

Select Committee on Electoral and Political Party Funding

Electoral and Political Party Funding in New South Wales

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Terms of reference

1. That a select committee be appointed to inquire into and report on the funding of, and disclosure of donations to, political parties, and candidates in state and local government elections, and in particular:
 - (a) all matters associated with electoral funding and disclosure
 - (b) the advantages and disadvantages of banning all donations from corporations, unions and organisations to parties and candidates
 - (c) the advantages and disadvantages of introducing limits on expenditure in election campaigns
 - (d) the impact of political donations on the democratic process and
 - (e) any related matters.
2. That notwithstanding anything contained in the standing orders, the committee consist of six members of the Legislative Council of whom:
 - (a) two must be government members
 - (b) two must be opposition members, and
 - (c) two must be cross bench members.
3. That, notwithstanding anything contained in the standing orders, at any meeting of the committee, any four members of the committee will constitute a quorum.
4. That the committee report by the last sitting day in June 2008.¹

On 15 May 2008, the Environmental Planning And Assessment (Restoration of Community Participation) Bill 2008 was referred to the Committee by the Legislative Council for inquiry and report.²

¹ Legislative Council *Minutes*, 27 June 2007, item 8, amended by Legislative Council *Minutes*, 23 October 2007, item 2

² Legislative Council *Minutes*, 15 May 2008, item 8

Committee membership

Revd the Hon Fred Nile MLC	Christian Democratic Party	<i>Chairman</i>
Hon Don Harwin MLC	Liberal Party	<i>Deputy Chair</i>
Hon Robert Brown MLC	The Shooters Party	
Hon Amanda Fazio MLC	Australian Labor Party	
Hon Jenny Gardiner MLC	The Nationals	
Hon Michael Veitch MLC	Australian Labor Party	

Table of contents

	Tables and figures	x
	Chairman's foreword	xi
	Summary of recommendations	xii
	Glossary and list of acronyms	xviii
Chapter 1	Introduction	1
	Establishment of the Committee	1
	Submissions	1
	Public hearings	1
	Public forum	2
	Procedural issues	2
	Report	4
Chapter 2	Context of the inquiry	6
	Public perceptions of political donations	6
	Local government	10
	State government	11
	Federal government	13
Chapter 3	Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	14
	Objectives of the Bill	14
	Content of the Bill	15
	Issues with the Bill	16
	Committee comment	17
Chapter 4	Comparative electoral funding regimes	18
	Australian jurisdictions	18
	International jurisdictions	23

Chapter 5	NSW election funding scheme	33
	Election Funding Act 1981	33
	Key provisions of election funding scheme	36
	Federal election funding and disclosure scheme	42
Chapter 6	Public funding for State elections	46
	Rationale for public funding	46
	Committee comment	48
	Eligibility and adequacy	48
	Committee comment	58
	Political Education Fund	59
	Committee comment	67
	Indirect public funding	68
	Committee comment	74
	Increased public funding	75
	Committee comment	79
Chapter 7	Political donations	80
	Extent of political donations	80
	Committee comment	88
	Banning political donations	89
	Committee comment	94
	Targeted restrictions on certain sources of political donations	95
	Committee comment	104
	Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008	105
	Committee comment	106
	Other possible exemptions from a ban on donations	106
	Committee comment	113
	Interim reforms	115
	Committee comment	119

Chapter 8	Election spending	120
	Extent of election spending	120
	Committee comment	123
	Spending caps	123
	Committee comment	129
	Difficulties in implementing spending caps	131
	Committee comment	136
	Interim reforms	137
	Committee comment	137
Chapter 9	Disclosure of political donations and campaign spending	139
	Current disclosure scheme	139
	Committee comment	143
	Improvements to disclosure scheme	143
	Committee comment	150
	Frequency and timeliness	153
	Committee comment	158
	Interim reforms	160
	Committee comment	161
Chapter 10	Local government	162
	Applying the electoral funding scheme to local government	162
	Committee comment	163
	Public funding	164
	Committee comment	169
	Political donations	170
	Committee comment	173
	Regulation of developer donations	173
	Committee comment	179
	Spending	181
	Committee comment	183
	Disclosure	184
	Committee comment	186
	Interim reforms	187
	Committee comment	190

Chapter 11	Election Funding Authority and Election Funding Act 1981	192
	Review of the Election Funding Act 1981	192
	Committee comment	193
	EFA's role in policing the electoral funding scheme	194
	Committee comment	201
	EFA's website and online lodgement of disclosure returns	202
	Committee comment	205
	Ongoing review of the election funding scheme	205
	Committee comment	208
	Future of the Election Funding Authority	209
	Committee comment	213
Chapter 12	Proposed model	214
	Key provisions of the proposed model	215
	Conclusion	218
Appendix 1	Submissions	219
Appendix 2	Witnesses	225
Appendix 3	Tabled documents	227
Appendix 4	Disclosure periods for the 2007 State Election and 2008 Local Government Elections	228
Appendix 5	Minutes	229
Appendix 6	Dissenting statement	258

Tables and figures

Table 2.1	Chronology of key events relating to electoral and political party funding	7
Table 4.1	Public funding in Australian jurisdictions	20
Table 4.2	Australian regulatory frameworks: Donations, disclosure & electoral expenditure	21
Table 4.3	International disclosure and expenditure requirements	23
Table 4.4	International regulatory: Donations and disclosure	30
Table 6.1	Public funding for 2007 NSW State Election	49
Table 6.2	Funding payable to candidates contesting 2007 Legislative Council election if eligibility threshold reduced or abolished	53
Table 6.3	Funding payable to candidates contesting 2007 Legislative Assembly election if eligibility threshold reduced or abolished	55
Table 6.4	Political Education Fund payments 2004-2007	63
Table 6.5	Potential annual payments from the Political Education Fund for Independent MPs and parties represented in the Legislative Council who did not stand candidates in the Legislative Assembly election	65
Table 6.6	Quarterly allowances paid to registered political parties in Canada (2007)	78
Table 7.1	Total donations to parties, groups and candidates in NSW 2003-2007	80
Table 7.2	Donations to each party in NSW 2003-2007	81
Table 7.3	Donations by category in NSW 2003-2007	82
Table 7.4	Political donations by category and by party/independents in NSW 2003-2007	84
Table 8.1	Total election spending by each party for the 2007 NSW State election	120
Table 8.2	Election spending by each party in the four years leading up to the 2007 NSW State election	121

Chairman's foreword

I am pleased to present the report of the Select Committee on Electoral and Political Party Funding.

The key message from this inquiry is that there must be significant reform of the electoral funding scheme, and in particular, tighter regulation of political donations. In many of the 189 submissions made to the Inquiry, community members told the Committee in no uncertain terms that the time for change is now. Many elected politicians at State and local government level agreed. In this context, the role of our Committee was not to ask whether there should be reform, but to ask how this should be done.

While there was broad support for reform, there were divergent views about how to achieve a fair and transparent electoral funding scheme. The NSW electoral finance regime has had two underlying objectives since its inception in 1981: to prevent corruption and undue influence, and to level the playing field by ensuring an adequate level of financial resources for all, including minor parties and independent candidates. The Committee believes both of these aims to be of equal weight, and our recommendations are therefore designed to address both.

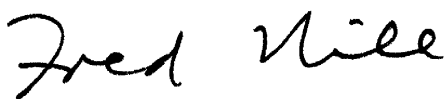
This report contains strong recommendations for policy change. The Committee has recommended that political donations by corporations and other organisations be banned, and that only small donations by individuals be permitted. Election spending would be capped. Political donations and election spending would be disclosed in a timely, transparent and accessible manner. There would be greater policing of the electoral funding scheme, and tougher penalties for non-compliance.

There will be an ongoing debate, within New South Wales and federally, about the type of electoral funding reforms that should be pursued. The Committee has made strong recommendations to make clear our position, and ensure that this report continues to inform the ongoing debate. The Committee acknowledges the role played by community members in shaping the recommendations made in this report. The Committee's recommendations are intended to restore community confidence in the integrity of the political process.

With this report the Committee is continuing the proud tradition of parliamentary committees being at the vanguard of electoral funding reform in New South Wales, a tradition that began with the 1981 committee report supporting the introduction of the first electoral funding scheme. The Committee hopes that our proposed model will have a similar lasting impact.

On behalf of the Committee, I thank each inquiry participant for taking the time to engage with the inquiry process. I am grateful to my Committee colleagues for the work they have undertaken on this important Inquiry and their contribution to this report. On their behalf, I acknowledge the Secretariat for their assistance in the conduct of this Inquiry and the production of this report.

I commend this report to the Government.



Revd the Hon Fred Nile MLC

Summary of recommendations

Recommendation 1

Page 59

That the Premier raise with Minister Faulkner, as part of the Federal Government's Green Paper review of electoral funding, the issue of simplifying registration requirements between the Federal Government and the states and territories.

Recommendation 2

Page 67

That the Premier establish a 'Party Administration Fund.' The Fund should:

- provide annual payments to subsidise party administration costs
- be open to all parties that have candidates elected to either the Legislative Council or Legislative Assembly.

Recommendation 3

Page 67

That the Premier review the funding provided through the 'Party Administration Fund' to:

- ensure that parties are adequately funded
- assess whether it is appropriate to calculate each party's entitlement based on the cost of a postage stamp.

Recommendation 4

Page 68

That the Premier establish a new 'Political Education Fund,' to be administered by the NSW Electoral Commission, and allocate monies equal to the value of the current Political Education Fund. The Fund should have clear objectives, and have clear assessment criteria against which to monitor the effectiveness of projects.

Recommendation 5

Page 75

That the Premier entrust the Auditor General with oversight responsibility for government advertising, with the Auditor General's powers to be modelled on those of the Auditor General in Ontario, Canada.

Recommendation 6

Page 79

That the Premier consult to determine a reasonable increase in electoral and political party funding.

Recommendation 7

Page 105

That the Premier ban all but small political donations by individuals, to be capped at \$1,000 per political party per year, and \$1,000 per independent candidate per electoral cycle.

Further, the Premier should investigate all relevant legal and constitutional issues arising from such a ban, and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws.

Recommendation 8

Page 106

That the Legislative Council not support Schedule 1[8] of the Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008, inserting a new section 148A banning developer donations into the *Environmental Planning and Assessment Act 1979*.

Recommendation 9*Page 113*

That the Premier exempt party membership and affiliation fees, including union affiliation fees, up to a reasonable limit, from the ban on all but small individual donations. The limit should be set by the Auditor General.

Recommendation 10*Page 113*

That the Premier, as part of the ban on all but small individual donations, ban intra-party transfers to cover State election costs. Consideration should be given to allowing intra-party transfers, up to a reasonable limit, to subsidise the costs of party administration. The limit should be set by the Auditor General.

Recommendation 11*Page 114*

That the Premier, as part of the ban on all but small individual donations, ban in-kind donations other than volunteer labour and the purchase of merchandise.

Recommendation 12*Page 114*

That the Premier, as part of the ban on all but small individual donations, ensure that the proceeds of merchandising, up to a reasonable limit, be used to support the costs of party administration. The limit should be set by the Auditor General.

Recommendation 13*Page 114*

That the Premier ensure that the legislation to ban all but small individual donations places no restriction on genuine volunteer labour.

Recommendation 14*Page 114*

That the Premier, as part of the ban on all but small individual donations, ban non-bank loans and other informal credit arrangements.

Recommendation 15*Page 115*

That the Premier, as part of the ban on all but small individual donations, exempt bank loans to parties, groups and candidates to fund their election costs, up to a reasonable limit. The limit should be set by the Auditor General.

Recommendation 16*Page 115*

That the Premier, as part of the ban on all but small individual donations, treat donations by a candidate to his or her own campaign in the same way as other individual donations, and that they be capped at \$1,000.

Recommendation 17*Page 119*

That the Premier implement his proposal to ban in-kind donations of offices, cars and phones, ensuring that the legislation does not restrict volunteer labour.

Recommendation 18*Page 130*

That the Premier cap election spending for parties, groups and candidates. There should be two spending caps, to apply to:

- candidates contesting the Legislative Assembly election
- parties and groups contesting the election. The cap should encompass the campaign costs of candidates contesting the Legislative Council election as well as State-wide spending by the party or group, including costs relating to both Legislative Assembly and Legislative Council elections.

Spending caps should be set by the Auditor General using caps in overseas jurisdictions for guidance.

Further, the Premier should investigate all relevant legal and constitutional issues arising from capping election spending for parties, groups and candidates, and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws.

Recommendation 19*Page 137*

That the Premier cap election spending by third parties as part of the cap on election spending by parties, groups and candidates, and consider whether spending by associated entities should also be capped. Third party spending caps should be set by the Auditor General using caps in overseas jurisdictions for guidance.

Further, the Premier should investigate all legal and constitutional issues arising from capping third party election spending and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws

Recommendation 20*Page 138*

That the Premier implement his proposals to:

- require funds raised for elections to be used for campaigning
- ban the use of funds raised for elections for the personal private gain of a candidate
- ban payment by third parties of election expenses.

Recommendation 21*Page 151*

That the Premier amend the disclosure scheme to introduce donor identification. Individual donors should be linked to the NSW electoral role, and organisations should be linked to an Australian Business Number.

Recommendation 22*Page 151*

That the Premier amend the disclosure scheme to introduce a new definition of related political parties, modelled on the Federal Government's definition, to ensure that different divisions of a party are no longer treated as separate entities for the purposes of applying the disclosure thresholds.

Recommendation 23*Page 151*

That the Premier amend the disclosure scheme to require that political donations made through fundraising events be clearly labelled to distinguish them from direct donations.

Recommendation 24*Page 152*

That the Premier ensure that audit certificates to accompany declarations of donations and spending are required annually, regardless of the frequency of disclosure. Auditors other than Registered Company Auditors should be able to provide the required audit certificates, to reduce the high costs of audits.

Recommendation 25*Page 152*

That the Premier, as part of the ban on all but small individual donations, introduce a disclosure threshold of \$500 for all donations. Discussions should be initiated with the Federal Government to encourage them to introduce the same threshold.

Recommendation 26*Page 153*

That the Premier investigate the merits of requiring political parties to lodge their annual financial statements with the Election Funding Authority.

Recommendation 27*Page 158*

That the Premier amend the disclosure scheme to require disclosure of donations and expenditure every six months.

Recommendation 28*Page 159*

That the Premier amend the disclosure scheme to require that six-monthly disclosure returns be published on the website of the Election Funding Authority within one month of being submitted.

Recommendation 29*Page 159*

That the Premier amend the disclosure scheme to introduce online lodgement of disclosure declarations for donations and expenditure. Online lodgement should:

- be compulsory
- facilitate real-time or continuous entry of donations and spending data
- be introduced before the 2011 State election
- be accompanied by training and other assistance to parties, groups, candidates and donors.

The *Election Funding Act 1981* should be amended to ensure that a declaration lodged online is considered valid.

Recommendation 30*Page 161*

That the Premier implement his proposal to make compulsory the disclosure of loans and other credit facilities.

Recommendation 31*Page 170*

That the Premier investigate public funding for local government election campaigns to deter corruption and undue influence. Public funding could be financed by the State Government. A detailed and wide-ranging review should be undertaken, to develop a proposed design for the scheme. The review should involve extensive stakeholder consultation, and community consultation to ascertain what level of electoral funding would be supported by the public.

Recommendation 32*Page 179*

That the Department of Local Government implement the ICAC's recommendation, to amend the Model Code of Conduct to:

- include clear instructions to councillors on the circumstances in which political donations will give rise to non-pecuniary conflicts of interest and how to manage such conflicts
- require councillors to refrain from discussion and voting on matters involving campaign donors. If to do so would deprive the meeting of a quorum, councillors may declare the interest and vote, but consideration should be given to making the resulting decision subject to third-party appeal in the Land and Environment Court if approval depended on the vote of a councillor or councillors who had a conflict of interest.

The Committee recommends that these requirements apply to donors who have donated over \$1,000.

Recommendation 33*Page 180*

That the Minister for Local Government implement the ICAC's recommendation, to introduce amendments to the *Local Government Act 1993* to provide that a failure to declare a non-pecuniary interest relating to a political donation is a matter falling within the jurisdiction of the Pecuniary Interest and Disciplinary Tribunal.

Recommendation 34*Page 180*

That the Premier require applicants to declare political donations over \$1,000 when lodging development applications. Persons lodging objections to development applications should also be required to declare political donations over \$1,000.

Recommendation 35*Page 180*

That the Premier implement the ICAC's recommendation, that the Minister for Planning include in the list of designated developments, development in respect of which a declaration as to the making of a donation has been made.

Recommendation 36*Page 184*

That the Premier, for local government elections, investigate differential spending caps tailored to apply to different council areas and to mayoral elections. The spending caps should be set after public consultation.

Recommendation 37*Page 190*

That the Premier implement his proposal to record and make public individual councillors' voting histories.

Recommendation 38*Page 190*

That the Premier, as an extension of Recommendation 34, implement his proposal to require the property developer (where the developer is not also the applicant) to declare the amount and recipient of political donations made by them.

Recommendation 39*Page 191*

That the Election Funding Authority advise candidates for the 2008 local government elections that a vigorous regime of scrutiny will be put in place after the election, to monitor declarations of political donations and campaign spending.

Recommendation 40

Page 193

That the Premier review the *Election Funding Act 1981* to clarify:

- the purpose and objectives of the Act
- the role and structure of the Election Funding Authority
- how GST amounts are to be treated.

Consideration should be given to whether registered officers should be assigned the role of party agents.

Recommendation 41

Page 194

That the Premier review the *Parliament Electorates and Elections Act 1912* to ensure that:

- registered parties are automatically registered for the purposes of the *Election Funding Act 1981*
- public funding is automatically reimbursed to the registered agent.

Recommendation 42

Page 201

That the Premier review the Election Funding Authority's powers to identify suspected breaches of the electoral funding scheme. Suspected breaches should be referred to a designated reference point for investigation.

Recommendation 43

Page 202

That the Premier review the penalties for breaches of the electoral funding scheme to devise tougher penalties, using section 315 of the *Commonwealth Electoral Act 1918* for guidance, and having deregistration of political parties as the option of last resort for serious and repeated non-compliance.

Recommendation 44

Page 208

That the Premier raise with Minister Faulkner, as part of the Federal Government's Green Paper review of electoral funding, the need to add electoral reform to the agenda for meetings of the Council of Australian Governments.

Recommendation 45

Page 208

That the Premier require the Election Funding Authority to report annually to Parliament on the effectiveness of the electoral and political party funding and disclosure scheme. The report should identify areas needing reform.

Recommendation 46

Page 209

That the Joint Standing Committee on Electoral Matters be reconstituted as a statutory committee, and be charged with a function of oversight of the implementation of the electoral funding and disclosure reforms as part of its brief.

Recommendation 47

Page 213

That the Premier allocate additional resources to the Election Funding Authority including:

- expert staff to monitor compliance with the electoral funding scheme and identify *prima facie* breaches of the scheme
- capital resources to acquire the information technology needed to improve the Authority's webpage and facilitate online lodgement of disclosure returns
- expert staff to establish and administer the Authority's information technology systems.

Glossary and list of acronyms

These definitions have been taken from the *Election Funding Act 1981* or replicate definitions used in the body of the report.

AEC	Australian Electoral Commission
associated entity	an organisation such as a company, trust fund or foundation that is closely associated with a political party, operating for that party's benefit
candidate	in relation to an election, means a person nominated as a candidate at the election in accordance with the <i>Parliamentary Electorates and Elections Act 1912</i> and includes a person applying for registration as, or registered as, a candidate in the Register of Candidates for the election
EFA	Election Funding Authority of New South Wales
group	a group of candidates, or part of a group of candidates, for election to the Legislative Council
in kind donation	donations of goods or services, for example free office space, printing services, merchandise and the assistance provided by volunteers
party	a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part
party agent	appointed under section 41 of the <i>Election Funding Act 1981</i> , responsible for ensuring that the party complies with the provisions of the Act
third party	individuals or organisations that are not candidates, groups, parties or associated entities such as, lobby groups and individual, corporate or institutional supporters

Chapter 1 Introduction

This chapter provides an overview of the establishment of the Inquiry. It then examines the way in which the Inquiry was conducted, and procedural issues arising during the course of the Inquiry. The chapter concludes with a summary of the report's contents.

Establishment of the Committee

- 1.1 The Select Committee on Electoral and Political Party Funding was established by resolution of the Legislative Council on 27 June 2007 to inquire into and report on electoral and political party funding.³
- 1.2 The reporting date for the Committee was extended to the last sitting day in June 2008 by resolution of the Legislative Council on 23 October 2007.⁴

Submissions

- 1.3 The Committee called for submissions through a media release issued on 15 November 2007, and through advertising in metropolitan and regional press. In order to facilitate debate on the role of electoral funding and the system of political donations, the Committee published a discussion paper that identified a number of areas for possible reform, and invited submitters to respond to these areas.
- 1.4 The Committee received 189 submissions from a wide range of stakeholders, including individuals, political parties, local governments, academics and community organisations.
- 1.5 A list of submissions can be found in Appendix 1.

Public hearings

- 1.6 The Committee held five public hearing during the course of its inquiry. The hearings were held at Parliament House on 3 March, 10 March, 31 March, 4 April and 11 April 2008. The Committee heard evidence from 32 witnesses, two of whom the Committee heard from via teleconference. A list of witnesses can be found in Appendix 2.
- 1.7 Transcripts from the hearings, together with documents tabled during proceedings and published by the Committee can be found at the Committee's website www.parliament.nsw.gov.au/partyfunding. A list of tabled documents appears in Appendix 3.

³ Legislative Council *Minutes*, 27 June 2007, item 8

⁴ Legislative Council *Minutes*, 23 October 2007, item 2

Public forum

- 1.8 Due to the high level of public interest in the Inquiry, the Committee held a public forum at Parliament House on Friday 4 April 2008. The Committee heard from 18 speakers. The speakers outlined their concerns regarding the current system of electoral funding and identified possible areas for reform. A list of forum speakers can be found in Appendix 2.
- 1.9 The Committee would like to extend its thanks and appreciation to all those who participated in the Inquiry through making a submission, appearing as a witness or attending the public forum.

Procedural issues

Appointment of Committee members

- 1.10 On 26 September 2007, the President informed the Legislative Council that he had received nominations from the Hon Robert Brown (The Shooters Party), Revd the Hon Fred Nile (Christian Democratic Party) and Ms Lee Rhiannon (The Greens) for the two cross bench positions on the committee.
- 1.11 In the absence of an agreement between cross bench members concerning representation on a committee, cross bench representation is to be determined by the Legislative Council under standing order 210(5). This is decided by ballot under standing order 135. Mr Brown and Revd Nile were subsequently elected to the Committee.⁵
- 1.12 When the Legislative Council proceeded to conduct the ballot, Ms Rhiannon moved an amendment to allow each of the nominating members to speak for no longer than two minutes about their candidature. The amendment was agreed to, although only Ms Rhiannon spoke to her candidature.

Adverse comment

- 1.13 Several submissions to the Inquiry made adverse comment against third parties. Under parliamentary privilege, submissions and oral evidence before a committee cannot be subject to legal action for defamation, so that participants can provide information freely and honestly. At the same time, the freedom of speech granted to participants is not intended to provide a forum for the making of inappropriate comments about others.
- 1.14 In keeping with parliamentary practice, the Committee considered the course of action to be taken to provide procedural fairness to those parties who were the subject of adverse comments. In the case of a number of submissions, the Committee resolved to suppress the names of individuals against whom allegations were made, or to not publish the submission in its entirety.

⁵ Legislative Council *Minutes*, 26 September 2007, item 10

The Greens Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008

- 1.15** The Environmental Planning and Assessment (Restoration of Community Participation) Bill 2008 (the Bill) was introduced into the Legislative Council by Greens' member Ms Sylvia Hale on 3 April 2008.⁶
- 1.16** During debate on the Bill, the Committee Chairman raised a point of order that claimed the speech of Ms Lee Rhiannon MLC, appeared to be based on an unpublished submission to the Committee.⁷
- 1.17** The President ruled that Ms Rhiannon could proceed with her speech, and cautioned members that 'that it would be dishonourable and indeed potentially a contempt of the House to attempt to read into the record material that was given in camera before a committee and that has not as yet been reported to the House.'⁸ The President also urged members 'to exercise restraint where there is a likelihood that their speech could interfere with the workings of a committee appointed by this House. Members should also be cautious of attempts by third parties to circumvent the decision of a properly constituted committee of this House.'⁹ Ms Rhiannon interrupted her speech, but resumed by leave on 15 May 2008 without further points of order being taken.
- 1.18** The unpublished submission to the Committee was identified during the debate as being made by Mr Mark Corrigan. When the Committee first considered Mr Corrigan's submission it resolved to keep it confidential because of the extent of adverse mention of individuals. Mr Corrigan was advised that he was free to publish the information contained in the submission in another form. The Committee also urged Mr Corrigan to direct his allegations to the Independent Commission Against Corruption in letters sent on 25 February 2008 and 11 March 2008. A copy of the submission was also provided to the Chairperson of the Electoral Funding Authority on a confidential basis for discussion during a later *in camera* hearing.
- 1.19** The Bill was referred to the Committee by the Legislative Council on 15 May 2008 for inquiry and report. The Bill is considered in Chapters 3 and 7.

Government bills to amend the election funding scheme

- 1.20** On 5 June 2008 Attorney General John Hatzistergos gave notice that two bills would be introduced into the Legislative Council on 17 June: the Election Funding Amendment (Political Donations and Expenditure) Bill, and the Local Government and Planning Legislation Amendment (Political Donations) Bill.

⁶ Legislative Council *Minutes*, 3 April 2008, item 11

⁷ NSWPD (*Legislative Council*), 8 May 2008, p 7187

⁸ NSWPD (*Legislative Council*), 8 May 2008, p 7188

⁹ NSWPD (*Legislative Council*), 8 May 2008, p 7209

Report

Recommendations

- 1.21** The recommendations in this report are designed to apply to both State and local government, except for those recommendations in Chapter 10, 'Local government.' Local government is considered in a stand-alone chapter because local government is complex, and raises issues distinct from those raised in relation to State government. Also, the Committee received less evidence on local as compared to State government.
- 1.22** Some of the Committee's recommendations would apply only if the Committee's proposed model for reform of the electoral funding scheme is implemented. Others will apply regardless of whether this model is implemented.

Outline

- 1.23** Chapters 2, 3 and 4 set the scene for the ensuing consideration of the NSW electoral funding scheme. Chapter 2 considers the context in which the Inquiry has been held. Chapter 3 considers a specific development arising during the Inquiry, namely the referral to the Committee of the Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008. Chapter 4 provides examples of comparative electoral funding schemes, in Australia and overseas.
- 1.24** Chapter 5 outlines the provisions of the NSW election funding scheme for State government elections.
- 1.25** Chapter 6 examines eligibility for, and adequacy of, public funding for State elections. The Political Education Fund is discussed as one means of providing public funding.
- 1.26** Chapter 7 considers two ways to regulate political donations: a prohibition on all (or most) donations, as opposed to targeted restrictions on certain sources of donations. Evidence to the Committee argued that such measures are needed to strengthen the electoral funding scheme, and deter corruption and undue influence.
- 1.27** Chapter 8 discusses spending, in particular the advantages and disadvantages of introducing spending caps. Spending caps are considered as a means to level the playing field and address the financial advantage enjoyed by major parties.
- 1.28** Chapter 9 investigates ways to strengthen the current disclosure scheme for political donations and election spending, and to ensure the accuracy, timeliness and accessibility of the information disclosed.
- 1.29** Chapter 10 considers how the issues raised in preceding chapters apply to local government, that is, public funding, donations, spending and disclosure.
- 1.30** In Chapter 11, the Committee examines the operation and effectiveness of the Election Funding Authority, and the *Election Funding Act 1981* under which the Authority operates.

- 1.31** Chapter 12 outlines a proposed model drawing on the recommendations made in previous chapters. The chapter also includes a second preference model for reforming the electoral funding scheme. This model could be implemented if the Government does not pursue the significant reforms recommended by the Committee.

Chapter 2 Context of the inquiry

This Inquiry has been conducted in an environment of strong community concern regarding the integrity of the electoral funding system. This chapter discusses the context of the Inquiry, starting with public perceptions of political donations and then examining issues at the local, State and Federal level.

Public perceptions of political donations

- 2.1** This Inquiry was established in June 2007 between the March 2007 NSW State election and the November 2007 Federal election. Calls for reform to the electoral funding system have become prominent since the establishment of the Inquiry, fuelled by events in or concerning local, State and Federal arenas, as highlighted in the chronology at the end of this section.
- 2.2** The strength of the community concern is reflected by the high volume of submissions received by the Committee from members of the community, and by the high level of interest in the Committee's public forum.
- 2.3** Half of the submissions received by the Committee advocated either a complete ban on political donations, or a partial ban on donations from certain sources such as corporations or property developers. Two thirds of submissions highlighted the need for greater transparency and disclosure of donations, while approximately one third of submission makers felt that there should be a cap on the amount that could be donated by corporations or by individuals.
- 2.4** Many inquiry participants have expressed the view that 'reform of political party and election funding is a necessity if public trust in the process of parliamentary democracy is to be restored in New South Wales.'¹⁰
- 2.5** Participants at the public forum expressed unease over the issue of political donations:
- I think that we are all aware of the problems surrounding political donations. We would not tolerate it if judges were permitted to receive donations from defendants or if referees were permitted to receive donations from sports people, so we have similar problems when our government is permitted to receive donations from people who may have vested interests.¹¹
- 2.6** Concerns have also been expressed that political donations hinder ordinary voters from being heard:
- ... donations skew the debate towards commercial interests thus narrowing, sometimes choking the debate for comprehensive inclusion of community views and needs. Political party donations, even though they may be viewed on a register, have established a culture conducive to corruption and therefore should be banned.¹²

¹⁰ Mr Richard Bryce, Public Forum, 4 April 2008, p 10

¹¹ Mr Shane Leong, Public Forum, 4 April 2008, p 4

¹² Submission 184, Ms Frances Burnham, p 1

- 2.7** The Cancer Council of NSW used the example of public health policy to highlight the perceived inequity:

This is a particular problem in policy areas such as public health where groups representing the interests of the general public or those who are at risk of chronic disease are unable or unwilling to use political donations as part of the policy influence strategy. In this scenario, political donations inherently disadvantage the ordinary citizen as well as charities that act in the community interest, as they are in most cases unable to match the financial resources of the corporate sector.¹³

- 2.8** Inquiry participants suggested that reform is needed to restore confidence in the integrity of the electoral funding regime:

Limitations on the size of donations, transparency of donors, bans on donations from particular types of organisations and caps on electoral spending should all be considered, but the overarching principle that must be observed is that the funding of political parties should not be allowed to compromise the trust placed by the people of New South Wales in our system of government and the freedoms that that system supports.¹⁴

- 2.9** This lack of confidence in the existing regulatory regime, the unease over political donations and the perception of undue influence have been reinforced by several recent events at the local and State Government level. These events are outlined in the following chronology:

Table 2.1 Chronology of key events relating to electoral and political party funding

Date	Event
25 May 2005	Tweed Shire Council dismissed by the NSW Governor under s 255 of the <i>Local Government Act 1993</i> following the findings of the Daly report. The report found that the results of the 2004 local election had been unduly influenced by donations from a pro-development group.
24 March 2007	NSW State election
27 June 2007	NSW Parliament's Select Committee on Electoral and Political Party Funding established by resolution of the Legislative Council.
	NSW Parliament's Joint Standing Committee on Electoral Matters begins its inquiry into the administration of the 2007 NSW election and related matters.

¹³ Submission 141, The Cancer Council (New South Wales), p 2

¹⁴ Mr Paul Shepanski, Public Forum, 4 April 2008, p 25

Date	Event
November 2007	NSW Parliament's Select Committee on Electoral and Political Party Funding releases its discussion paper into electoral and political party funding and calls for submissions.
	NSW Department of Planning releases its discussion paper entitled 'Improving the NSW planning system.' The Department invites public comment on its proposals. There is significant media interest in, and widespread public concern over the proposed changes.
24 November 2007	Federal election
4 February 2008	Election Funding Authority releases reports on declarations lodged by candidates, groups and parties contesting the March 2007 State election.
12 February 2008	Election Funding Authority releases reports on declarations lodged by donors for March 2007 State election.
18 February 2008	ICAC commences public inquiry into allegations of corruption at Wollongong City Council.
27 February 2008	Port Macquarie-Hastings Council dismissed by the NSW Governor following findings of mismanagement of the construction of the Port Macquarie Cultural and Entertainment Centre, also known as the Glasshouse.
28 February 2008	Premier announces changes to strengthen the electoral funding scheme.
29 February 2008	Ms Noreen Hay MP stood down as the Parliamentary Secretary for Health after she was adversely named in the ICAC inquiry into Wollongong City Council. Reinstated on 3 March 2008 after the ICAC inquiry made no findings against her.
3 March 2008	NSW Parliament's Select Committee on Electoral and Political Party Funding commences hearings.
4 March 2008	ICAC Commissioner recommends that all civic offices of Wollongong City Council be vacated.
	Wollongong Council is formally dismissed by the NSW Governor.
8 March 2008	Premier indicates that reforms to the electoral funding scheme may be in place before the September 2008 local government elections.
22 March 2008	Premier announces that New South Wales will consider a ban on private donations. The General Secretary of the NSW Labor Party is tasked with consulting other political parties on the proposed reforms to the electoral funding regime.

Date	Event
28 March 2008	Senator the Hon John Faulkner, Special Minister of State issues a press release announcing the Federal Government will propose reforms to the Federal electoral funding scheme. Minister Faulkner further announces a review of the electoral funding scheme, which will lead to the publication of a Green Paper. The first part of the review will be published in July 2008, and the second part in October 2008
3 April 2008	The NSW Government releases a draft exposure bill outlining wide-ranging improvements to the State's planning system, the Environmental Planning and Assessment Amendment Bill 2008.
	The Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008 introduced into the Legislative Council by The Greens NSW. One of the aims of the Bill is to ban developer donations.
14 April 2008	Four Corners airs a program investigating the perception that donors have undue influence on government policy.
15 May 2008	The NSW Government introduces three planning reform bills into Parliament. The Bills are the Environmental Planning and Assessment Amendment Bill 2008, Building Professionals Amendment Bill 2008 and Strata Management Legislation Amendment Bill 2008.
	The Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008 referred to the Select Committee on Electoral and Political Party Funding by the Legislative Council.
	Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 introduced into the Federal Senate. The Bill makes several amendments to national donations and election funding regulations.
21 May 2008	NSW Parliament's Joint Standing Committee on Electoral Matters tables its final report. The report made a number of recommendations concerning the conduct of the 2007 State election.
28 May 2008	ICAC's second report on Wollongong City Council makes findings of serious corrupt conduct against former town planner Ms Beth Morgan and developer Mr Frank Vellar. The ICAC recommends that the Planning Minister consider suspending the development consent granted for the "Quattro" development. The report makes no findings in relation to any elected Councillors or State MP's.
5 June 2008	Attorney General John Hatzistergos gives notice that two bills will be introduced into the Legislative Council on 17 June 2008: the Election Funding Amendment (Political Donations and Expenditure) Bill, and the Local Government and Planning Legislation Amendment (Political Donations) Bill.

Date	Event
19 June 2008	NSW Parliament's Select Committee on Electoral and Political Party Funding tables its final report, recommending a new model to regulate election finance in New South Wales.

Local government

2.10 There have been a number of high-profile incidents concerning local government authorities. The submission from Wyong Shire Council commented on the damage done to the good standing of local councils by such events:

Over recent years across Australia there have been numerous investigations into undisclosed political donations designed to gain favour in the decision making process – Gold Coast, Tweed, Greater Geelong and Busselton to name a few. In each case the reputations of the councils has been significantly damaged regardless of the outcome of the investigation. The reputation of local government as a whole has also been adversely impacted.¹⁵

2.11 Most recently, the progress of an ICAC inquiry into Wollongong City Council attracted adverse publicity. The inquiry investigated allegations of corrupt conduct concerning 14 people involved with the Council between 2000 and 2007. The allegations particularly concern the approval process for several development applications in the Wollongong region, and whether favourable consideration was given to those applications because of relationships between the property developers, councillors and council staff.¹⁶ Labor parliamentarians were drawn into the ICAC inquiry into Wollongong City Council through donations received from the property developers named in the inquiry.¹⁷

¹⁵ Submission 177, Wyong Shire Council, p 1

¹⁶ Wilson L, 'Pollies asked developer for bribe', *The Australian*, 21 February 2008, p 7; Frew W, 'Gong-gate council under threat', *The Sydney Morning Herald*, 21 February 2008, p 5; Benson S & Cummings L, 'Going going Gong', *Daily Telegraph*, 21 February 2008, p 1

¹⁷ Robins B and Jopson D, 'Tabak cash not wanted – Brown', *The Sydney Morning Herald*, 22 February 2008, p 4; Clennell A, 'MP owed debt to developer for renovations', *The Sydney Morning Herald*, 19 March 2008, p 10; 'Hay: All above board', *The Illawarra Mercury*, 14 April 2008, p 2, 'Wollongong MP denies wrongdoing', *The Australian*, 14 April 2008 < <http://www.theaustralian.news.com.au/story/0,25197,23535196-5006784,00.html> > (accessed 30 April 2008)

- 2.12** While the ICAC is yet to release its final findings, the Premier acted on the interim recommendation of the ICAC, dismissing the elected council and appointing administrators.¹⁸ The second report made findings of serious corrupt conduct against former town planner Ms Beth Morgan and developer Mr Frank Vellar, and recommended the suspension of the development consent granted for the ‘Quattro’ development.¹⁹ The report makes no findings in relation to any elected councillors or State MP’s.
- 2.13** An earlier example of a council alleged to have been subject to undue influence is the Tweed Shire Council. In May 2005 the Council was dismissed following the findings of the Daly report, that a pro-development group had injected a large amount of money into the 2004 local government elections, to ensure that a number of pro-development candidates were elected to Council. According to Daly, the integrity of the pro-development candidates was ‘...so undermined that the public can no longer have confidence that they can and will carry out their duties and functions to the standards expected of them’.²⁰ The Council was placed under administration, with a new council to be elected during the 2008 local government elections.

State government

- 2.14** Similar concerns about developer donations have arisen at a State level, particularly in regard to a perceived link between donations made to the NSW Labor Party and subsequent decisions by the Minister for Planning. Of particular concern among inquiry participants and the community is the high degree of discretion that the Minister for Planning can exercise over potentially controversial decisions.²¹ A participant in the public forum described the need for transparency in such situations:

When legislation enables more ministerial discretion, we rely more on the integrity of the Ministers to honour their constitutional duty. That reliance on integrity brings an imperative of transparency of ministerial action so that the extent of influence of various interests on a decision can be judged by the public.²²

¹⁸ ‘Wollongong council sacked’, ABC News, 4 March 2008. <<http://www.abc.net.au/news/stories/2008/03/04/2179795.htm>> (accessed 30 May 2008)

¹⁹ ‘ICAC recommends Planning Minister consider suspending Wollongong “Quattro” development consent’, 28 May 2008 <<http://www.icac.nsw.gov.au/index.cfm?objectID=28F92963-C384-4C50-27DF10584E1894CE>> (accessed 29 May 2008)

²⁰ Daly M, *Tweed Shire Council Public Inquiry – First Report*, May 2005, p 272

²¹ Smith A, ‘Minister approved project of company that donated’, *The Sydney Morning Herald*, 27 February 2008; <<http://www.smh.com.au/news/national/sartor-approved-big-donors-project/2008/02/26/1203788346601.html>> (accessed 30 May 2008); Salusinszky I, ‘Top ALP donor appeals to Sartor’, *The Australian*, 9 April 2008; <<http://www.theaustralian.news.com.au/story/0,25197,23509731-5006784,00.html>> (accessed 30 April 2008); ‘Donors foolish to expect my ear’, 14 April 2008 <<http://www.abc.net.au/news/stories/2008/04/14/2216076.htm>> (accessed 30 April 2008)

²² Mr Barry Laing, Public Forum, 4 April 2008, p 6

- 2.15** Evidence to the Committee claimed that perceptions of undue influence also circulate around the tobacco and gaming industries, with Action on Smoking and Health (ASH) highlighting the perceived influence of these industries on the development and approval of legislation to restrict smoking in public places:
- ... many of these proposals have been delayed, weakened or undermined after the apparent influence of powerful industry groups with interests in tobacco and gambling. The direct consequence of dilution of policy change has been harm to the community – especially to, but not limited to, the most disadvantaged.²³
- 2.16** The ambiguities of the electoral finance regime in regards to reporting campaign expenditure have also been subject to close media attention. In a particular instance, donations to a party head office were directed towards campaign expenditure for a specific electorate in the 2007 NSW State Election but were not reported by the candidate.²⁴ This demonstrated the complexity of the reporting regime, with those concerned often unsure of their obligations.
- 2.17** The extent of community disquiet and the ongoing pressure for change crystallised in February of 2008. In a statement to Parliament, the Premier announced interim measures to strengthen the electoral funding regime.²⁵ Further proposals to amend the system were announced in March, with the Premier declaring that New South Wales would consider a ban on private donations and a full system of public funding for election campaigns.²⁶ The Premier's proposals are currently being canvassed with other political parties.
- 2.18** On 5 June 2008 Attorney General John Hatzistergos gave notice that two bills would be introduced into the Legislative Council on 17 June: the Election Funding Amendment (Political Donations and Expenditure) Bill, and the Local Government and Planning Legislation Amendment (Political Donations) Bill.
- 2.19** Another contribution to the current debate on political donation reform is the introduction of a private members bill, the Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008 by The Greens NSW into the Legislative Council. On 15 May the Bill was referred to the Committee for inquiry and report, and is discussed in the next chapter.

²³ Submission 132, Action on Smoking and Health Australia, p 2

²⁴ Clennell A, 'MP fails to mention \$50 000', *The Sydney Morning Herald*, 14 April 2008, p 6; Clennell A and Jones J, 'Contribution not declared', *The Herald – Newcastle and Hunter*, 14 April 2008, p 7; Smith A and Clennell A, 'We failed to declare donations: ALP', *The Sydney Morning Herald*, 15 April 2008, p 5

²⁵ NSW PD (*Legislative Assembly*), 28 February 2008, pp 5679-5361

²⁶ Clennell A, 'Emma to ban political donations,' *Sydney Morning Herald*, 21-23 March 2008, p 1

Federal government

- 2.20** Following the election of the new Federal Labor Government in November 2007, Senator the Hon John Faulkner, Special Minister of State, announced that the Government would make several modifications to strengthen the electoral regime. This included changes to some of the controversial amendments passed by the previous government in 2006, particularly reversing the disclosure limit for donations. These changes are discussed in further detail in Chapter 4.
- 2.21** Minister Faulkner also announced that the Government would release an Electoral Reform Green Paper. The first part, to be released in July 2008, will examine disclosure, expenditure and funding issues. The second part, to be released in October 2008, will be directed at identifying other areas of electoral law that need strengthening. The Prime Minister will seek the cooperation of the States and Territories in producing the Green Paper and in advocating nation-wide electoral reform.²⁷
- 2.22** It is evident that although there is now support across the political spectrum for reform of the electoral funding system, there are differing opinions as to the extent and substance of that reform. It will require consultation and negotiation within and between political parties and other interested stakeholders to ensure that any reforms maintain the ability of politicians to operate effectively whilst also restoring the public's confidence in the political funding regime.

²⁷ The Hon John Faulkner, Special Minister of State, 'Electoral Reform', *Media Release 06/2008*, 28 March 2008; Maiden S, 'PM cracks down on political donations', *The Australian*, 28 March 2008 <<http://www.theaustralian.news.com.au/story/0,25197,23445203-601,00.html>> (accessed 30 May 2008)

Chapter 3 Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008

This chapter examines the objectives and content of the Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008. It also outlines three key issues in relation to the proposed legislation.

Objectives of the Bill

- 3.1** The Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008 was introduced into the Legislative Council by The Greens NSW. On 15 May 2008, the Bill was referred to the Committee by the Legislative Council for inquiry and report.²⁸
- 3.2** The Bill was introduced by Ms Sylvia Hale MLC on 3 April 2008 and seeks to amend the *Environmental Planning and Assessment Act 1979* (The EPA Act) in three ways:
- add additional objectives to the Act to make the reduction of greenhouse emissions, the mitigation of the effects of climate change and the protection and enhancement of the health and wellbeing of the community overarching objectives of the planning system
 - increase the level of community involvement in the determination of applications for approval of development projects under part 3A of the Act by requiring environmental assessments of part 3A projects, the publishing of submissions relating to part 3A projects and the extension of appeal rights in relation to part 3A projects
 - return a measure of community control over decision making, increase accountability and remove conflicts of interest by banning donations from property developers to political parties, officials and candidates.²⁹
- 3.3** The first and second proposed amendments are outside the scope of the Committee's Inquiry and are not considered in detail in this report. The third proposed amendment, relating to donations by property developers is relevant to the Committee's terms of reference, and is considered in this chapter in general terms and again in Chapter 7.
- 3.4** According to the Bill's Explanatory note, the object of the Bill in respect to donations is:
- (c) to make it an offence for any property developer to make a donation to an elected office holder, candidate for election, political party or party official, or for such a donation to be accepted, and

²⁸ Legislative Council *Minutes*, 15 May 2008, item 8

²⁹ NSWPD (*Legislative Council*), 3 April 2008, p 6335

- (d) to make it an offence for any person to make a development application under the principal Act or lodge an expression of interest in carrying out a development within 1 year after making a donation to an elected office holder, candidate for election, political party or party official, or to make such a donation within 1 year after the person's development application is determined.³⁰

3.5 During her second reading speech on the Bill, Ms Hale said that these amendments:

... seek to restore a measure of community and council control over decision making, increase accountability and remove conflicts of interest by banning donations from property developers to political parties, officials and candidates. ... The purpose of these amendments is, in one simple step, to remove the vast majority of conflicts of interest that have brought the State's planning system into such disrepute.³¹

Content of the Bill

3.6 The Bill proposes to achieve these objectives by inserting into the EPA Act a new section 148A titled 'Donations by property developers and others'. The new section makes it an offence for:

- a property developer to make, or offer to make, a donation to a politician, political party or party official, or solicit another person to make, or to offer to make, a donation to a politician, political party or party official on the property developer's behalf
- a politician, political party or party official to accept or solicit a donation from a property developer
- a person (whether or not a property developer) to make a development application or submit an expression of interest to the Minister, or to a consent authority, within one year after making a donation to a politician, political party or party official
- a person (whether or not a property developer) to make a donation to a politician, political party or party official within 1 year after a development application made by the person is determined under this Act.³²

3.7 The Bill defines 'property developer' in the following terms:

a **property developer** means a person or body that, at the time of making, offering, soliciting another person to make or being solicited to make a donation:

- (a) is involved in property development, or

³⁰ Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008, Explanatory note, p 1. The full text of the Bill can be found on the Parliament's website: <<http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/V3BillsListCurrent>> (accessed 10 June 2008)

³¹ *NSWPD (Legislative Council)*, 3 April 2008, pp 6335-6336

³² Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008, schedule 1[9]

- (b) is associated with property development (because the person or body provides financial, legal, construction or other related services to a person or body involved in property development), or
- (c) has made a development application to the Minister or to a consent authority that has not been determined, but does not include a home renovator.³³

3.8 The definition of ‘politician’ in the proposed new section includes a Member of Parliament, an elected member of a local council, or a candidate for election to Parliament or a local council.

3.9 Ms Hale outlined the rationale for her definition of ‘property developer’ during her second reading speech on the Bill:

This bill has been drafted broadly to apply to anyone involved in the property development process, other than home renovators—that is, a person whose sole involvement with property development is the building, renovating or extending of the person's place of residence. It also addresses the issue of third parties by making it an offence to solicit a third party to make a donation or to accept such a donation. This approach makes the legislative framework clearer and easier to understand, enforce and comply with.³⁴

3.10 The difficulties in defining a property developer were raised by a number of witnesses to the Inquiry and are considered in Chapter 7.

Issues with the Bill

3.11 The Parliament’s Legislation Review Committee raised three issues with the proposed new section relating to retrospectivity, absolute liability and ill-defined administrative powers.

Retrospectivity

3.12 Proposed Section 148A extends to development applications (within the meaning of that section) made to the Minister or a consent authority within one year before the commencement of that section (Schedule 1[9]).

3.13 The Legislation Review Committee considered that the retrospective application of the proposed section 148A, breach of which is an offence, might adversely impact and unduly trespass on personal rights and liberties.

Absolute liability

3.14 The proposed new offences under section 148A do not include, expressly or by implication, any defence or reasonable excuse, thus making them absolute liability offences.

³³ Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008, schedule 1[9]

³⁴ *NSWPD (Legislative Council)*, 3 April 2008, p 6338

- 3.15** The Legislation Review Committee considered that, except in extraordinary circumstances, it is inappropriate for an absolute liability offence, which does not allow for a defence or reasonable excuse, and therefore the proposed section 148A may amount to an undue trespass on individual rights and liberties.

Ill-defined administrative powers

- 3.16** Proposed section 148A creates offences without specifying the range of maximum penalty units or if such offences carry a term of imprisonment.
- 3.17** The Legislation Review Committee considered not specifying the range of maximum penalty units may unduly trespass on individual rights and should be subject to control by legislation rather than be dependent on insufficiently defined administrative powers.³⁵

Committee comment

- 3.18** The Committee notes the concerns of the Legislation Review Committee regarding the potential infringement on civil liberties. In Chapter 7, the Committee considers the need for tighter regulation of political donations. The imposition of targeted restrictions on developer donations is considered as a means to achieve this end. The Committee's findings on the Bill are therefore contained in this broader discussion.

³⁵ New South Wales Parliament, Legislation Review Committee, *Legislation Review Digest*, No 4 of 2008, pp 24-25

Chapter 4 Comparative electoral funding regimes

Comparing electoral funding regimes in place across Australia and internationally helps to identify the areas in which the NSW system can be improved. By examining other funding regimes, the Committee is able to identify changes to enhance the transparency, accountability and effectiveness of the NSW electoral funding scheme. This chapter examines the different electoral funding regimes that exist across Australia. It also explores the characteristics of four international funding regimes that are at the forefront of electoral funding regulation, and considers factors that have contributed to reform of these regimes.

Australian jurisdictions³⁶

- 4.1 Electoral funding is regulated by the Federal government in relation to Federal elections, as well as by every state and territory in relation to State and local government elections. In most Australian jurisdictions, this regulation is based on the disclosure of donations and expenditure.
- 4.2 There are, however, differing regulatory requirements in regards to electoral funding across Australia's states and territories. Features of the NSW scheme which it shares with other states and territories include:
- public funding paid post-election if 4% threshold for eligibility for public funding is reached (Victoria, Queensland, Western Australia, ACT, Commonwealth)³⁷
 - public funding capped by actual expenditure (Victoria, Queensland, Western Australia, Commonwealth)³⁸
 - compulsory disclosure of donations (Queensland, Western Australia, Northern Territory, ACT, Commonwealth)
 - third party disclosure requirements (Queensland, Western Australia, Northern Territory, ACT, Commonwealth).

³⁶ The information in this section is largely drawn from NSW Legislative Council, Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding: Discussion Paper*, November 2007, pp 10-11

³⁷ In New South Wales the 4% threshold does not apply to a candidate who is elected.

³⁸ This is one of several provisions in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, introduced into the Senate on 15 May 2008. Other reforms include lowering the disclosure threshold for donations, shortening reporting periods and extending the prohibition on anonymous gifts and donations to cover associated entities and third parties. For more information on the Bill see The Hon John Faulkner, Special Minister of State, 'Changes to Australia's Electoral Laws', *Media Release 16/2008*, 15 May 2008

- 4.3** Features of schemes of the other states and territories not replicated in New South Wales include:
- public funding payments made automatically in accordance with entitlement, instead of on the submission of a claim for reimbursement (ACT)
 - annual, rather than post-election, disclosure by political parties (Queensland, Western Australia, Northern Territory, ACT)
 - restrictions on donation amounts from certain sources (Victoria)
 - disclosure requirements for ‘associated entities’ (Queensland, Western Australia, Northern Territory, ACT, Commonwealth)
- 4.4** There is no public funding for elections in the Northern Territory, South Australia or Tasmania.
- 4.5** There is no requirement to disclose donations in Victoria, South Australia or Tasmania.
- 4.6** The Tasmanian electoral scheme caps spending for candidates in Legislative Council elections. The expenditure limit was set at \$10,000 in 2005, with provisions to increase this amount each subsequent year by an additional \$500.³⁹ Political parties are also prohibited from incurring expenditure in elections for the Legislative Council.⁴⁰
- 4.7** There are no requirements to disclose donations in Victoria, but there is a requirement to disclose expenditure. Victoria is the only State to ban donations from any source, with a ban introduced in 2002 to halt donations over \$50,000 from certain casino and gaming licensees.⁴¹ In addition, public funding for elections was introduced in 2002.
- 4.8** Anonymous donations are banned by the Federal Government and in all states and territories, with the exception of Victoria.⁴²
- 4.9** Committees in Tasmania and Victoria are currently considering reforms to the electoral funding regimes in their jurisdictions.
- 4.10** The following tables outline the key features of disclosure schemes in the Australian jurisdictions.

³⁹ *Electoral Act 2004* (Tas), s 160

⁴⁰ *Electoral Act 2004* (Tas), s 162

⁴¹ *Electoral Act 2002* (Vic), s 216

⁴² NSW Legislative Council, Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding: Discussion Paper*, November 2007, p 11

Table 4.1 Public funding in Australian jurisdictions⁴³

Jurisdiction	Public funding	Threshold for public funding	Public funding capped by electoral expenditure
NSW	Yes	4% or elected candidate	Yes
Victoria	Yes	4%	Yes
Queensland	Yes	4%	Yes
Tasmania	No	N/A	N/A
South Australia	No	N/A	N/A
Western Australia	Yes	4%	Yes
Northern Territory	No	N/A	N/A
ACT	Yes	4%	No
Commonwealth	Yes	4%	Yes ⁴⁴

⁴³ The information in this table is drawn from material contained in the following publications of the New South Wales Parliamentary Library Research Service: Callinan R, *Election Finance Law: Public Funding, Donations and Expenditure*, Briefing Paper 15/2001; Drabsch T, *Election Finance Law: An Update*, Briefing Paper 13/2005; Griffith G and Drabsch T, *Election Finance Law: Recent Developments and Proposals for Reform*, Briefing Paper 8/2007.

⁴⁴ This is one of several provisions in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, introduced into the Senate on 15 May 2008. For more information on the Bill see The Hon John Faulkner, Special Minister of State, 'Changes to Australia's Electoral Laws', *Media Release 16/2008*, 15 May 2008

Table 4.2 Australian regulatory frameworks: Donations, disclosure & electoral expenditure⁴⁵

Jurisdiction	Compulsory disclosure of donations	Third party disclosure requirements	Frequency of disclosure for political parties	Limits on size of donations	Prohibition of particular sources of donations	Spending caps
NSW	Yes	Yes	Post election	No	Anonymous donations	No
Victoria	No ⁴⁶	No	N/A	Cap of \$50,000 for certain gaming licensees	Ban on donations over \$50,000 from gaming licensees	No
Queensland	Yes	Yes	Annual	No	Anonymous donations	No
Tasmania	No	No	N/A	No	Anonymous donations	For candidates in Legislative Council elections
South Australia	No	No	N/A	No	Anonymous donations	No
Western Australia	Yes	Yes	Annual	No	Anonymous donations	No

⁴⁵ The information in this table is drawn from material contained in the following publications of the New South Wales Parliamentary Library Research Service: Callinan R, *Election Finance Law: Public Funding, Donations and Expenditure*, Briefing Paper 15/2001; Drabsch T, *Election Finance Law: An Update*, Briefing Paper 13/2005; Griffith G and Drabsch T, *Election Finance Law: Recent Developments and Proposals for Reform*, Briefing Paper 8/2007.

⁴⁶ Although Victoria does not have a separate disclosure scheme, parties and other political participants must comply with federal disclosure requirements. See Tabled document, Young S and Tham J, *Political finance in Australia: a skewed and secret system*, 2006, p 11

Jurisdiction	Compulsory disclosure of donations	Third party disclosure requirements	Frequency of disclosure for political parties	Limits on size of donations	Prohibition of particular sources of donations	Spending caps
Northern Territory	Yes	Yes	Annual	No	Anonymous donations	No
ACT	Yes	Yes	Annual	No	Anonymous donations	No
Commonwealth	Yes	Yes	Biannual ⁴⁷	No	Anonymous donations	No

⁴⁷ This is one of several requirements that appear in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, introduced into the Senate on 15 May 2008. For more information on the bill see The Hon John Faulkner, Special Minister of State, 'Changes to Australia's Electoral Laws', *Media Release 16/2008*, 15 May 2008

International jurisdictions

4.11 The following table broadly outlines the regulatory approaches taken in international jurisdictions. The International Institute for Democracy and Electoral Assistance compiled these figures by examining the electoral funding regimes of 111 countries to generate statistical information on approaches to electoral funding. Later chapters consider how features of international regimes could be applied to New South Wales.

Table 4.3 International disclosure and expenditure requirements⁴⁸

	Yes (%)	No (%)
Do donors have to disclose contributions made?	14	86
Do political parties have to disclose contributions made?	52	48
Is there a ceiling on contributions to political parties?	29	71
Is there a ceiling on how much a donor can contribute?	27	73
Is there a ceiling on how much a party can raise?	8	92
Is there a ban on any type of donation to political parties?	55	45
Is there a ban on foreign donations to political parties?	36	64
Is there a ban on corporate donations to political parties?	20	80
Is there a ban on donations from government contractors to political parties?	24	74 ⁴⁹
Is there a ban on trade union donations to political parties?	15	85
Is there a ban on anonymous donations to political parties?	41	58 ⁵⁰
Is there a ban on in kind donations to political parties?	4	96
Is there provision for public disclosure of expenditure by political parties?	48	52
Is there a ceiling on party election expenditure?	24	76
Do political parties receive direct public funding?	59	41
Do political parties receive indirect public funding? (i.e. broadcast time)	71	29

4.12 Canada, New Zealand, the United Kingdom and the United States are four of the most cited electoral funding regimes in academic literature on the topic. These electoral funding systems provide four distinct examples of differing approaches to regulation, and as such provide useful comparative examples.

⁴⁸ Austin R and Tjermstrom M (eds), 'Matrix on Political Finance Laws and Regulations', *Funding of Political Parties and Election Campaigns*, Handbook Series, International Institute for Democracy and Electoral Assistance, 2003, pp 185-218

⁴⁹ No information was available from two of the countries in the sample

⁵⁰ No information was available from one of the countries in the sample

- 4.13** As discussed in the following sections, the recent experiences of Canada, New Zealand and the United Kingdom suggest that the impetus to reform an electoral funding system is usually generated by the existence or perception of undue influence in the electoral system. The identification of such undue influence often results in growing public pressure to protect and strengthen electoral regulatory schemes.

Canada

- 4.14** A number of inquiry participants identified the Canadian model of regulating electoral funding as an exemplary system that New South Wales should seek to emulate. For example, one of the public forum speakers said of the Canadian model:

Of democracies comparable with Australia, only Canada has made real inroads into fixing the single most important issue of electoral funding, namely corruption and donations. Canada of course has banned all political donations, other than from individuals, and has put a tight rein on the myriad of third parties in all their guises. They have taken bold, effective actions...⁵¹

- 4.15** Dr Norman Thompson, Director of the Greens' Political Donations Research Project, commented that the Canadian system has largely removed the perception of undue influence over policy decisions:

As the Canadians recognise, donations from corporations and unions have the power to corrupt the political process. Therefore, they now ban all such donations. Only individuals are allowed to donate to political parties and the amount they can donate yearly is capped.⁵²

- 4.16** As well as the ban on donations from trade unions and corporations, there is also a ban on receiving donations from non-citizens and non-residents of Canada.⁵³

- 4.17** Individual donations are capped at C\$1,100 to each registered political party per annum, and C\$1,100 each election to a candidate not endorsed by a registered party.⁵⁴ The disclosure threshold for individuals is C\$200.

- 4.18** In regards to limits on expenditure, there are national and constituency limits calculated using the number of electors in each of the contested districts. There is also a national expenditure limit on third party election advertising, and a prohibition on registered parties and associations transferring money from trust funds directly to candidates. Disclosure of donations is required annually, and after elections.⁵⁵

⁵¹ Mr Geoff Wall, Public Forum, 4 April 2008, p 23

⁵² Submission 125, Dr Norman Thompson, p 11

⁵³ NSW Legislative Council, Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding: Discussion Paper*, November 2007, p 12

⁵⁴ Submission 154, Dr Joo-Cheong Tham, Senior Lecturer, Law Faculty, University of Melbourne, p 54

⁵⁵ NSW Legislative Council, Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding: Discussion Paper*, November 2007, p 12

- 4.19 Political parties receive public funding regularly throughout the year to enable them to operate effectively. As a condition of these allowances, parties are required to report quarterly.
- 4.20 This regular source of public funding, combined with the ban on corporate donations, is intended to create a system that instills confidence in the public and allows for accountability in government decision-making. According to The Greens NSW:

Whilst some public wariness of politicians' motives still persists, accusations of buying political influence are no longer being made, as donations are not large enough to significantly corrupt. In the absence of large corporate donors, Canada's new laws encourage parties to seek more donors, thereby increasing grassroots political involvement.⁵⁶

The impetus for reform

- 4.21 The recent reforms to the Canadian system of electoral regulation are the result of revelations regarding the former Liberal government and the influence of political donations on the awarding of government grants. In the mid-1990's the Federal Liberal government established a program to sponsor events in Quebec. The money to support these programs was not allocated by a government department, but rather by officials from the Prime Minister's office.
- 4.22 It subsequently emerged that the grants had been allocated to advertising firms that had not produced programs equivalent to the amount of money they were paid. The advertising firms were, however, regular donors to the Liberal party. The commission of inquiry into the incident, the Gomery Commission, found that:

...there was a clear causative link between the grant of these sponsorship contracts and the making of political donations (as well as unrecorded cash gifts) to members of the Liberal government.⁵⁷

- 4.23 The Liberal government was defeated at the 2006 general election. The findings of the Gomery Commission ensured that reforms to the electoral system, as proposed by the newly elected Conservative government, gained substantial cross-party support.

New Zealand

- 4.24 New Zealand has a cap on the amount that individual candidates and political parties can spend. Parties are able to spend NZ\$1 million, plus NZ\$20,000 in each of the constituencies contested. Individual candidates, also known as constituency candidates, have an expenditure limit of NZ\$20,000.⁵⁸

⁵⁶ Submission 121, The Greens, p 8

⁵⁷ Geddis A, *The regulation of election campaign financing in Canada and New Zealand*, presented at the Political Finance and Government Advertising Workshop, February 2006, p 2

⁵⁸ Tabled document, *Political finance in Australia: a skewed and secret system*, p 134

- 4.25 Disclosure of donations is required annually for political parties, and after elections for candidates. The threshold for disclosure is NZ\$10,000. Donations over NZ\$20,000 must be disclosed within 10 days.⁵⁹
- 4.26 Public funding is largely restricted to the provision of free broadcasting time on public broadcasters. Funds are also provided to purchase radio and television time during an election period. The public broadcasters determine the amount of public broadcasting time allocated, with the amount of funds made available determined by the Parliament.⁶⁰

The impetus for reform

- 4.27 The 2005 general election in New Zealand generated a number of concerns regarding the electoral funding regime, particularly in regards to campaign finance.
- 4.28 Four central issues, as identified by Associate Professor Andrew Geddis of the University of Otago, emerged from the 2005 election:
- The Exclusive Brethren Assembly spent between NZ\$500,000 and NZ\$1.5 million on producing and distributing leaflets criticising the Labour and Green Parties, and thus promoting the National Party. Other groups, such as the racing industry and some unions, engaged in similar election related advertising.⁶¹
 - The Labour Party was reported to the police for having overspent the overall limit on election expenditure by an estimated \$400,000.
 - The National Party was reported to the police for having overspent the limit on election broadcasts by approximately \$100,000.
 - An election petition was brought against the elected candidate in the Tauranga electorate alleging that he had overspent the financial limit for individual constituency campaigns.⁶²
- 4.29 These concerns led to the most recent changes to the electoral funding system in New Zealand, with the passing of the *Electoral Finance Act 2007* in December 2007. These amendments did not substantially change the overall regulatory system, but were made to tighten third party regulation. Professor Geddis highlighted the two central concerns regarding third party donations as being the possibility of a third party exerting undue influence over election campaigns, and the secrecy surrounding how political parties and candidates raise funds for campaign activities. The *Electoral Finance Act 2007* seeks to address these issues.⁶³

⁵⁹ Submission 6, Associate Professor Andrew Geddis, p 10

⁶⁰ Tabled document, *Political finance in Australia: a skewed and secret system*, p 138

⁶¹ Submission 6, p 3

⁶² Geddis A, *The regulation of election campaign financing in Canada and New Zealand*, presented at the Political Finance and Government Advertising Workshop, February 2006, p 4

⁶³ Submission 6, p 1

United Kingdom

- 4.30** The United Kingdom has also made recent reforms to its system of electoral funding under the *Political Parties, Elections and Referendums Act 2000* and the *Electoral Administration Act 2006*. In regards to disclosures of income, parties are required to lodge quarterly returns, with weekly returns lodged during an election period. These returns must be accompanied by an auditor's statement, and parties are further required to lodge an annual statement of accounts. The disclosure threshold is £5,000.⁶⁴
- 4.31** Expenditure is limited, and calculated according to the number of seats contested each election.⁶⁵ There is also a requirement for parties to lodge post election disclosure returns of their expenditure during an election campaign.⁶⁶
- 4.32** The United Kingdom electoral funding system bans donations from foreign persons or foreign corporations, together with imposing tight restrictions on the donations practices of trade unions and corporations. Dr Joo-Cheong Tham of the University of Melbourne outlined the restrictions:
- British trade unions are required to ballot their members every ten years for authority to promote their political agendas. Once authorised, political expenditure by a trade union must be made from a separate political fund which individual members have a right to refrain from contributing to. British companies, on the other hand, are required to seek authorisation from their shareholders every four years to make political donations and/or political expenditure.⁶⁷
- 4.33** There is a ban on political advertising in the broadcast media, but not on advertising in print or other media. Qualifying political parties are given free broadcast time on major public and commercial television and radio stations. The broadcast time allocated to the major parties is dependent on the electoral support received in the previous election, combined with the number of candidates they are standing in the current election. Minor parties that stand candidates in at least one-sixth of the total seats are also allocated broadcast time.⁶⁸
- 4.34** Together with the free public airtime, parties also receive assistance in the form of free mailings, free use of public rooms during an election and policy development grants.⁶⁹ These grants, of up to £2 million each year, are allocated by the Electoral Commission to registered parties with at least two members in the House of Commons.⁷⁰ The United Kingdom also provides annual payments to eligible opposition parties to carry out their parliamentary duties.⁷¹

⁶⁴ Tabled document, *Political finance in Australia: a skewed and secret system*, p 115

⁶⁵ Submission 154, p 52

⁶⁶ Tabled document, *Political finance in Australia: a skewed and secret system*, p 133

⁶⁷ Submission 154, p 60

⁶⁸ Tabled document, *Political finance in Australia: a skewed and secret system*, p 138

⁶⁹ NSW Legislative Council, Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding: Discussion Paper*, November 2007, p 13

⁷⁰ Drabsch T, *Election Finance Law: An Update*, Briefing Paper 13/05, p 34

⁷¹ <www.parliament.uk/commons/lib/research/notes/snpc-01663.pdf> (accessed 28 May 2008)

The impetus for reform

- 4.35** These reforms were instigated following the 2005 general election, when several problems with the existing electoral funding regime became apparent. In March 2006 it was discovered that some loans made during the 2005 election might have breached statutory requirements. The *Electoral Administration Act 2006* clarified that loans to political parties were ‘governed by a similar regime of transparency and permissibility to that set out for donations to parties in the *Political Parties, Elections and Referendums Act 2000*’.⁷² Loans are subject to the same £5,000 disclosure threshold as donations, and political parties are only permitted to take out loans from sources that are permitted to donate to parties.
- 4.36** A second issue arose over allegations that businessmen who made substantial donations to the Labor Party had subsequently been nominated for peerages. The ensuing review of the funding of political parties, conducted by Sir Hayden Phillips, made several recommendations concerning donations caps, expenditure controls and public funding.⁷³ Discussion between the three main political parties on Sir Hayden’s recommendations to reform political party funding were suspended on 30 October 2007 following failure to agree on an overall package of reform.⁷⁴

United States

- 4.37** Under the system of electoral funding in the United States, the disclosure of donations to presidential campaigns is required on a monthly basis. During an election campaign, disclosure is required 12 days before the election, and 20 days following the election.⁷⁵ The disclosure threshold is US\$200 per annum. Furthermore, during an election campaign, gifts with a value greater than US\$1,000 must be reported within 48 hours.⁷⁶
- 4.38** Individual donations to a candidate are restricted to US\$2,100 each election cycle. A similar restriction exists for individual donations to parties, with donations in this instance restricted to US\$26,700 to each national party committee.⁷⁷
- 4.39** Individuals are also limited in the amount that they can donate to political action committees (PACS). Individuals can donate US\$5,000 to each PAC, up to a limit of US\$61,400 for all PACS over an election cycle.⁷⁸

⁷² Griffith G and Drabsch T, *Election Finance Law: Recent Developments and Proposals for Reform*, Briefing Paper 8/2007, p 28

⁷³ Phillips H, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, March 2007, p 7 <http://www.partyfundingreview.gov.uk/files/strengthening_democracy.pdf> (accessed 16 May 2008)

⁷⁴ Sir Hayden Phillips, ‘Inter-Party Talks suspended without agreement’, 30 October 2007 <<http://www.partyfundingreview.gov.uk/html/news.htm>> (accessed 16 May 2008)

⁷⁵ NSW Legislative Council, Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding: Discussion Paper*, November 2007, p 13

⁷⁶ Tabled document, *Political finance in Australia: a skewed and secret system*, p 115

⁷⁷ Tabled document, *Political finance in Australia: a skewed and secret system*, p 121

⁷⁸ Tabled document, *Political finance in Australia: a skewed and secret system*, p 121

- 4.40** PACS can either be a separate segregated fund or a non-connected committee, and must be registered with the Federal Election Commission. Separate segregated funds are established and administered by corporations, labour unions, membership organisations or trade associations, with contributions given by individuals associated with a connected or sponsoring organisation. Non-connected committees are not sponsored by or connected to any of the above entities and can solicit contributions from the general public.⁷⁹
- 4.41** There is a limit of US\$101,400 per election cycle for all contributions to parties, candidates, and PACS.⁸⁰
- 4.42** There are several prohibited sources of donations under US electoral funding law. Donations may not be received from foreign parties or from persons or corporations with contracts with the Federal Government. Corporations and labour unions are prohibited from donating directly to candidates or parties.⁸¹
- 4.43** In regards to expenditure, parties are required to make an annual disclosure of their expenditure for the financial year.⁸²
- 4.44** Public funding is available to candidates in presidential primaries. Candidates can be allocated public funding once the candidate meets various qualification requirements and agrees to meet certain expenditure limits. When a candidate becomes the sole nominee of a major party, the candidate then becomes eligible to receive a public grant. The conditions attached to the grant are that the candidate must not spend more than the amount of the grant and must not accept private donations to the election campaign.⁸³
- 4.45** The following table compares the regulatory regimes in Canada, New Zealand, the United Kingdom and the United States.

⁷⁹ Drabsch T, *Election Finance Law: An Update*, Briefing Paper 13/2005, p 36

⁸⁰ Griffith G and Drabsch T, *Election Finance Law: Recent Developments and Proposals for Reform*, Briefing Paper 8/2007, p 41

⁸¹ Griffith G and Drabsch T, *Election Finance Law: Recent Developments and Proposals for Reform*, Briefing Paper 8/2007, p 41

⁸² Tabled document, *Political finance in Australia: a skewed and secret system*, p 133

⁸³ Tabled document, *Political finance in Australia: a skewed and secret system*, p 125

Table 4.4 International regulatory frameworks: Donations and disclosure⁸⁴

Jurisdiction	Public funding	Compulsory disclosure of donations	Frequency of disclosure	Limits on size of donations	Prohibition of particular sources of donations	Limits on electoral expenditure	Prohibition on particular types of electoral expenditure
Canada	Yes	Yes – disclosure threshold of C\$200	Registered parties: Quarterly reports as a condition of receiving quarterly allowances. Registered parties: Annual and post election disclosure also required	Yes – for individuals	Yes – trade unions and corporations, non-citizens and non-residents of Canada	Yes	No
New Zealand	No – but funds for use of TV	Yes - disclosure threshold of	Registered parties:	Yes – for donations of	Yes – from foreign persons	Yes	Yes – ban on election

⁸⁴ The information in this section is drawn from material contained in the following publications of the New South Wales Parliamentary Library Research Service: Callinan R, *Election Finance Law: Public Funding, Donations and Expenditure*, Briefing Paper 15/2001; Drabsch T, *Election Finance Law: An Update*, Briefing Paper 13/2005; Griffith G and Drabsch T, *Election Finance Law: Recent Developments and Proposals for Reform*, Briefing Paper 8/2007. Updated information on the changes to electoral laws is drawn from Submission 6; Submission 154; and tabled document, *Political finance in Australia: a skewed and secret system*.

SELECT COMMITTEE ON ELECTORAL AND POLITICAL PARTY FUNDING

Jurisdiction	Public funding	Compulsory disclosure of donations	Frequency of disclosure	Limits on size of donations	Prohibition of particular sources of donations	Limits on electoral expenditure	Prohibition on particular types of electoral expenditure
	and radio broadcasts	NZ\$10,000	Annual reports; Candidates: post election. Report within 10 days of donations exceeding \$20,000	more than NZ\$1,000 from foreign persons or corporations.	or corporations. ⁸⁵		broadcasts except for programs in allocated time and paid for with public funding allocation
United Kingdom	No – but free mailings, use of public rooms and air time, plus grants for policy development	Yes - disclosure threshold of £5,000	Registered parties: Weekly during election period, otherwise quarterly. Post-election disclosure of expenditure. Annual statement of accounts	No	Yes – bans on donations from foreign persons or corporations, restrictions on trade unions and corporations.	Yes	Yes – paid broadcast media advertising
United States	Yes – for	Yes - disclosure	Presidential	Yes – for	Yes – bans on	Yes – if the	No

⁸⁵ Elections NZ, 'New election laws in force – summary', <<http://www.elections.org.nz/rules/election-laws-in-force.html>> (accessed 19 May 2008)

Electoral and Political Party Funding in New South Wales

Jurisdiction	Public funding	Compulsory disclosure of donations	Frequency of disclosure	Limits on size of donations	Prohibition of particular sources of donations	Limits on electoral expenditure	Prohibition on particular types of electoral expenditure
	presidential candidates	threshold of US\$200 per annum.	<p>candidates: disclosure reports 12 days before and 20 days after the election, otherwise monthly.</p> <p>During election campaigns, gifts over US\$1,000 must be reported within 48 hours</p>	individuals	donations from government contractors, foreign parties. Corporations and labour unions are prohibited from donating directly to candidates or parties	candidate accepts public funding	

Chapter 5 NSW election funding scheme

The NSW *Election Funding Act 1981* (the Act) was a pioneering piece of legislation which led to the first comprehensive election finance scheme in Australia. The Act introduced public funding of State elections to New South Wales, and made disclosure of donations compulsory. The Act aimed to level the playing field by reducing the disparity of financial resources available to parties and candidates, and prevent undue influence by requiring donations to be disclosed.⁸⁶ The Election Funding Authority (EFA) was established to oversee the new scheme. In 1983, the Federal Government followed suit and introduced its own public funding and disclosure scheme.

This chapter explains the rationale for the NSW scheme of public funding and disclosure, and outlines subsequent amendments to the scheme, including the changes announced by the Premier since this inquiry commenced. The key provisions of the scheme are then described in some detail. The effectiveness of these provisions is considered in following chapters. Lastly, a broad outline is given of the Federal scheme.

Election Funding Act 1981

5.1 Premier Neville Wran, in his 1981 second reading speech to introduce the Election Funding Bill, said of the legislation: ‘It removes the risk of parties selling favours and declares to the world that the great political parties of New South Wales are not up for sale.’⁸⁷ This rationale continues today.

Rationale for the *Election Funding Act 1981*

5.2 As noted in the Committee’s Discussion Paper,⁸⁸ public funding of election campaigns supports the democratic process by recognising that parties and candidates, and in particular new and minor parties and independent candidates, should have sufficient funds to be able to participate in elections.⁸⁹ It is also a means of ensuring a level of equality between election participants, so that candidates are not simply elected because they have the most money to spend on their campaigns. A further rationale is to minimise the danger of electoral funds being obtained from inappropriate sources.

5.3 On the other hand, private funding recognises that state funds are limited and subject to many competing demands. It also recognises that, given the increasingly competitive nature of politics and campaigns, it is inevitable that parties and candidates will seek to communicate their policies and platforms to the electorate in the most effective way. A further possible

⁸⁶ NSWPD (*Legislative Assembly*), 15 April 1981, pp 5938-5944

⁸⁷ NSWPD (*Legislative Assembly*), 15 April 1981, p 5944

⁸⁸ NSW Legislative Council, Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding: Discussion Paper*, November 2007, p 2

⁸⁹ NSWPD (*Legislative Assembly*), 15 April 1981, p 5944

rationale is that funding by the state may over time have the potential to erode the level of responsiveness of political parties to their members.

- 5.4** Where private funding is permitted, however, there is the potential for abuse: political donations may be used to purchase political favours, access to decision makers, or consideration in policy formulation, undermining faith in government and distorting the democratic process. An appropriate regulatory framework is vital to ensure that such conduct does not occur, and counter perceptions of impropriety. Public perceptions of political donations are discussed in Chapter 2.
- 5.5** The scheme established by the Act, therefore, incorporates three main elements:
- public funding for State elections (which can be supplemented by private funds)
 - disclosure of political donations by both donors and recipients
 - disclosure of electoral expenditure.
- 5.6** The Act applies in part to local government elections. There is no public funding for local government elections, but similar disclosure provisions apply. Issues relating to local government are discussed in Chapter 10.

Amendments since 1981

- 5.7** The design of the NSW election funding and disclosure scheme was based on the recommendations of the NSW Parliament's Joint Select Committee Upon Public Funding of Election Campaigns, which reported in November 1980.⁹⁰ The scheme remains essentially the same today, although there have been some noteworthy amendments.
- 5.8** Local government elections were brought under the disclosure scheme in 1987,⁹¹ following which the disclosure requirements were encapsulated in the *Local Government Act 1993*.
- 5.9** Disclosure requirements were strengthened in 1993, in response to the Independent Commission Against Corruption's 1990 inquiry into North Coast Land Development,⁹² and the findings of the NSW Parliament's Joint Select Committee upon the Process and Funding of the Electoral System, which tabled reports in 1991 and 1992.⁹³ The resulting changes included introducing disclosure requirements for third parties, implementing specific disclosure requirements for fundraising events, reducing disclosure thresholds, and banning anonymous donations over certain amounts.⁹⁴

⁹⁰ NSW Parliament, Joint Select Committee upon Public Funding of Election Campaigns, *Report*, November 1980

⁹¹ Submission 106, Election Funding Authority of New South Wales, p 1

⁹² Independent Commission Against Corruption, *Investigation into North Coast Land Development*, July 1990

⁹³ NSW Parliament, Joint Select Committee upon the Process and Funding of the Electoral System, *First Report*, March 1991, *Second Report*, September 1992

⁹⁴ *Election Funding (Amendment) Act 1993*; Callinan R, *Election Finance Law: Public Funding, Donations and Expenditure*, NSW Parliamentary Library Research Service, Briefing Paper 15/2001, p 46

- 5.10** The Political Education Fund was established in 1993 based on a recommendation by the Joint Select Committee upon the Process and Funding of the Electoral System. The Fund provides annual payments to parties to undertake political education of voters.
- 5.11** The method for calculating the total pool of public funding available for elections was changed in 1999, following the introduction of fixed four-year parliamentary terms.⁹⁵
- 5.12** The EFA's powers to demand information from third parties were increased in 2006.⁹⁶ The EFA was given the power to require a third party to identify someone who the EFA reasonably suspects has incurred electoral expenditure but has failed to disclose it.⁹⁷

Premier's announced changes

- 5.13** The Premier of New South Wales, the Hon Morris Iemma MP, has recently made statements foreshadowing changes to the electoral funding and disclosure scheme. The Premier has confirmed that some of these changes would be implemented before the September 2008 local government elections.⁹⁸
- 5.14** The changes announced by the Premier on 28 February 2008 included to:
- implement six-monthly disclosure in June and December each year
 - commit to lowering the disclosure limit, if the Federal Government did so
 - require developers to declare donations when lodging development applications
 - formulate clearer guidelines for councillors on voting on decisions involving donors
 - require all councils to record the voting history of councillors on development matters
 - require donations to be made to and administered by party headquarters rather than individual candidates, and to consider how to apply this to independent candidates
 - implement online disclosure of donations.⁹⁹
- 5.15** On 22 March the Premier was reported in the media as advocating a ban on all donations.¹⁰⁰ A few days later, in a supplementary submission to the Committee, the General Secretary of the ALP NSW confirmed that the Premier had tasked him with initiating discussions with other parties, to build bipartisan support for a ban on donations.¹⁰¹

⁹⁵ *Election Funding Amendment Act 1999*

⁹⁶ *Election Funding Amendment Act 2006*

⁹⁷ NSW PD (*Legislative Assembly*), 17 October 2006, p 2753-2754

⁹⁸ NSW PD (*Legislative Assembly*), 6 March 2008, p 6058

⁹⁹ NSW PD (*Legislative Assembly*), 28 February 2008, pp 5679-5681

¹⁰⁰ Clennell A, 'Iemma to ban political donations,' *Sydney Morning Herald*, 21-23 March 2008, p 1

¹⁰¹ Submission 107a, Australian Labor Party (NSW Branch), p 2

- 5.16** On 3 April the Department of Premier and Cabinet made a submission to the Committee, elaborating on the changes announced by the Premier in February. While discussions on introducing a ban on donations may be expected to be lengthy and time-consuming, the intention is for the changes outlined in the Premier and Cabinet submission to be implemented quickly, to strengthen the electoral funding scheme in the meantime. In addition to the reforms announced in February that are listed above, these interim reforms include to:
- lower the disclosure threshold to \$1,000, in line with the Federal Government's announcement that it would do so
 - require campaign accounts for independent MPs and candidates to be managed by the EFA
 - legislate to ensure disclosure of loans and other credit facilities
 - legislate to ensure that funds raised for elections are used for campaign purposes
 - ban in-kind donations including the provision of offices, cars and phones
 - ban payment by third parties of election expenses
 - implement twice-yearly disclosure of donations on the EFA website.¹⁰²
- 5.17** On 5 June 2008 Attorney General John Hatzistergos gave notice that two bills would be introduced into the Legislative Council on 17 June: the Election Funding Amendment (Political Donations and Expenditure) Bill, and the Local Government and Planning Legislation Amendment (Political Donations) Bill.
- 5.18** The feasibility of introducing these changes prior to the September 2008 local government elections is discussed in Chapter 10.

Key provisions of election funding scheme

- 5.19** There are several key provisions of the NSW election funding and disclosure scheme. These include: the operation of the EFA, the scheme's administering body; public funding for State elections, including annual payments from the Political Education Fund; and disclosure of donations and expenditure.

¹⁰² Submission 182, Department of Premier and Cabinet, pp 1-6

Role of the EFA

5.20 The EFA is responsible for administering the election funding and disclosure scheme in a fair and unbiased manner.¹⁰³ Its functions, which apply to both State and local government elections, include:

- registration of candidates and groups (the NSW Electoral Commissioner is responsible for registration of political parties)
- registration of official agents and party agents for elections
- processing declarations of political donations received by parties, groups and candidates
- processing declarations of political donations by donors
- processing declarations of electoral expenditure by parties, groups, candidates and third parties.

5.21 In addition, the EFA is responsible for two functions that apply solely to State government elections:

- processing claims for payment of public funds
- processing declarations of expenditure and claims for payment from the Political Education Fund.¹⁰⁴

5.22 The EFA reports annually to Parliament on its operations in the previous financial year.

Structure of the EFA

5.23 The Authority consists of three members: the NSW Electoral Commissioner, who acts as Chairperson; a person appointed by the Governor on the nomination of the Premier; and a person appointed by the Governor on the nomination of the Leader of the Opposition.¹⁰⁵ At present, the Premier's nominee is Mr Stephen Lewis, and the Leader of the Opposition's nominee is Mr Ted Pickering.¹⁰⁶

5.24 The EFA may not employ its own staff,¹⁰⁷ but relies on staff provided by the NSW Electoral Commission. In his second reading speech on introducing the Bill, Premier Wran explained the rationale for the EFA's staffing arrangements:

¹⁰³ *Election Funding Act 1981*, s 22(2)

¹⁰⁴ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, p 5

¹⁰⁵ *Election Funding Act 1981*, s 6

¹⁰⁶ Mr Trevor Follett, Secretary, Election Funding Authority of New South Wales, Evidence, 3 March 2008, p 2

¹⁰⁷ *Election Funding Act 1981*, s 22(3)

It is envisaged that administrative support for the Authority will be strictly limited, much of the work being done by seconded officers or officers within the existing electoral office. Of course, there will be initial start-up costs but it is envisaged that, once the scheme is firmly established, costs of administration will be minimal.¹⁰⁸

- 5.25** The EFA's administrative staff consists of two full-time clerical staff, and the Secretary of the EFA, who spends a third of his time working for the EFA (the Secretary also holds the role of Director of Finance and Administration for the NSW Electoral Commission).¹⁰⁹ In addition, at election time the EFA employs a dozen casuals for periods ranging from one to six months.¹¹⁰
- 5.26** The EFA was constituted as a corporation¹¹¹ and is therefore independent of ministerial direction. The Premier is responsible for administering the Act.
- 5.27** The operations of the EFA are discussed in Chapter 11.

Public funding for State elections

- 5.28** Public funding is only available for State elections. There is no public funding for local government elections.
- 5.29** The formula for determining the total pool of public funding available for each State election is set out in the Act, and is based on the number of people registered to vote and the length of the parliamentary term (now fixed at four years).
- 5.30** The funding pool is divided into two separate allocations:
- Central Fund – two-thirds of funding pool, for eligible parties, groups and candidates that contest the Legislative Council election
 - Constituency Fund – one-third of funding pool, for eligible candidates that contest the Legislative Assembly election.¹¹²
- 5.31** The Act also sets aside funds for by-elections.
- 5.32** Public funding is available to parties, groups and candidates who have registered with the relevant body (either the NSW Electoral Commissioner or the EFA), and who receive at least 4% of the first preference vote in a State election. It is still possible for parties, groups and candidates to receive public funding if they receive less than 4% of the first preference vote, but only if they either have a member of their party or group elected, or are elected themselves, in the case of independent candidates.¹¹³

¹⁰⁸ *NSWPD (Legislative Assembly)*, 15 April 1984, p 5940

¹⁰⁹ Mr Follett, Evidence, 3 March 2008, p 2

¹¹⁰ Mr Follett, Evidence, 3 March 2008, p 8

¹¹¹ *Election Funding Act 1981*, s 5

¹¹² *Election Funding Act 1981*, Part 5, Divisions 2, 3, 4, 6

¹¹³ *Election Funding Act 1981*, sections 59, 60, 61, 65

- 5.33** Public funding is retrospective, and is granted after an election to eligible claimants. Claims for payment must be lodged with the EFA within 120 days of the day of the return of writs for the Legislative Council. No party or group can receive more than half of the Central Fund, and no candidate can receive more than half of the funds available for each electorate. Parties, groups and candidates can only be reimbursed up to the amount of their verified electoral expenditure, and therefore cannot make a profit from public funding.¹¹⁴
- 5.34** Claims for payment and declarations of donations and expenditure must be lodged by the registered agent of the party, group or candidate. Successful claims for public funding will be paid to the agent.¹¹⁵
- 5.35** For the 2007 State election, the total pool of public funding was calculated to be \$11.78 million, based on a rate of \$2.69 per registered voter.¹¹⁶ Of the total funding pool, parties and candidates were entitled to payments of \$11.17 million.¹¹⁷
- 5.36** Public funding is discussed in Chapter 6.

Political Education Fund

- 5.37** Registered parties that stand candidates for the Legislative Assembly, and which have a candidate elected to the Legislative Council, are entitled to annual payments from the Political Education Fund. Each party's annual payment is calculated based on the number of first preference votes for the party's candidates for election to the Legislative Assembly, multiplied by the cost of an ordinary postage stamp.¹¹⁸ The annual payments in the four years leading up to the 2007 State election amounted to \$6.65 million.¹¹⁹
- 5.38** Annual payments from the Political Education Fund are to be spent on political education, namely the preparation and dissemination of printed or other materials, that contain information about the:
- history or structure of the party
 - policies of the party, including contrasts with other parties
 - achievements of the party.¹²⁰

¹¹⁴ *Election Funding Act 1981*, s 63

¹¹⁵ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, p 14; Election Funding Authority, *Election Funding Guide for Candidates and Groups for State Elections*, March 2007, p 17

¹¹⁶ Mr Follett, Evidence, 3 March 2008, p 2

¹¹⁷ Email from Mr Trevor Follett, Secretary, Election Funding Authority of New South Wales, to the Secretariat, 28 March 2008

¹¹⁸ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, pp 11 & 47

¹¹⁹ Email from Mr Trevor Follett, Secretary, Election Funding Authority of New South Wales, to the Secretariat, 28 March 2008

¹²⁰ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, p 8

- 5.39** Political education may include preparing and sending state-wide newsletters for party members or holding seminars. The Political Education Fund may also pay a proportion of the salary of staff involved in the preparation and dissemination of political education materials.¹²¹ The Political Education Fund may not be used to pay for election spending or the holding of party conferences.
- 5.40** As with public funding for election campaigns, claims for payment and declarations of expenditure must be lodged by the registered party agent, and successful claims will be paid to the agent.
- 5.41** The Political Education Fund is addressed in Chapter 6.

Disclosure provisions

- 5.42** Following both State and local government elections, all parties, groups and candidates, as well as donors, must lodge a declaration of certain political donations and a declaration of political expenditure. In general terms, the declaration must cover the four-year period between elections. Disclosure is compulsory regardless of whether a party, group or candidate is seeking public funding, and regardless of whether a candidate is elected.
- 5.43** In addition to the disclosure requirements under the Act, there are a number of other means by which to prevent undue influence on ministers, MPs, councillors and other public officials.¹²² These include codes of conduct for MPs, ministers, public servants and local councils, and guidelines on managing lobbyists for ministers and public officials. Sanctions include corruption being considered an offence under criminal and common law, and the anti-corruption regime under the *Independent Commission Against Corruption Act 1988*.

Disclosure periods

- 5.44** There are multiple and overlapping disclosure periods for State and local government elections, and for parties, groups, candidates and donors. For example, for State government elections, the disclosure period for parties, candidates and donors commences the 31st day after election day for the previous election and ends the 30th day after election day for the current election.¹²³ The disclosure period for groups is shorter; it commences on nomination day for the current election and again finishes the 30th day after election day. Parties, groups, candidates and donors must lodge their declarations within 120 days of the return of writs for a State election.¹²⁴ The diagram at Appendix 4 shows the different disclosure periods for State and local government elections.

¹²¹ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, p 48

¹²² Submission 182, Annexure B

¹²³ Tabled document, Election Funding Authority of New South Wales, *How disclosure periods are determined*, 3 March 2008, p 1

¹²⁴ Tabled document, Election Funding Authority of New South Wales, *PowerPoint Presentation*, 3 March 2008, p 6

- 5.45** For local government elections, the disclosure period remains the same as in State government elections for parties, candidates and donors. There is, however, a different disclosure period for groups: it commences on the third day after nomination day for the current election and again finishes on the 30th day after election day.¹²⁵ Parties, groups, candidates and donors must lodge their declarations within 120 days of election day.¹²⁶
- 5.46** The provisions of the disclosure scheme are discussed in Chapter 9.

Disclosure of political donations

- 5.47** Political donations must be disclosed if they amount to a ‘gift’ within the definition of the Act, including:
- donations of money
 - the provision of a service for free or at a discounted charge (excluding volunteer labour)
 - donations of gifts or property (eg. items for auction or prizes for raffles)
 - the purchase of a ticket to, or an item at, a fundraising event.¹²⁷
- 5.48** Details of the donation, including the full name and address of the donor, and the date and value of the donation, must be disclosed if the donation is equal to, or above, the prescribed threshold. The following thresholds apply for donations to parties, groups and candidates:
- Parties - \$1,000¹²⁸
 - Groups - \$1,000
 - Candidates - \$200.
- 5.49** Donors do not need to submit a declaration for donations below these thresholds, and recipients need only disclose the total number and total value of such donations.¹²⁹ For the purpose of applying the thresholds, multiple contributions from a single source during a twelve-month period are aggregated. Further, corporations that are related to each other for the purposes of section 50 of the *Federal Corporations Act 2001* are regarded as a single corporation, and the donations aggregated.¹³⁰ Parties, groups and candidates cannot receive anonymous donations above the applicable thresholds.¹³¹ Any anonymous donation above the applicable threshold is forfeited to the state.

¹²⁵ Tabled document, *How disclosure periods are determined*, pp 1-2

¹²⁶ Tabled document, *PowerPoint Presentation*, p 6

¹²⁷ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, pp 34-35

¹²⁸ The Premier has announced that the disclosure threshold for political parties will be reduced to \$1,000, in line with the Federal Government’s announcement that it would reduce its threshold. Submission 189, Department of Premier and Cabinet, p 2

¹²⁹ *Election Funding Act 1981*, s 89(a)

¹³⁰ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, p 35

¹³¹ *Election Funding Act 1981*, s 87A

5.50 Special disclosure requirements apply to fundraising events and activities. For each occasion, the party, group or candidate must disclose the net proceeds, together with a brief description of the nature of the occasion, and the date or period in which it was held or occurred.¹³²

5.51 Political donations are examined in Chapter 7.

Disclosure of electoral expenditure

5.52 All electoral expenditure must be disclosed by parties, groups and candidates, regardless of value. Electoral expenditure is defined as expenditure ‘for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election.’¹³³

5.53 Electoral expenditure that must be disclosed includes spending on:

- advertisements on radio, TV and newspapers; posters and brochures; how-to-vote material and any other printed election material
- holding rallies
- distribution of election material
- candidates’ travel and accommodation for an election
- stationery, phone calls and postage
- campaign offices.¹³⁴

5.54 Third parties must disclose electoral expenditure of more than \$1,000 during an election period. Third parties may pay for electoral expenditure on behalf of a party, group or candidate, or may show support for or opposition to a political party, group or candidate, often through advertising.¹³⁵ As with political donations, for the purpose of applying the threshold, multiple expenses by a single source within the election period must be aggregated.¹³⁶ Third parties must also declare any political donations they have received of \$1,000 or more that were used to incur the electoral expenditure.¹³⁷

5.55 The issues relating to election spending are considered in Chapter 8.

Federal election funding and disclosure scheme

5.56 For some stakeholders, such as political parties that are registered both in New South Wales and federally, the complexity of the NSW scheme of election funding and disclosure is

¹³² Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, p 38

¹³³ *Election Funding Act 1981*, s 88(1)

¹³⁴ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, pp 37-38

¹³⁵ Election Funding Authority, *Election Funding Guide for Political Donors*, March 2007, p 10

¹³⁶ Election Funding Authority, *Election Funding Guide for Political Donors*, March 2007, p 12

¹³⁷ Election Funding Authority, *Election Funding Guide for Political Donors*, March 2007, p 15

compounded by the different requirements of the Federal scheme. State and territory branches of registered political parties, for example, are required to comply with some aspects of the Federal scheme.

Minister Faulkner's announced changes

- 5.57** Senator the Hon John Faulkner, Special Minister of State, announced in early 2008 that the new Federal Government would move to strengthen its election finance regime. The changes foreshadowed by Minister Faulkner affect the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act*, introduced by the previous Federal Government in 2006. The Act made a number of changes to the electoral funding system, the most controversial of which was to increase the disclosure threshold for donations from \$1,500 to \$10,000, indexed to the consumer price index.¹³⁸
- 5.58** The changes announced by Minister Faulkner include to:
- lower the disclosure limit to \$1,000 from \$10,500
 - ban donations from overseas and from non-Australian companies
 - reduce the disclosure time frame to 6 months from 12 months
 - move to a reimbursement rather than an entitlement model of election funding, by linking election funding to verified election expenditure
 - remove the loophole allowing separate divisions of a party to be treated as separate entities, preventing large donations from being hidden across state and territory branches of the party.¹³⁹

Key provisions

- 5.59** The changes announced by Minister Faulkner have been introduced to Parliament but have not yet been agreed to at the time of publication. The following section outlines the key provisions of the Federal scheme, as it would be if these changes were passed.
- 5.60** The Federal scheme was established in 1983 and is administered by the Australian Electoral Commission (AEC). Public funding is available to registered political parties, Senate groups and independent candidates who receive at least 4% of the first preference vote.¹⁴⁰
- 5.61** Registered political parties, their state and territory branches and associated entities would be required to lodge biannual returns with the AEC, disclosing income and expenditure in the

¹³⁸ Griffith G and Drabsch T, *Election Finance Law: Recent Developments and Proposals for Reform*, NSW Parliamentary Library Briefing Paper no 8/07, p 18

¹³⁹ The Hon John Faulkner, Special Minister of State, 'Electoral Reform', *Media Release 06/2008*, 28 March 2008

¹⁴⁰ <www.aec.gov.au/Parties_and_Representatives/Political_Disclosures/Overview.htm>(accessed 1 May 2008)

previous financial year.¹⁴¹ Third parties, including associated entities, would be required to lodge biannual returns if they incur political expenditure over \$1,000¹⁴² during the financial year.

5.62 After an election, candidates and Senate groups (other than Senate groups endorsed by one political party) are required to lodge an election return with the AEC disclosing donations and electoral expenditure.¹⁴³ Candidates and Senate groups would be required to disclose donations over \$1,000 received in the disclosure period. Candidates and Senate groups must disclose all electoral expenditure incurred between the issue of the writ and election day. Election returns would be lodged 8 weeks after election day.¹⁴⁴

5.63 Senate groups endorsed by one political party are not required to lodge an election return, as the donations and expenditure are disclosed in the party's annual return. Registered political parties, their state and territory branches and associated entities are also not required to lodge election returns.

5.64 Donors would be required to lodge either a biannual return or an election return with the AEC, depending on who they made donations to. Donors would be required to lodge a biannual return disclosing donations over \$1,000 during the financial year to a registered political party, as well as any donations received in order to make such donations.¹⁴⁵ Donors would be required to lodge an election return disclosing donations over \$1,000 to a candidate or Senate group made in the disclosure period.¹⁴⁶ The disclosure period commences 31 days after the previous Federal election and ends 30 days after election day.

¹⁴¹ <www.aec.gov.au/Parties_and_Representatives/Political_Disclosures/Overview.htm> (accessed 1 May 2008)

¹⁴² Lowering the disclosure threshold to \$1,000 (from \$10,500) is one of several provisions that appear in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, introduced into the Senate on 15 May 2008

¹⁴³ <www.aec.gov.au/Parties_and_Representatives/Political_Disclosures/candidates.htm> (accessed 1 May 2008)

¹⁴⁴ Shortening the lodgement period from 15 weeks to 8 weeks is one of several provisions that appear in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, introduced into the Senate on 15 May 2008

¹⁴⁵ <www.aec.gov.au/pdf/political_disclosures/handbooks/2007/donors/donors_handbook_2007.pdf> (accessed 1 May 2008)

¹⁴⁶ <www.aec.gov.au/Parties_and_Representatives/Political_Disclosures/Annual_Return/donor_election_info.htm> (accessed 1 May 2008)

5.65 State and territory stakeholders must comply with aspects of the Federal regulatory scheme. For instance, state and territory branches of registered political parties must submit an annual disclosure and expenditure return to the Australian Electoral Commission (AEC).¹⁴⁷ Under the Federal scheme for candidates endorsed by a political party, public funding is paid to the agent of the state or territory branch of the party in the jurisdiction where the candidate stood for election.¹⁴⁸ It is also possible to redirect election-funding payments from one state or territory branch, to another.¹⁴⁹

¹⁴⁷ Callinan R, *Election Finance Law: Public Funding, Donations and Expenditure*, New South Wales Parliamentary Library Research Service, Briefing Paper 15/2001, pp 17-18

¹⁴⁸ *Commonwealth Electoral Act 1918* s 299

¹⁴⁹ *Commonwealth Electoral Act 1918* ss 299(5A), (5B) and (5C)

Chapter 6 Public funding for State elections

Public funding of State elections has two main objectives: one, to decrease the potential for corruption, by providing a legitimate funding source; and two, to level the playing field by providing a basic level of funding to all candidates. There is no public funding for local government elections. The Committee strongly supports public funding for the electoral system, but believes that certain provisions of the current scheme need to be reformed, to ensure that that public funding is distributed in a fair and equitable manner, and that it meets the needs of parties, groups and candidates.

The recommendations contained in this report have been developed with an emphasis on:

- ensuring that there is a nationally consistent approach
- simplifying the system to enhance the level of compliance with disclosure laws by donors, parties and candidates
- banning all donations over \$1,000
- breaking the cycle of ever increasing campaign costs by capping expenditure.

This chapter briefly considers the rationale for public funding of elections. The main focus is on whether public funding is provided in a fair and equitable way, and whether it is provided in the most effective way. The chapter concludes by considering whether the community is willing to pay more for State government elections.

Rationale for public funding

- 6.1** Public funding is a common feature of many electoral finance regimes. Public funding may take the form of direct financial support, or may be provided by indirect means, such as free broadcasting time.
- 6.2** The International Institute for Democracy and Electoral Assistance reports that 59% of countries provide direct public funding to political parties, and that 71% of countries provide indirect public funding such as allocated broadcast time.¹⁵⁰ In Australia, six of the nine¹⁵¹ jurisdictions provide public funding for elections. The four international regimes examined in Chapter 4, namely Canada, New Zealand, the United Kingdom and the United States, all provide public funding in one form or another.

¹⁵⁰ Austin R and Tjermstrom M (eds), 'Matrix on Political Finance Laws and Regulations', *Funding of Political Parties and Election Campaigns*, Handbook Series, International Institute for Democracy and Electoral Assistance, 2003, p 214 and p 218. The sample size for the survey was 111 countries.

¹⁵¹ The nine jurisdictions includes the eight states and territories plus the Commonwealth.

6.3 The rationale for public funding of State election campaigns was articulated in the previous chapter: namely, for the dual purpose of preventing corruption and undue influence, and levelling the playing field. According to the Public Interest Advocacy Centre:

... the principles of equal representation, and equal opportunity for citizens and parties to participate in political life must be central to any consideration of political financing, as must the principle of ensuring that elected members are free to work in the public interest, unencumbered by undue influence, conflict of interest or corrupt practice.¹⁵²

6.4 Despite this seductive promise that public funding strengthens our democratic system, some inquiry participants opposed public funding of elections, on the grounds that it fosters anti-democratic tendencies among our political parties. For example, the Festival of Light Australia argued that public funding makes political parties less responsive to their membership and the broader population: 'Judged by wisdom, public funding is dubious at best. By providing a conduit for funding which bypasses civil society, the representative nature of Australian democracy is weakened.'¹⁵³

6.5 The Festival of Light Australia also disagreed with one of the fundamental reasons for the introduction of public funding, namely that it lessens the risk of corruption and undue influence:

Private funding from inappropriate sources is undesirable and should be resisted, but public funding does not diminish this risk. Potentially inappropriate influence is better addressed through requirements for disclosure of political contributions and campaign expenditure.¹⁵⁴

6.6 The efficacy of public funding was also questioned by Professor Colin Hughes, Emeritus Professor of Political Science at the University of Queensland and inaugural Commonwealth Electoral Commissioner from 1984 to 1989. Professor Hughes said:

... my own opinion is that the available data show no sign of private fund-raising being inhibited by public funding ... If the Select Committee were starting from scratch, my advice now would be not to introduce public funding.¹⁵⁵

6.7 However, Professor Hughes acknowledged that it would now be impracticable to end public funding.

¹⁵² Submission 145, Public Interest Advocacy Centre, p 1

¹⁵³ Submission 40, Festival of Light Australia, p 4

¹⁵⁴ Submission 40, p 5

¹⁵⁵ Submission 42, Emeritus Professor Colin Hughes, p 2

- 6.8** The Public Interest Advocacy Centre also concluded that public funding has been ineffective in achieving its aims:

Direct public funding has supplemented the continuing and increasing private contributions and has done little to reduce the influence of wealthy and powerful interest groups. It has not resulted in financial equivalency between parties or improved accountability and transparency.¹⁵⁶

- 6.9** However, rather than arguing against the provision of public funding, as did Professor Hughes, the Public Interest Advocacy Centre recommended that public funding should be better regulated.

Committee comment

- 6.10** The Committee acknowledges that the system of public funding for NSW State elections is not perfect. The Committee is also of the view that it would be impracticable to move away from a system of public funding that has been in place for 27 years.
- 6.11** The Committee is committed to the original ideals of the public funding scheme: to prevent corruption and undue influence, and to promote more equal electoral competition. The Committee believes that the electoral funding scheme must be reformed, to ensure that the scheme meets these ideals.
- 6.12** The Committee considers the merits of introducing public funding for local government elections in Chapter 10.

Eligibility and adequacy

- 6.13** The Committee heard evidence concerning how to improve the eligibility criteria for and adequacy of public funding. In particular, inquiry participants argued that the eligibility criteria could be reformed to ensure diversity of political representation by supporting the participation of minor parties and independent candidates.

Current levels

- 6.14** Public funding is provided to registered parties, groups and candidates who receive at least 4% of the first preference vote in a State election, or who are successful in being elected to Parliament. As shown in the following table, parties, groups and candidates received approximately \$11.1 million in public funding following the 2007 State election.

¹⁵⁶ Submission 145, p 6

Table 6.1 Public funding for 2007 NSW State election¹⁵⁷

	Maximum entitlement \$	Amount paid \$ ¹⁵⁸	Payment ratio %
Parties	7,853,420	7,582,149	96.6
Candidates	3,926,646	3,588,034	91.3
Total	11,780,066	11,170,183	94.8

Eligibility

6.15 Several inquiry participants argued that the eligibility criteria advantaged the major parties, at the expense of minor parties and independent candidates, and in particular, new entrants to the political scene. According to this argument, major parties are at a significant advantage: they are already a known ‘brand’ and have established a media presence, they have an established party apparatus, they have access to parliamentary entitlements, and they are able to take advantage of economies of scale.

6.16 The 4% eligibility threshold was introduced as a result of a 1991 recommendation, made by the NSW Parliament’s Joint Select Committee upon the Process and Funding of the Electoral System. The Committee’s report said that:

The Committee therefore recommends the setting of a 4% threshold as one which would discourage frivolous candidates and still enable the smaller parties to qualify for public funding once this percentage of votes is obtained. This percentage will also increase the number of candidates who qualify for public funding, thus opening the system to more candidates.¹⁵⁹

6.17 The submission from The Shooters Party described the importance of public funding to minor parties and independent candidates:

Prior to the introduction of public funding in 1981, it was almost impossible for minor parties to contest elections with any optimism, because of their inability to raise the finances needed to contest an election ... This submission recommends ... that public funding of political parties and election campaigns be reviewed, so as to provide a more equitable allocation of public funds to independent candidates and smaller parties.¹⁶⁰

¹⁵⁷ Correspondence from Mr Trevor Follett, Secretary, Election Funding Authority, to the Committee, received 28 March 2008

¹⁵⁸ The amount paid is less than the entitlement because NSW has a scheme of reimbursement for election expenses. Also, no candidate can receive more than half of the funds available for each electorate, and no party or group contesting the Legislative Council election can receive more than half of the Central Fund.

¹⁵⁹ NSW Parliament, Joint Select Committee upon the Process and Funding of the Electoral System, *First Report*, March 1991, p 11

¹⁶⁰ Submission 89, Shooters Party, p 3

6.18 Another minor party, the Christian Democratic Party (NSW Branch), took issue with the 4% threshold for eligibility for payment of public funding, arguing that ‘the level of 4% of primary votes to receive electoral funding is at an unrealistic level as an arbitrary figure ... as it favours major parties.’¹⁶¹ The Christian Democratic Party NSW argued that there should be no minimum threshold and funding should be based on votes gained.¹⁶²

6.19 Mr Arie Baalbergen, Treasurer of the Christian Democratic Party NSW, justified abolishing the threshold by referring to the ‘vigorous’ registration requirements for State political parties, which include a minimum membership of 750 people, to be checked annually, and a registration fee of \$2,000.¹⁶³ The Christian Democratic Party was silent on the whether a threshold would be necessary for independent candidates, who do not have to demonstrate a membership base in order to be registered.

6.20 On the other hand, another minor party with representation in Parliament, The Greens NSW, supported the continuation of the 4% threshold:

At the moment we think four per cent is reasonable and that is coming from a party that for many years was a two per cent party. We took our time to get there! So we are not saying it out of a selfish motive ... We still need a threshold and at the moment we think four per cent is pretty fair.¹⁶⁴

6.21 Mr Paul Davey, Vice Chairman of the National Party of Australia – NSW, said of the threshold: ‘No, I do not think it should be lower. I think that if you cannot get 4 per cent of the primary vote bad luck.’¹⁶⁵

6.22 There was also some support from independent members for retaining the 4% threshold. Mrs Dawn Fardell MP, Member for Dubbo, asserted that the current eligibility threshold should be retained, because ‘if we were to lower that figure we would have a wider field of people out there putting up their hand, knowing they will not get across the line, and I should say they are of nuisance value ...’¹⁶⁶

6.23 Mrs Fardell said that rather than reducing the threshold, other mechanisms should be put in place to neutralise the financial advantage of the major parties:

While the requirement may be considered a disincentive to genuine candidates not financed by a major party, this could be overcome if the vast amounts spent on campaigns were reined in and limits were placed on the amount and cost of campaign materials.¹⁶⁷

¹⁶¹ Submission 99, Christian Democratic Party (NSW Branch), p 1

¹⁶² Mr Arie Baalbergen, Treasurer, Christian Democratic Party, Evidence, 31 March 2008, p 74

¹⁶³ <www.elections.nsw.gov.au/electoral_education_and_resources/state_elections/Registration_of_Political_Parties_for_Parliamentary_Elections_Handbook.pdf> (accessed 2 May 2008)

¹⁶⁴ Ms Lee Rhiannon MLC, Evidence, 31 March 2008, p 42

¹⁶⁵ Mr Paul Davey, Vice Chairman, National Party of Australian New South Wales Branch, Evidence, 4 April 2008, p 49

¹⁶⁶ Mrs Dawn Fardell MP, Member for Dubbo, Evidence, 31 March 2008, p 28

¹⁶⁷ Submission 139, Mrs Dawn Fardell MP, p 1

- 6.24** Spending caps are discussed in Chapter 8.
- 6.25** Another option would be to introduce different eligibility thresholds for the Legislative Council and Assembly. The submission from Dr Joo-Cheong Tham, Senior Lecturer in Law at Melbourne University, suggested that the threshold for the Legislative Council be reduced to 2% but that the threshold for the Legislative Assembly remain at 4%. Dr Tham argued that because votes for the Legislative Council are cast on a State-wide basis a party, group or candidate needs to receive a much greater number of votes to achieve the 4% threshold than for a Legislative Assembly electorate.¹⁶⁸ That is, to achieve the 4% threshold for a Legislative Assembly electorate, a candidate needs to receive approximately 2,000 votes. To achieve the 4% threshold in the Legislative Council a candidate needs to be receive over 160,000 votes.¹⁶⁹
- 6.26** While giving evidence to the Committee Dr Tham explained that since making his submission, he had given further thought to the issue of thresholds, and was now of the view that there should be a very low threshold or no threshold at all:
- The rationale given in various places for having a threshold of 2 to 4 percent is that it basically is a deterrent against candidates who are not serious and so on and so forth. In my view, that role of deterrence should be played by the deposit that is required to be given by the candidate. If the candidate does not receive above a certain number of votes, they forfeit their deposit. Increasingly my view is that there is a very little justification for a threshold, whether it is 2 per cent or what ... I am arguing for, if you like, a completely pro rata system or a very low threshold.¹⁷⁰
- 6.27** The nomination deposit for candidates to the Legislative Assembly is \$250,¹⁷¹ for candidates to the Legislative Council \$500, and for groups of between 11 and 21 members \$5,000 (for groups of other sizes, the deposit is the number of members of the group multiplied by \$500).¹⁷² The deposit is refunded if the candidate or group achieves 4% of the first preference vote, or the candidate or a member of the group is elected.
- 6.28** The first of the two following tables shows how changing the eligibility threshold from 4% to 2% of first preference votes, or scrapping the eligibility threshold altogether, would have affected the funding payable for the 2007 State election for parties, groups and candidates contesting the Legislative Council election. The second table illustrates this for parties and independents contesting the Legislative Assembly election. The amounts in brackets highlight

¹⁶⁸ Dr Joo-Cheong Tham, Senior Lecturer, Law Faculty, University of Melbourne, Evidence, 31 March 2008, p 7; Submission 154, Dr Joo-Cheong Tham, p 62

¹⁶⁹ <www.elections.nsw.gov.au/__data/assets/excel_doc/0005/48299/Enrolment_figures_April_08.xls> (accessed 28 May 2008) For the Legislative Assembly, the number of votes needed to achieve the threshold is based on an average electorate size of 48,703 voters. The votes needed to achieve the threshold for the Legislative Council was calculated according to the 4,059,166 enrolled voters.

¹⁷⁰ Dr Tham, Evidence, 31 March 2008, p 8

¹⁷¹ <www.elections.nsw.gov.au/electoral_education_and_resources/state_elections/RO.124A_Handbook_for_Candidates_LA.pdf> (accessed 2 May 2008)

¹⁷² <www.elections.nsw.gov.au/electoral_education_and_resources/state_elections/RO.124B_Handbook_for_Parties,_Groups_and_Candidates_LC.pdf> (accessed 2 May 2008)

where there would have been a decrease in funding. The tables are based on secretariat analysis of 2007 election funding reports published by the EFA.¹⁷³

¹⁷³<www.efa.nsw.gov.au/state_government_elections/election_funding_reports/state_general_election_2007> (accessed 28 April 2008)

Table 6.2 Funding payable to candidates contesting 2007 Legislative Council election if eligibility threshold reduced or abolished

Party	% primary votes received 2007	Amount payable 4% threshold or candidate elected	Amount payable 2% threshold	Difference between 2% and 4% thresholds	Amount payable 0% (no) threshold	Difference between 0% and 4% threshold
ALP NSW	39.14	\$3,426,979	\$3,426,979	\$0	\$3,073,829	(\$353,150)
Liberal Party NSW	34.22	\$2,996,107	\$2,996,107	\$0	\$2,687,441	(\$308,666)
National Party NSW						
The Greens NSW	9.12	\$798,434	\$798,434	\$0	\$716,232	(\$82,202)
Christian Democratic Party NSW	4.42	\$387,204	\$387,204	\$0	\$347,121	(\$40,083)
The Shooters Party	2.79	\$244,696	\$244,696	\$0	\$219,110	(\$25,586)
Australian Democrats NSW	1.78	\$0	\$0	n/a	\$139,791	\$139,791
Australians Against Further Immigration	1.64	\$0	\$0	n/a	\$128,796	\$128,796
The Fishing Party	1.53	\$0	\$0	n/a	\$120,157	\$120,157
Unity Party	1.21	\$0	0	n/a	\$95,026	\$95,026
Restore the Workers Party	0.92	\$0	\$0	n/a	\$72,251	\$72,251
Horse Riders Party	0.57	\$0	\$0	n/a	\$44,765	\$44,765
Outdoor Recreation Party						
Peter Breen – Human Rights Party	0.44	\$0	\$0	n/a	\$34,555	\$34,555
Socialist Alliance	0.40	\$0	\$0	n/a	\$31,414	\$31,414
Save Our Suburbs	0.31	\$0	\$0	n/a	\$24,345	\$24,345
Independent Group						

Electoral and Political Party Funding in New South Wales

Party	% primary votes received 2007	Amount payable 4% threshold or candidate elected	Amount payable 2% threshold	Difference between 2% and 4% thresholds	Amount payable 0% (no) threshold	Difference between 0% and 4% threshold
A	0.68	\$0	\$0	n/a	\$53,403	\$53,403
D	0.01	\$0	\$0	n/a	\$785	\$785
F	0.50	\$0	\$0	n/a	\$39,267	\$39,267
H	0.08	\$0	\$0	n/a	\$6,283	\$6,283
M	0.09	\$0	\$0	n/a	\$7,068	\$7,068
Ungrouped Candidates						
Bodlay, Jordie	0.00	\$0	\$0	n/a	\$0	n/a
Carbury, Richard	0.00	\$0	\$0	n/a	\$0	n/a
Fraser, Dawn	0.12	\$0	\$0	n/a	\$9,424	\$9,424
Lovett, Ryan	0.00	\$0	\$0	n/a	\$0	n/a
MacDonald, Alasdair	0.00	\$0	\$0	n/a	\$0	n/a
Nunez, Jose	0.00	\$0	\$0	n/a	\$0	n/a
Rofe, David	0.01	\$0	\$0	n/a	\$785	\$785

Table 6.3 Funding payable to parties and independents contesting 2007 Legislative Assembly election if eligibility threshold reduced or abolished

Party	4% threshold	2% threshold	Difference between 2% and 4% thresholds	0% (no) threshold	Difference between 0% and 4% thresholds
ALP NSW	\$1,334,147	\$1,310,673	(\$23,474)	\$1,282,885	(\$51,262)
Liberal Party NSW	\$1,060,782	\$1,034,247	(\$26,535)	\$995,695	(\$65,087)
National Party NSW	\$369,946	\$347,374	(\$22,572)	\$346,181	(\$23,765)
Country Labor	\$151,084	\$152,760	\$1,676	\$147,935	(\$3,149)
The Greens NSW	\$354,897	\$355,036	\$139	\$350,404	(\$4,493)
Christian Democratic Party NSW	\$63,334	\$92,895	\$29,561	\$94,289	\$30,955
Unity Party	\$23,351	\$34,330	\$10,979	\$43,239	\$19,888
Australians Against Further Immigration	\$10,957	\$46,768	\$35,811	\$57,935	\$46,978
Australian Democrats	\$1,923	\$11,635	\$9,712	\$21,197	\$19,274
Outdoor Recreation/Fishing Party	\$4,934	\$6,488	\$1,554	\$8,025	\$3,091
Socialist Alliance	\$0	\$0	\$0	\$1,241	\$1,241
Save our Suburbs	\$0	\$0	\$0	\$908	\$908
Independents	\$314,910	\$336,142	\$21,232	\$336,406	\$21,496

Sliding scale of funding

- 6.29** As an alternative to reducing the eligibility threshold, it was suggested that a sliding scale of funding could be introduced to benefit minor parties, independent candidates and new entrants. The benefits of a sliding scale of funding were outlined by Dr Tham:

What this sort of tapered scheme does – if you like we can think about it as some kind of form that is akin to a progressive income taxation system – is basically contribute in a rough and ready sort of way to offset the natural disadvantages that small and minor parties face in the electoral and political arena.¹⁷⁴

- 6.30** Dr Tham therefore recommended that:

The amount of payments should be subject to a tapered scheme with the payment rate per vote decreasing according to the number of first preference votes received. For instance, the first 5% of first preference votes received by a party could entitle it to a payment of \$2.00 per vote, while a payment rate of \$1.50 per vote applied to the next 20% of first preference votes and a payment rate of \$1.00 per vote attached to votes received beyond the 25% mark.¹⁷⁵

- 6.31** The Public Interest Advocacy Centre also supported a sliding scale of public funding, because it would go ‘some way to addressing the huge difference between the public election funding of the major parties compared to minor parties and consequential undemocratic advantage this gives them.’¹⁷⁶

- 6.32** In response to a question taken on notice, the Public Interest Advocacy Centre advised that it was not aware of any jurisdictions that had implemented a sliding scale of funding per vote.¹⁷⁷

Registration and verification of expenditure

- 6.33** Inquiry participants raised concerns about two other eligibility requirements: first, the requirement to register with the Electoral Commission or the Election Funding Authority (EFA), and second, the post-election requirement to verify election spending before being reimbursed for the campaign costs.

- 6.34** There was no evidence to suggest that registration should no longer be required, but it was suggested that registration requirements be streamlined between the Federal Government and the states and territories. As explained in Chapter 5, the NSW Electoral Commission is responsible for registering parties, and the EFA registers groups and candidates.

¹⁷⁴ Dr Tham, Evidence, 31 March 2008, p 7

¹⁷⁵ Submission 154, pp 62-63

¹⁷⁶ Answers to questions taken on notice during evidence 10 March 2008, Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, p 2

¹⁷⁷ Answers to questions taken on notice during evidence 10 March 2008, Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, p 2

6.35 The submission from the Australian Labor Party (NSW Branch) said:

The Commonwealth should register parties who want to stand candidates for a Federal Election. Any party registered by the Commonwealth should automatically be registered in all States and Territories for State and Local Government Elections.

In addition, the States and Territories should administer a regime for registering parties who want to stand candidates for State and Local Government elections.¹⁷⁸

6.36 Concerns were also raised about the pros and cons of the post-election reimbursement of campaign costs. The NSW electoral funding scheme requires parties, groups and candidates to submit returns detailing their expenditure, and to provide proof of expenditure. The rationale behind the reimbursement model is to prevent any party, group or candidate receiving public funding in excess of the cost of their campaign.

6.37 The reimbursement model was criticised for being time-consuming and onerous, with the verification of expenditure often falling to inexperienced volunteers. According to Mr Karl Bitar, General Secretary of the ALP NSW:

In many instances we are relying on volunteers to fill out a lot of these forms ... In a lot of instances the branch treasurer is sort of an 87-year-old retiree who has never practised accounting, and is just filling the role of treasurer because he was at the branch meeting and no one else put their hand up ...¹⁷⁹

6.38 The Committee also heard from Mr Colin Barry, Chairperson of the EFA, that the EFA spends a large amount of time verifying expenditure returns:

One of the challenges is that the New South Wales scheme is a reimbursement scheme, unlike the Commonwealth scheme, which is an entitlement scheme, and unlike the Victorian scheme, which is an entitlement scheme. Consequently an enormous amount of work goes into getting all the necessary supporting documentation to validate the reimbursement.¹⁸⁰

6.39 As noted by Mr Barry, the alternative to a reimbursement scheme is an entitlement scheme. Under an entitlement scheme eligible candidates receive their full entitlement of public funding, regardless of how much they have spent. An entitlement scheme is much simpler and easier to administer than a reimbursement scheme. However, as shown by the 2004 Federal election, an entitlement scheme opens up the door to candidates profiting from standing for public office. Ms Pauline Hanson stood for election to the Senate and her party received \$199,886 in public funding, but spent only \$35,426 on its election campaign.¹⁸¹ Mr Barry

¹⁷⁸ Submission 107, Australian Labor Party (NSW Branch), p 5

¹⁷⁹ Mr Karl Bitar, New South Wales General Secretary, Australian Labor Party, Evidence, 4 April 2008, p 71

¹⁸⁰ Mr Colin Barry, Chairperson, Election Funding Authority of New South Wales, Evidence, 3 March 2008, p 17. The Committee notes that the Federal Government has announced that it is moving to implement a reimbursement model.

¹⁸¹ <www.news.com.au/story/0,23599,23036802-421,00.html#> (accessed 2 May 2008)

acknowledged that under an entitlement scheme a candidate may make a profit of public funding, but said that this is 'a rather unique occurrence.'¹⁸²

- 6.40** The Committee notes the March 2008 announcement by the Federal Government that it will implement a reimbursement model, 'so that political parties and candidates do not make a windfall gain from public funding.'¹⁸³

Committee comment

- 6.41** Eligibility requirements for public funding must not of themselves act as a deterrent to the diverse range of parties and candidates seeking elective office. On the other hand, it is legitimate for the Parliament to legislate to prevent electoral processes being brought into disrepute. For example, the Parliamentary Electorates and Elections Amendment Bill 1999 enacted changes to party registration requirements and group voting provisions in response to widespread concern about the ballot for election of members of the Legislative Council at the March 1999 general election.
- 6.42** The threshold for public funding eligibility is one of a suite of inter-connected measures, including party registration, candidate nomination and candidate deposit requirements that have been enacted to deal with frivolous candidates. Changes to one of these cannot be considered in isolation.
- 6.43** The Committee notes that lowering the eligibility threshold from 4% to 2% would have made no difference to the allocation of funding for the 2007 Legislative Council election, as the only party, group or candidate to receive between 2% and 4% was The Shooters Party, who were entitled to public funding by virtue of having a candidate elected. For the Legislative Assembly, however, lowering the threshold to 2% would have seen the funding allocated to some minor parties increase.
- 6.44** Given the minimal impact on eligibility for funding from lowering the threshold to 2%, the Committee doubts there would be any impact on the number and diversity of candidates lodging nominations. Abolishing the threshold would, however, remove one of a suite of measures in place to deter frivolous candidates.
- 6.45** The Committee heard that a sliding scale of public funding is another measure to support minor parties and independent candidates. This is a complex proposal and requires further investigation, particularly given the paucity of comparative models. Therefore the Committee's preference is to retain the current eligibility threshold.
- 6.46** The Committee is sympathetic to the objective of synchronising registration requirements for political parties at both the Federal and state/territory levels. The Committee notes, however, that current registration requirements were enacted as part of a suite of measures in the 1999 amendments to electoral legislation and this needs to be taken into account in discussions with the Federal Government. Bearing this in mind, the Premier should raise party registration with

¹⁸² Mr Barry, Evidence, 3 March 2008, p 18

¹⁸³ Senator the Hon J Faulkner, Special Minister of State, 'Electoral Reform,' *Media Release*, 28 March 2008

Senator the Hon John Faulkner, Special Minister of State as part of the Federal Government's Green Paper review.

Recommendation 1

That the Premier raise with Minister Faulkner, as part of the Federal Government's Green Paper review of electoral funding, the issue of simplifying registration requirements between the Federal Government and the states and territories.

- 6.47 While the Committee has sympathy for the volunteers who must meet the complex requirements of the reimbursement model, and the administrative work this creates for the EFA, the Committee supports the greater emphasis on accountability built into the reimbursement model and therefore supports its continued use.

Political Education Fund

- 6.48 The purpose of the Political Education Fund is to provide annual payments to political parties to compensate them for the cost of conducting political education. The Fund was established as the result of a 1992 recommendation of a parliamentary committee which found that 'political education of the voting community is not presently assisted by the state in any real way but is left largely to the political parties. As this imposes a considerable burden on them the committee supports the creation of a political education fund ...'¹⁸⁴ In the four years leading up to the 2007 State election, the Fund made payments worth \$6.7 million.¹⁸⁵ Some inquiry participants questioned whether the Fund is achieving its objectives, while others criticised the eligibility criteria for payments from the Fund.

Importance of political education

- 6.49 Ms Robin Banks, Chief Executive Officer of the Public Interest Advocacy Centre, described the need for political education:

We run training for people about working with government and it never ceases to amaze me how little people understand about the way in which voting works, the way in which the two Houses of Parliament work, and the difference between Federal and State governments.¹⁸⁶

- 6.50 Dr Simon Longstaff, Director of the St James Ethics Centre, described community understanding of the electoral process and political system as 'moderate to bad.' Dr Longstaff told the Committee:

¹⁸⁴ NSW Parliament, Joint Select Committee upon the Process and Funding of the Electoral System, *Second Report*, September 1992, p 6

¹⁸⁵ Email from Mr Trevor Follett, Secretary, Electoral Funding Authority of New South Wales, to the Secretariat, 28 March 2008

¹⁸⁶ Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, Evidence, 10 March 2008, p 4

I have spoken to people who simply have no idea what the Legislative Council or House of Assembly is. They do not know what the Senate is. I think there is quite a long way to go in Australia in creating a kind of civic literacy around the key institutions of democracy and the operation of our Constitution. I know the curriculum is crowded but large numbers of people are in an unhealthy state of ignorance in relation to how our democracy operates.¹⁸⁷

- 6.51** Dr Longstaff acknowledged that the Electoral Commission conducts voter education, but noted that this was limited to education about the technical aspects of the voting system.¹⁸⁸ Dr Longstaff said that there was ‘some degree of urgency’ in providing more effective political education, given the current poor level of understanding.¹⁸⁹
- 6.52** A contrasting view about the level of political education came from Mr Barry O’Farrell MP, Leader of the NSW Opposition, who said: ‘I think voters have increasingly become better informed and I pay credit to changes in the curricula at both State and national levels for that.’¹⁹⁰

Effectiveness

- 6.53** The Political Education Fund has an extremely broad objective, namely to support ‘political education.’ There is no further detail about what the Fund is meant to achieve. There are however restrictions on the way in which payments from the Fund can be used. As discussed in Chapter 5, parties can use payments from the Fund for the dissemination of material informing voters about the history, policies or achievements of the party. The Fund can also be used to pay a proportion of the salary of staff members involved in preparing materials covered by the Fund. The Fund cannot be used to pay for election costs.
- 6.54** The Committee heard criticism that the Fund is being used to support parties’ ongoing administrative and operational costs, rather than for its stated purpose of supporting political education. Ms Clover Moore MP, Member for Sydney, referred in evidence to a 2005 media story, which claimed that parties had used the Political Education Fund to pay for staff salaries, media training workshops, telephone calls, computer costs, photocopier maintenance, rent and cleaning, and property maintenance.¹⁹¹
- 6.55** Ms Moore argued that ‘the Political Education Fund is not an appropriate mechanism for objective civics education’ and recommended that the Fund be abolished.¹⁹²
- 6.56** Another independent member, Mrs Fardell, also recommended that the Fund be abolished: ‘There appears to be no obvious value to the Political Education Fund beyond a slush fund for the promotion of political parties.’¹⁹³

¹⁸⁷ Dr Simon Longstaff, Executive Director, St James Ethics Centre, Evidence, 31 March 2008, p 22

¹⁸⁸ Dr Longstaff, Evidence, 31 March 2008, p 23

¹⁸⁹ Dr Longstaff, Evidence, 31 March 2008, p 23

¹⁹⁰ Mr Barry O’Farrell MP, Leader of the NSW Opposition, Evidence, 31 March 2008, p 50

¹⁹¹ Submission 153, Ms Clover Moore MP, p 5

¹⁹² Answers to questions taken on notice during evidence 4 April 2008, Ms Clover Moore MP, p 2

¹⁹³ Submission 139, p 1

6.57 Mr Greg Piper MP, the independent member for Lake Macquarie, was likewise skeptical about the amount of political education being undertaken: ‘Certainly, if the intention is for the education of the public in regard to the political system, I have to say that as someone who has been in the political system for quite some time, I have seen very little of that education.’¹⁹⁴

6.58 Additional support for abandoning the Political Education Fund came from the Australian Centre for Democracy and Justice (ACDJ):

ACDJ consider the Political Education Fund to be unnecessary. However we consider political education to be vital. ACDJ would recommend abandoning the fund and distributing these monies to the NSW Electoral Commission who could then use these funds for education that is not party-specific.¹⁹⁵

6.59 Dr Longstaff suggested that if the Fund was to be used for genuine political education, then ‘I think should be done by a disinterested, independent body that is able to work with a group like the Board of Studies and create curricula material and use other mechanisms more suited to our modern times ...’¹⁹⁶

6.60 In contrast, the submission from the Liberal Party NSW said that the Fund ‘is meeting the objectives identified by the parliamentary committee that recommended its establishment.’¹⁹⁷

Monitoring

6.61 Parties are not required to demonstrate that any activities paid for from the Fund are designed to improve the level of political education. In relation to monitoring the outcomes of the Fund, Mr Barry, Chairperson of the EFA, said:

The objectives of the Fund are for political parties to undertake political education. I do not know that it is really appropriate for me to comment on whether it is meeting its objectives. All we do is process the applications from the political party and if they are in order, provide the party with its entitlement. We do not do any other research or validation.¹⁹⁸

6.62 Ms Banks from the Public Interest Advocacy Centre argued that parties must be held accountable for the way that they spent payments from the Fund:

We see it as vital that people not feel that the process is something that happens over there, away in the distance, or down here in Macquarie Street, but rather it is something that does engage them. Requiring those that receive funds to account for how they engage the community and how they educate the community about political

¹⁹⁴ Mr Greg Piper MP, Member for Port Macquarie, Evidence, 4 April 2008, p 28

¹⁹⁵ Submission 108, Australian Centre for Democracy and Justice, p 5

¹⁹⁶ Dr Longstaff, Evidence, 31 March 2008, p 20

¹⁹⁷ Submission 140, Liberal Party of Australia (NSW Division), p 11

¹⁹⁸ Mr Barry, Evidence, 3 March 2008, p 14

processes in this State particularly is, in our view, a vital part of the Fund being effective.¹⁹⁹

- 6.63** The Public Interest Advocacy Centre lamented that the EFA ‘does not have a role in auditing the use of funds ... the only accountability is that the money has been spent.’²⁰⁰

Eligibility

- 6.64** As outlined in Chapter 5, registered parties that are successful in having a candidate elected to the Legislative Council are entitled to annual payments from the Political Education Fund. To receive payments parties must in effect stand candidates in the Legislative Assembly, as each party’s annual payment is based on the number of first preference votes for the party’s Legislative Assembly candidates.

- 6.65** Annual payments from the Political Education Fund are calculated according to the following formula:

$P = CS \times FPV$, where:

P = the payment made to the party for the year concerned

CS = the cost (as at 1 December before the payment is made) of a postage stamp needed to post a standard letter by ordinary post in Sydney to an address in Sydney

FPV = the total number of first preference votes recorded at the last general election, on all ballot papers not rejected as informal, for the candidates endorsed by the party for the election to the Legislative Assembly.²⁰¹

- 6.66** The following table shows the annual payments to all political parties under the Political Education Fund, in the lead-up to the 2007 State election.

¹⁹⁹ Ms Banks, Evidence, 10 March 2008, p 3

²⁰⁰ Ms Banks, Evidence, 10 March 2008, p 3

²⁰¹ Election Funding Authority of New South Wales, *Election Funding Guide for Parties for State Elections*, March 2007, p 47

Table 6.4 Political Education Fund payments 2004-2007²⁰²

Party Name	2004 \$	2005 \$	2006 \$	2007 \$	Total \$
ALP NSW	688,618	688,618	688,618	688,618	2,754,472
Christian Democratic Party (Fred Nile Group)	32,986	32,986	32,986	32,986	131,944
Country Labor Party	126,891	126,891	126,891	126,891	507,564
Liberal Party NSW	472,444	472,444	472,444	472,444	1,889,776
National Party NSW	184,002	184,002	184,002	184,002	736,008
The Greens NSW	157,685	157,685	157,685	157,685	630,740
Total	1,662,626	1,662,626	1,662,626	1,662,626	6,650,504

6.67 Although The Shooters Party has two members sitting in the Legislative Council, the Party does not stand candidates in the Legislative Assembly and therefore is ineligible for payments from the Fund. The submission from The Shooters Party criticised this anomaly:

The Shooters Party is in the rare situation of being able to say that it has spent money on educating voters, particularly in regard to pointing out the difference between the Upper House and the Lower House systems, with the aim of educating the voter, and ensuring that the voter records a valid preference at the polls. The Shooters Party spent an estimated **\$164,000** on this alone prior to the last State election, yet, it remains ineligible for funding under the Political Education Fund.²⁰³

6.68 The Shooters Party called for the eligibility criteria for payments from the Fund to be revised:

It is obvious that the original intention of distributing funds on the basis of the electoral performance at the previous general election is not being achieved, as some minor parties are only represented in the Legislative Council ... The Shooters Party recommends that the funding formula for the Political Education Fund be reworked, so as to recognise the performance of parties in the Legislative Council and/or the Legislative Assembly.²⁰⁴

6.69 Dr Tham agreed that the eligibility criteria should be revised:

To restrict the measure of public support to the votes garnered in the lower House seems to me to be wrong because support can be reflected either through the votes for the upper House or the lower House. One should not make a distinction between one and the other.²⁰⁵

²⁰² Email from Mr Trevor Follett, Secretary, Election Funding Authority of New South Wales, to the Secretariat, 28 March 2008

²⁰³ Submission 89, p 12, emphasis as per original

²⁰⁴ Submission 89, p 14

²⁰⁵ Dr Tham, Evidence, 31 March 2008, p 8

- 6.70** Mr Bitar, General Secretary of the ALP NSW also supported broadening the eligibility criteria, describing as ‘bizarre’ the situation in which parties with candidates elected to the Legislative Council are not eligible for payments from the Fund.²⁰⁶
- 6.71** Further support for broadening the eligibility criteria, to include not just all parties represented in Parliament but also independent MPs, came from Ms Lee Rhiannon MLC of The Greens NSW:
- At the moment some parties have access to public money from the Political Education Fund. We support independent members of Parliament and parties that do not run in Lower House seats being able to access this money.²⁰⁷
- 6.72** The Public Interest Advocacy Centre criticised the Political Education Fund for favouring the major parties: ‘We certainly think that political education is not simply the domain of the major parties. It is something that all those involved in the political process should be engaged in.’²⁰⁸
- 6.73** Mr Barry, the Chairperson of the EFA, also suggested that the formula for calculating each party’s entitlement under the Political Education Fund be revised. Mr Barry questioned whether it was still appropriate to base a party’s funding entitlement on the price of a postage stamp.²⁰⁹

New formula for calculating payments

- 6.74** As noted earlier, registered parties that are successful in having a candidate elected to the Legislative Council are entitled to annual payments from the Political Education Fund. Annual payments are calculated by multiplying the number of first preference votes for the party’s Legislative Assembly candidates by the cost of a regular postage stamp (50c). This formula currently excludes independent members of the Legislative Assembly, and parties who have members elected to the Legislative Council but who do not stand candidates in the Legislative Assembly.
- 6.75** The eligibility criteria for payments from the Political Education Fund could be broadened to enable payments to all parties represented in Parliament, and all independent MPs, based on the number of first preference votes received in either the Upper or Legislative Assembly. Total payments from the Fund would increase by \$68,328 annually, or \$273,312 for each electoral cycle.
- 6.76** The following table is based on analysis of the data on the EFA’s website. The entitlement of Independent MPs was calculated based on the number of first preference votes received, multiplied by 50c. The amount payable to The Shooters Party, which is represented in the Legislative Council but did not stand any candidates in the Legislative Assembly, was calculated according to the number of first preference votes the elected candidate received,

²⁰⁶ Mr Bitar, Evidence, 4 April 2008, p 63

²⁰⁷ Ms Rhiannon, Evidence, 31 March 2008, p 35

²⁰⁸ Ms Banks, Evidence, 10 March 2008, p 4

²⁰⁹ Mr Barry, Evidence, 3 March 2008, pp 15-16

plus a proportion of the Group votes equal to the number group votes divided by the number of candidates in the group.²¹⁰ The above method of calculation would clearly not address the equity of the distribution of funds to parties that contest only Legislative Council seats.

Table 6.5 Potential annual payments from the Political Education Fund payment for independent MPs and parties represented in the Legislative Council that did not stand candidates in the Legislative Assembly election²¹¹

Independent Member	# votes	Annual Entitlement
Peter Draper (Tamworth)	20,531	\$10,266
Dawn Fardell (Dubbo)	18,296	\$9,148
Clover Moore (Sydney)	16,316	\$8,158
Robert Oakeshott (Port Macquarie)	28,523	\$14,262
Greg Piper (Lake Macquarie)	12,917	\$6,459
Richard Torbay (Northern Tablelands)	32,615	\$16,308
Total		\$64,599
Party with elected Legislative Council member who did not stand candidates for Legislative Assembly		
Roy Smith	7,457 ²¹²	\$3,729
Total additional annual payment		\$68,328

Regular funding payments for party administration

- 6.77** The stated purpose of the Political Education Fund is to support political education of the community, yet the permissible activities which can be funded are more akin to parties' ongoing administrative and operational costs. Ongoing party costs include salaries, rent for office space, postage costs, purchase and maintenance of information technology and telecommunications equipment, stationery, travel, and ongoing research to drive policy development.²¹³ Because there is no ongoing funding for parties between elections, it would not be surprising if the Fund has become a defacto means of ongoing party support.
- 6.78** The Committee notes that Canada provides regular payments to political parties to pay for the costs of party administration, and that receipt of party administration payments is dependent on parties fulfilling regular reporting requirements.

²¹⁰ Roy Smith received 1,976 first preference votes. The Group received 104,143 votes. There were 19 candidates in the group.

²¹¹ Secretariat analysis 2007 election funding reports <www.efa.nsw.gov.au/state_government_elections/election_funding_reports/state_general_election_2007> (accessed 14 April 2008)

²¹² The amount payable to The Shooters Party was calculated according to the number of first preference votes the elected candidate received (1,976), plus a proportion of the Group votes equal to the number group votes (104,143) divided by the number of candidates in the group (19).

²¹³ Tabled document, Young S and Tham J, *Political finance in Australia: a skewed and secret system*, 2006, p 91

- 6.79** As described in Chapter 4, the United Kingdom provides provides policy development grants worth up to £2 million each year to registered parties with at least two members in the House of Commons.²¹⁴
- 6.80** Mr Bitar of the ALP NSW described his party's ongoing administrative and operational costs to service its 17,000 members, including producing publications, running a website and holding the annual State conference.²¹⁵ Mr Bitar therefore suggested that the Political Education Fund be reformed to provide parties with an ongoing funding source:
- ... the parties receive public funding straight after an election campaign. You also have the Political Education Fund. I think one of the things that we should consider as part of this process is either merging those funds or having one fund that allows parties to operate on an annual basis, and that also allows parties to run a reasonable campaign.²¹⁶
- 6.81** Mr Bitar, who has been tasked by the Premier with consulting the parties about the proposal to ban all political donations, told the Committee that an important part of this consultation would be developing realistic costings for ongoing party administration:
- I think all the political parties have to sit down and have an honest look at what it costs to run their operation ... campaigns aside.
- If we were to introduce full public funding, what does it cost to run the New South Wales branch of the ALP? Being conservative, not being ridiculous or silly, what does it cost to run the Libs? What does it cost to run the Greens? You need to have a proper look at those figures.²¹⁷
- 6.82** Further support for ongoing party funding came from Dr Tham of Melbourne University, who recommended that parties and candidates that are eligible for election funding payments should receive an annual allowance.²¹⁸ In addition, Dr Tham recommended that these annual payments also be available to parties with over 500 members. For these parties, the annual payment should be calculated based on votes received in the previous election and the current membership of the party.
- 6.83** Further, Dr Tham recommended that parties that are eligible for annual allowances should be able to apply for policy development grants.²¹⁹

²¹⁴ Drabsch T, *Election Finance Law: An Update*, New South Wales Parliamentary Library Research Service, Briefing Paper 13/05, p 34

²¹⁵ Mr Bitar, Evidence, 4 April 2008, p 65

²¹⁶ Mr Bitar, Evidence, 4 April 2008, p 63

²¹⁷ Mr Bitar, Evidence, 4 April 2008, p 65

²¹⁸ Submission 154, p 63

²¹⁹ Submission 154, p 63

Committee comment

- 6.84** The Committee is disappointed that the Political Education Fund has not been monitored by the EFA. The Committee considers that parties should have been required to demonstrate that funds expended had been used for the purpose of improving political literacy in New South Wales.
- 6.85** The Committee believes that the Political Education Fund should be abolished, and two new funds established: one to subsidise party administration costs, and one to fund political education.
- 6.86** In relation to the ‘Party Administration Fund,’ the Committee considers that the eligibility criteria for receiving annual payments from the Fund should not discriminate against parties that only stand candidates in the Legislative Council or the Legislative Assembly. The Committee does not believe that independent MPs should be eligible for annual payments between elections, because they do not have the ongoing administration costs of political parties. The Committee considers that the costs of independent MPs are met by parliamentary entitlements.
- 6.87** Monies equal to the current value of the Political Education Fund should be allocated to the new Fund.

Recommendation 2

That the Premier establish a ‘Party Administration Fund.’ The Fund should:

- provide annual payments to subsidise party administration costs
- be open to all parties that have candidates elected to either the Legislative Council or Legislative Assembly.

- 6.88** As part of the ongoing inter-party dialogue about electoral reform, the funding provided to cover parties’ administration costs must be reviewed to ensure that parties are adequately funded. In particular, consideration should be given to whether it is still appropriate to calculate each party’s entitlement based on the price of a postage stamp. The Committee considers it likely that if restrictions are placed on political donations, such as those recommended by the Committee in the next chapter, then parties would need to be supported by a greater share of public funding.

Recommendation 3

That the Premier review the funding provided through the ‘Party Administration Fund’ to:

- ensure that parties are adequately funded
- assess whether it is appropriate to calculate each party’s entitlement based on the cost of a postage stamp.

- 6.89** While the Committee acknowledges the importance of providing ongoing funding to support party administration, this should not be at the expense of educating the community about our electoral process and political system. This should not be an either/or proposition.
- 6.90** Although there has been no study of the effectiveness of the Political Education Fund, the Committee considers it likely that it has not been effective in improving political literacy. The Committee bases this conclusion on the type of activities on which parties are permitted to spend their annual payments.
- 6.91** The Committee believes that monies equal to the current value of the Political Education Fund should be allocated to a new fund administered by the NSW Electoral Commission, for the purposes of political education. The new fund should have clear objectives, and clear assessment criteria against which to monitor its effectiveness.

Recommendation 4

That the Premier establish a new 'Political Education Fund,' to be administered by the NSW Electoral Commission, and allocate monies equal to the value of the current Political Education Fund. The Fund should have clear objectives, and have clear assessment criteria against which to monitor the effectiveness of projects.

Indirect public funding

- 6.92** Another dimension to the election funding debate is the option for indirect public funding of elections. In-kind funding is already in place in other jurisdictions, and may include the provision of free broadcasting time. The argument is that by providing substantial in-kind benefits, there is less need for direct funding and the drain on the public purse is reduced.
- 6.93** Particular forms of indirect public funding for elections can include the parliamentary entitlements of sitting MPs, and government advertising. Several inquiry participants claimed that these entitlements were being used to support election campaigns.

In-kind funding

- 6.94** A number of inquiry participants supported the concept of in-kind public funding. As described in Chapter 4, public funding in the United Kingdom is largely limited to the provision of in-kind benefits. Free broadcasting time is provided to qualifying parties, including minor parties that stand candidates in at least one-sixth of seats. In-kind support also includes free mailings and free use of public rooms in an election period.
- 6.95** In New Zealand, free broadcast time is provided by the public television and radio broadcasters, who determine the amount of time made available. Public funding is also provided for the purpose of purchasing broadcast time. The funds to be made available for this purpose is determined by the New Zealand Parliament.

6.96 In Australia the ABC allocates free broadcast time on radio and television during Federal, state and territory elections.²²⁰ The Government and Opposition parties always receive free broadcast time. New and minor parties may also be eligible for free broadcast time if they meet certain criteria.

6.97 Inquiry participants were particularly attracted to the idea of providing free broadcasting time, with parties to then be prevented from spending their own funds on radio or television advertising. For example, Professor Marian Sawer, Leader of the Democratic Audit of Australia said:

We believe there is much to be said in favour of the kind of system in place in Canada, the United Kingdom and New Zealand for allocating electronic advertising time in accordance with an equitable principle or formula rather than having open slather and people being able to purchase as much as their bank accounts will allow.²²¹

6.98 Similar sentiments were expressed in the submission from The Greens NSW: ‘The Greens support the provision of publicly funded election advertisement timeslots on free to air television and commercial radio and the ABC.’²²²

6.99 The FairGO Alliance also supported publicly funded advertising time:

If we do have to have advertising it should be funded by government and severely limited in cost and to distribution of factual information on the performance of candidates in each electorate ... An amount of funding should be allocated to each electorate and divided equally between the top five candidates who provide written evidence of the most supporters registered to vote in that electorate.²²³

6.100 The Committee heard praise for the New Zealand system for providing in-kind funding. Mr Norman Kelly, representing the Democratic Audit of Australia, said:

The state provides money to the parties so that they can actually enter into electronic advertising on television and radio ... at the last election the pool of money for electoral advertising was \$3.2 million. ²²⁴

6.101 Mr Kelly then described the criteria by which the funding is allocated:

The Electoral Commission uses various criteria, including voting support at the previous election, voting at subsequent by-elections, size of membership of the party, and the number of candidates the party intends to stand at the next election. Opinion polling can be used to gauge the level of support. It is a way of providing relative support for new entrants.²²⁵

²²⁰ ABC, ‘Fact Sheet: Allocation of Free Broadcasting Time to Political Parties during Election Campaigns,’ <www.abc.net.au/corp/pubs/documents/election_campaigns.pdf> (accessed 5 June 2008)

²²¹ Professor Marian Sawer, Leader, Democratic Audit of Australia, Evidence, 3 March 2008, p 38

²²² Submission 121, The Greens, p 8

²²³ Submission 5, FairGO Alliance, p 1

²²⁴ Mr Norman Kelly, Democratic Audit of Australia, Evidence, 3 March 2008, p 34

²²⁵ Mr Kelly, Evidence, 3 March 2008, p 38

- 6.102** It was even suggested that public television licences include a condition requiring the proprietors to provide a certain amount of broadcasting time at elections, to again contain the costs of elections. According to Dr Longstaff of the St James Ethics Centre:

I know that stations and the owners of television rights will throw up their hands in horror at this suggestion, but each of those people is able to generate the income they enjoy through the use of a public licence which is provided to them under certain conditions, and one of the conditions that might be attached to the provision of a licence to broadcast in Australia may include a requirement that a certain amount of time be made available – if not free certainly at reasonable costs – so that those licence holders were contributing something of their time or even an opportunity cost towards the support of democracy in Australia.²²⁶

- 6.103** However, questions were raised about whether it would be legally possible to restrict political advertising through the introduction of allocated broadcasting time. These questions were based on the implications of a 1991 High Court case, as described by the Public Interest Advocacy Centre:

In Australia there was an attempt to ban paid advertising in 1991, but this was struck down by a ruling of the full bench of the High Court when it was found to be constitutionally invalid due to implied freedom of political communication in relation to political matters inherent in the Constitution.²²⁷

- 6.104** Support for in-kind funding was not universal. Emeritus Professor Hughes cautioned that in-kind funding was full of pitfalls:

Provision of goods and services is another can of worms best left alone. Campaigning techniques have changed considerably, are changing, and will continue to change. Today's Parliament's estimate as to which medium or media should be subsidised will not correspond to tomorrow's PR consultants' opinions as to which media are most effective in shaping electoral decisions.²²⁸

- 6.105** On a similar issue, Dr Tham was unsure whether allocated broadcasting time would be appropriate.²²⁹

²²⁶ Dr Longstaff, Evidence, 31 March 2008, p 17

²²⁷ Submission 145, p 21

²²⁸ Submission 42, p 3

²²⁹ Dr Tham, Evidence, 31 March 2008, p 8

MPs' entitlements

- 6.106** Evidence to the Committee highlighted the potential for MPs to use their entitlements to support their election campaigns. The Public Interest Advocacy Centre described how the benefits of incumbency can create an electoral advantage:

While some parliamentary entitlements such as superannuation only benefit the individual elected representative, many other entitlements such as salaries, allowances for staff, postage and print are of benefit to the parties more generally. The more members elected, the greater is this advantage.²³⁰

- 6.107** Dr Longstaff described the difficulties of determining whether an MP was using his or her entitlements for election purposes:

On the issue of incumbency of those who sit in Parliament, it is extremely difficult to prevent members of Parliament from going about their business relating to their electorates, even if on occasion that means they are using their office in order to find what is, I suppose, an electoral advantage or political advantage.²³¹

- 6.108** A specific example was provided in the submission from the Liberal Party NSW, which described the potential for members of the Legislative Assembly to gain an unfair electoral advantage through use of their Electorate Mailout Accounts.²³² These Accounts provide MPs with up to \$64,000 per annum to mail each of their constituents two newsletters each year. The Accounts are not to be used to pay for election campaigning.

- 6.109** In 2004 the Auditor General, in his report to Parliament, found that members of the Legislative Assembly used their Electorate Mailout Accounts 'more in the month immediately preceding the election than at any other time during 2002-03.'²³³ The Auditor General commented that: 'The use of the Electorate Mailout Account by some Members of Parliament could be construed as funding activities of a direct electioneering or political campaigning nature.'²³⁴ The Committee notes, however, that the contents of newsletters distributed through the Electorate Mailout Account must be approved by the Clerk of the Legislative Assembly, and cannot contain electioneering material.

- 6.110** The Liberal Party NSW recommended that if spending caps were introduced, use of Electorate Mailout Accounts be prohibited in the twelve months leading up to an election.²³⁵

²³⁰ Submission 145, p 8

²³¹ Dr Longstaff, Evidence, 31 March 2008, p 20

²³² Submission 140, p 9

²³³ NSW Auditor General, *Report to Parliament, Auditor General's Report to Parliament 2004*, vol 1, section 2, p 12

²³⁴ NSW Auditor General, *Auditor General's Report to Parliament 2004*, vol 1, p 12

²³⁵ Submission 140, p 10

- 6.111** Similarly, the Public Interest Advocacy Centre recommended greater transparency about how members use their entitlements, and greater regulation of MPs' entitlements to ensure that they are not used for election purposes.²³⁶

Government advertising

- 6.112** As with MPs' entitlements, inquiry participants such as the Public Interest Advocacy Centre were concerned about the potential for governments to abuse the privileges of office:

Examples of such abuses include the use of government advertising for political purposes, the delaying of official campaign launches in order to prolong access to parliamentary entitlements, disregarding the caretaker convention, creating large public relations and media units with increased use of consultants.²³⁷

- 6.113** Greater regulation of government spending was supported by Mr O'Farrell, Leader of the Opposition, 'because to do otherwise simply allows the party in government, whoever that party is, to have access to greater resources and to some extent thwart the intent of any reform.'²³⁸

- 6.114** Of particular concern was the potential for the misuse of government advertising. The Audit Office reviewed government advertising in 2007, after the March 2007 State election. The Audit Office found that the Government had introduced a 'more robust' approval process since its last audit in 1995.²³⁹ Despite the improvements, the Audit Office concluded that government advertising could be misused for political purposes:

We have seen an increase in the amount spent on placing advertisements in the media leading up to the March 2007 state election. Although this may be justified, it contributes to the perception that government advertising may be promoting the incumbent government.

We found that the current guidelines are not adequate to prevent the use of public funds for party political purposes.²⁴⁰

- 6.115** The last Federal election provided an oft-quoted example of extensive government advertising in the lead-up to an election. The incumbent Government spent \$61 million before the election on advertising and other promotional material to explain its Work Choices legislation. Questions were raised about whether this was information dissemination, or promotion of a policy for electoral gain.²⁴¹

²³⁶ Submission 145, p 9

²³⁷ Submission 145, p 9

²³⁸ Mr O'Farrell, Evidence, 31 March 2008, p 55

²³⁹ NSW Auditor General, *Performance audit: Government Advertising, Department of Premier and Cabinet, Department of Commerce*, 2007, p 2

²⁴⁰ NSW Auditor General, *Performance audit: Government Advertising, Department of Premier and Cabinet, Department of Commerce*, 2007, pp 2-3

²⁴¹ Marris S, *Work Choices ads cost \$121 m*, October 16 2007 <www.theaustralian.news.com.au/story/0,25197,22593751-11949,00.html> (accessed 15 May 2008)

6.116 Professor Sawyer of the Democratic Audit was alert to the problems created by insufficient controls on government advertising:

I think the perception that government advertising may be used for partisan purposes is a major problem in Australia. We have not adopted clear enough guidelines concerning government advertising, such as have been adopted in Canada, New Zealand and the United Kingdom.²⁴²

6.117 The submission from the Liberal Party NSW drew the Committee's attention to the process introduced in Ontario, Canada, which requires the Auditor General to approve all government advertising.²⁴³ There are two stages at which advertising can be reviewed:

- Voluntary pre-review – a draft script is considered, as well as the scope and cost of advertising. Pre-review is commonly used for TV and radio advertising before incurring significant production costs.
- Compulsory formal review – advertisements are considered in their final form, with accompanying documentation to describe the objectives, target audience and key messages. Advertisements are deemed approved if not rejected within seven days.²⁴⁴

6.118 The Ontario Auditor General can delegate his or her responsibilities, but has not done so, instead appointing 'a "panel of experts" consisting of a lawyer, an academic and a newspaper editor, to advise on controversial advertising proposals.'²⁴⁵

6.119 The Liberal Party NSW said that without putting in place measures to stop the misuse of government advertising for political gain, other reforms, in particular caps on campaign expenditure, would be meaningless. The Liberals therefore recommended: 'That the New South Wales Government immediately legislate to authorise the Auditor-General to review and approve government advertising.'²⁴⁶

6.120 Similarly, the Public Interest Advocacy Centre recommended: 'That strict guidelines for government advertising be developed and that Auditors General should be given a role in reviewing advertisements before they are published or broadcast.'²⁴⁷

6.121 Dr Norman Thompson, Director of The Greens Political Donations Research Project also called for the Auditor General to be made responsible for approving government advertising:

The NSW Auditor General should be given the powers to vet all government ads prior to their running and reject those that aren't only for valid education of the public on important issues.²⁴⁸

²⁴² Professor Sawyer, Evidence, 3 March 2008, p 37

²⁴³ Submission 140, p 8

²⁴⁴ Submission 140, p 8

²⁴⁵ Submission 140, p 8

²⁴⁶ Submission 140, p 1, emphasis as per original

²⁴⁷ Submission 145, p 12

²⁴⁸ Submission 125, Dr Norman Thompson, p 13

- 6.122** As well as suggesting that the Auditor General be given oversight responsibility for government advertising, Dr Longstaff suggested that government advertising be restricted in the pre-election period:

... to provide, if you like, a blackout point within a certain period before an election where government advertising, other than that which is deemed to be critical – for example, in relation to bushfires and things of that kind – could be prohibited.²⁴⁹

- 6.123** On the other hand, in the opinion of Professor Hughes, it is not appropriate for the Auditor General to be given oversight responsibility for government advertising:

Indirect sources of funding, what are now often called the benefits of incumbency, is relative new ground for regulation. As a first principle I would say that decisions would be better left to the ordinary courts rather than given to special statutory officers appointed for the purpose or, worse still, existing statutory officers like the Auditor-General or the Electoral Commissioner with the consequent likelihood of embroiling them in what are essentially political arguments during a highly partisan period.²⁵⁰

- 6.124** Another cautionary note came from Dr Tham, who recommended that rather than take immediate action, an inquiry be conducted into the possible regulation of government advertising.²⁵¹

Committee comment

- 6.125** The claimed benefits of in-kind public funding are attractive: the playing field is levelled by providing all contestants with significant benefits, such as access to broadcasting time, while at the same time decreasing the drain on the public purse. However, the Committee is cautious about how the distribution of in-kind benefits would be determined, and in particular, how publicly funded broadcasting time would be allocated to new political parties, and independent candidates. The Committee is also mindful that with changing technology, it would be difficult to predict what would be the most sought-after form of advertising in future, and provide public funding accordingly. The Committee therefore does not support the introduction of in-kind public funding.
- 6.126** The Committee is concerned that incumbent MPs can use their Electoral Mailout Accounts to raise their profiles in the community in the lead-up to an election. Although election-related material cannot be paid for from the Account, any material distributed advantages incumbents by raising their profile at the expense of other candidates.
- 6.127** Similarly, the Committee considers that government advertising should be subject to greater oversight and regulation, to prevent it becoming an ersatz form of election funding. In addition, if spending caps were to be implemented, as discussed in Chapter 8, it would be necessary to restrict government advertising to avoid the government effectively circumventing these caps.

²⁴⁹ Dr Longstaff, Evidence, 31 March 2008, p 20

²⁵⁰ Submission 42, p 3

²⁵¹ Submission 154, p 52

- 6.128** The Committee therefore supports the Auditor General being given oversight responsibility for government advertising, along the lines of the scheme in Ontario, Canada, where the Auditor General may be advised by a panel of experts or an Advertising Commissioner. Government advertising should also be banned in a defined, pre-election period, except in the case of certain emergency situations. The Auditor General should be responsible for determining what government advertising should be permitted in this period.

Recommendation 5

That the Premier entrust the Auditor General with oversight responsibility for government advertising, with the Auditor General's powers to be modelled on those of the Auditor General in Ontario, Canada.

Increased public funding

- 6.129** One of the big questions attending reform of the electoral funding scheme, is, 'will public funding need to be increased?' It is likely that it would. Given the lack of public confidence in the electoral funding system, it is important to consider whether the public would support an increase in electoral funding.

Will public funding need to be increased?

- 6.130** Public funding to parties, groups and candidates for the 2007 State election was \$11.1 million, as shown in Table 6.1. Spending for the 2007 State election was \$36.4 million, therefore public funding subsidised approximately one-third of electoral expenditure.
- 6.131** As discussed in Chapter 7, many inquiry participants have called for a ban on all donations, or restrictions on certain sources of donations. If implemented, these measures could create a need for greater public funding, given the current levels of election spending. As discussed in Chapter 8, spending caps could be introduced to rein in electoral expenditure, but even with spending caps there could still be a shortfall in funding.
- 6.132** Another issue is how to fund the ongoing costs of party administration. As discussed earlier, some inquiry participants were of the view that the Political Education Fund may have been used to partly fund party administration. The annual payments from the Political Education Fund in the four-year period leading up to the 2007 State election amounted to \$6.7 million, as shown in Table 6.4. As noted earlier, the Committee supports quarantining the monies from the Fund for the purposes of genuine political education, and also supports introducing a new means of ongoing funding for party administration. This would need to be supported by an increase in public funding.
- 6.133** The Committee heard speculation that if all donations were banned, the current level of public funding would not be enough to support the costs of party administration. According to Mr Bitar:

In all reality, if you were to ban donations altogether, you would have to have some form of an increase in public funding ... The problem I have at the moment is that

public funding on its own at the current level would not necessarily allow us to run the administration of the party and have a decent campaign. I think the Liberal Party, The Nationals, the Greens and all the other minor parties would agree with me on that.²⁵²

Is the public willing to pay more?

- 6.134** It is far from certain that the community would be willing to provide additional public funding for election campaigns. Mr Paul Davey, Vice Chairman, National Party NSW, questioned the community's will to increase public funding:

If all activities of political parties are to be funded from the public purse, election campaigns and the ongoing party maintenance of organisations between elections, the cost to taxpayers would be extremely heavy. Would taxpayers cop this?²⁵³

- 6.135** Mr Bitar explained that in advocating full public funding, the ALP NSW was not suggesting that parties, groups and candidates could spend as much as they liked and the public would foot the bill.²⁵⁴ Rather, there would be a formula to determine each entrant's public funding entitlement. Mr Bitar acknowledged the importance of gauging whether the public would be willing to pay more:

Democracies cost money, elections cost money and maintaining people's rights within a democracy also costs money. I would like to state ... that restoring the public's confidence in the political process and in government decision-making will also cost money. We have to make a call as to whether we think the public's perception is worth us spending that money.²⁵⁵

- 6.136** Some witnesses told the Committee that they would support greater public funding of elections, if it safeguarded the integrity of the democratic system. According to Ms Banks of the Public Interest Advocacy Centre:

... if the public purse does not fund democracy, does that reflect that we do not care enough about it? It seems to me that one of the most important things that we should fund from the public purse is the effective operation of democracy ...²⁵⁶

- 6.137** A similar view came from Dr Longstaff of the St James Ethics Centre:

I do think that it is appropriate that taxpayer funds be used to fund elections. I see elections as being obviously core to the quality of the democracy that we are able to enjoy in the State of New South Wales, and for the taxpayers as a whole to help facilitate a proper degree of quality in that democracy I think is an appropriate thing to do.²⁵⁷

²⁵² Mr Bitar, Evidence, 4 April 2008, p 63

²⁵³ Mr Davey, Evidence, 4 April 2008, p 43

²⁵⁴ Mr Bitar, Evidence, 4 April 2008, p 61

²⁵⁵ Mr Bitar, Evidence, 4 April 2008, p 62

²⁵⁶ Ms Banks, Evidence, 10 March 2008, p 5

²⁵⁷ Dr Longstaff, Evidence, 31 March 2008, p 16

- 6.138** In relation to the possibility of introducing public funding for local government elections, as discussed in Chapter 11, Councillor Bruce Miller said:

The biggest challenge is probably to convince an understandably cynical public that public funding is not just another grab for the taxpayer's funds by undeserving politicians. That is why we must devise a scheme for regulating political donations which earns the public's trust.²⁵⁸

- 6.139** Save Our Suburbs argued that:

To make up for the removal of donations by organisations funding from the public sector should be increased. It should be noted that the public ultimately pays for private sector organisation donations anyway – the cost of donations will be in the overall price structure of goods and services.²⁵⁹

- 6.140** Similarly, the submission from Democracy Watch said that political donations do not save taxpayer money, but lead to hidden demands on the public purse:

The actual cost of privately-financed campaigns may not come from tax monies, but the consequences of such campaigns are costing taxpayers billions of dollars. These consequences include the myriad tax breaks, subsidies, bail-outs, regulatory exemptions, and other “favours” that elected officials routinely perform for their financial backers.²⁶⁰

- 6.141** Community willingness to provide additional election funding is of course linked to the size of the proposed increase. Dr Tham of Melbourne University said that a political finance regime must ensure that parties have adequate funding to perform their functions. However, he warned that ‘adequacy, though, does not mean what the parties want (or think they need for campaigning purposes) and must be strictly judged against the functions that parties ought to perform.’²⁶¹

- 6.142** Ms Anne Jones, CEO of Action on Smoking and Health Australia, called for the community to be consulted about whether to provide more public funding for elections:

We are talking about large amounts of money. More consultation, which this process has started today, would be a really good idea ... If taxpayers' money is to be spent, there has to be some consultation about what people think is a fair go, given that money will be spend on financing campaigns. It will have to come from somewhere and it means that something else will not be funded.²⁶²

- 6.143** Speakers at the Committee's public forum gave some indication that the public may be willing to pay more for elections, if this is accompanied by reforms to restrict private finance. Mr

²⁵⁸ Tabled document, Councillor Bruce Miller, Shires' Association of NSW, *Draft answers to the Committee's questions*, 31 March 2008, p 3

²⁵⁹ Submission 55, Save Our Suburbs, p 2

²⁶⁰ Submission 82, Democracy Watch, pp 5-6

²⁶¹ Submission 154, p 17

²⁶² Ms Anne Jones, Chief Executive Officer, Action on Smoking and Health Australia Evidence, 3 March 2008, p 58

Geoff Wall said in evidence, ‘One voice that I have not heard at this inquiry is that of the ordinary taxpayer. Are they happy to pay more? To answer this, I walked the streets this week and surveyed 77 taxpayers.’²⁶³ Mr Wall said of his impromptu survey, 60% were sympathetic to increased public funding in return for greater integrity in the electoral funding process, 30% were unsympathetic and 10% did not care.

- 6.144** According to another forum speaker, Mr Shane Leong: ‘I for one would be happy for our democracy to be funded by taxpayer money if it means that it is not funded by developer, union or corporate money.’²⁶⁴
- 6.145** The Committee notes that the level of public funding in Canada, although at the Federal Government level, provides a point of comparison when considering a possible increase in election funding in New South Wales. Public funding in Canada is allocated to registered parties that obtain at least 2 percent of all valid votes cast at a general election, or at least 5 percent of the valid votes cast in the electoral districts in which it stands a candidate in a general election. The allowance is paid quarterly at a rate of \$1.75 per valid vote per year.²⁶⁵
- 6.146** As outlined in the following table, in 2007 Canadian political parties received over \$27 million in public funding. The Committee notes that following the 2007 NSW State election, parties, groups and candidates received approximately \$11.1 million in public funding. In the four years leading up to the 2007 State election, parties also received payments totalling \$6.7 million from the Political Education Fund. This amounts to total public funding of approximately \$18 million in this period. The level of public funding can be compared to 2007 election spending of \$36.4 million. The Committee notes that spending levels would be expected to decrease markedly if spending caps were introduced.

Table 6.6 Quarterly allowances paid to registered political parties in Canada (2007)²⁶⁶

	Bloc Québécois	Conservative Party of Canada	Green Party of Canada	Liberal Party of Canada	New Democratic Party
1st quarter (Jan-March)	\$727,092	\$2,515,737	\$310,867	\$2,096,926	\$1,212,255
2nd quarter (April-June)	\$742,042	\$2,567,462	\$317,258	\$2,140,041	\$1,237,180
3rd quarter (July-Sept)	\$742,042	\$2,567,462	\$317,258	\$2,140,041	\$1,237,180

²⁶³ Mr Geoff Wall, Public forum, 4 April 2008, p 23

²⁶⁴ Mr Shane Leong, Public forum, 4 April 2008, p 4

²⁶⁵ ‘Annual Allowance for Political Parties’ <<http://www.elections.ca/content.asp?section=loi&document=fs08&dir=gui&lang=e&textonly=false>> (Accessed 17 June 2008)

²⁶⁶ ‘Quarterly Allowances to the Registered Political Parties’ <<http://www.elections.ca/content.asp?section=pol&document=qua2007&dir=pol/qua&lang=e&textonly=false>> (accessed 17 June 2008)

4th quarter (Oct-Dec)	\$742,042	\$2,567,462	\$317,258	\$2,140,041	\$1,237,180
Annual total/party	\$2,953,218	\$10,218,123	\$1,262,641	\$8,517,049	\$4,923,795
OVERALL TOTAL	\$27, 874,826				

Should there be full public funding of elections?

- 6.147** Whilst many inquiry participants supported tighter regulation of donations, some also argued that this should not lead to the public being expected to meet the full cost of election campaigns. According to Ms Clover Moore: 'I would not support a fully publicly funded system... We currently have a mixed system of public and private election funding, and that is appropriate.'²⁶⁷
- 6.148** Dr Tham did not support full public funding, instead advocating a maximum reimbursement limit of 60% for candidates, as is the case in Canada.²⁶⁸ Alternatively, Mr Greg Piper MP suggested that public funding should cover 50% of the cost of an election campaign.²⁶⁹

Committee comment

- 6.149** The Committee is committed to upholding the integrity of the electoral process and political system, believing that this is crucial to our democratic system of government. Evidence to the Committee has very clearly shown that there is public support for reform of the electoral funding scheme. Equally, however, the Committee is wary of making excessive demands on the public purse.
- 6.150** The reforms to the electoral funding scheme discussed in this report would necessitate increased public funding. The Committee considers that there should be consultation to ascertain what level of increase would be supported by NSW voters.

Recommendation 6

That the Premier consult to determine a reasonable increase in electoral and political party funding.

²⁶⁷ Ms Clover Moore MP, Member for Sydney, Evidence, 4 April 2008, p 31

²⁶⁸ Dr Tham, Evidence, 31 March 2008, p 2

²⁶⁹ Mr Piper, Evidence, 4 April 2008, p 28

Chapter 7 Political donations

Political donations can be seen as a means to ameliorate the cost of electoral funding on the public purse, and as a way for community members to participate in elections and support the democratic process. Alternatively, donations can be perceived as a means for wealthy corporations or individuals to gain unequal access to politicians, and as a means to buy influence. The Committee believes that donations are a legitimate way to participate in the political process. Greater regulation of donations is, however, needed to limit the potential for corruption and undue influence, and allay public concerns about the impact of donations.

This chapter considers the extent and impact of donations on the political system, and the advantages and disadvantages of banning donations. It also discusses targeted restrictions on certain sources of donations, or industries. In addition, the difficulties of banning donations or implementing targeted restrictions on donations are examined.

Extent of political donations

7.1 Donations are the major source of financial support for parties, groups and candidates. The influence of donations is of concern not just to the public but also to political insiders. This section considers evidence concerning the dangers posed by political donations, as well as counter-arguments that donations need not be viewed as an attempt to exert improper influence.

Current levels

7.2 In the four years leading up to the 2007 State election, parties, groups and candidates received over \$65 million in donations.²⁷⁰ The following table shows donations to parties, groups and candidates over these four years. The Committee notes that these figures do not give an accurate picture of the level of political donations in New South Wales, as parties, groups and candidates have included donations made for the purposes of Federal election campaigns.

Table 7.1 Total donations to parties, groups and candidates in NSW 2003-2007²⁷¹

	Political contributions \$
Parties	58,694,843
Groups	2,356
Candidates	6,565,967
Total	65,263,166

²⁷⁰ Email from Mr Trevor Follett, Secretary, Electoral Funding Authority of New South Wales, to the Secretariat, 28 March 2008

²⁷¹ Email from Mr Trevor Follett, Secretary, Election Funding Authority of New South Wales, to the Secretariat, 28 March 2008

7.3 The following table shows political donations, including annual subscriptions, to each party contesting the 2007 State election. As with the previous table, these figures do not give an accurate picture of the level of political donations in New South Wales, as parties have included donations made for the purposes of Federal election campaigns. The figures need to be cross-referenced with expenditure in the 2007 State election, as discussed in Chapter 8 and detailed in Table 8.2 to get a clearer picture, as the reporting period includes two Federal elections.

Table 7.2 Donations to each party in NSW 2003-2007²⁷²

Party Name	Political contributions \$			
	\$1,500 or less	Over \$1,500	Annual Subscriptions	Total
Australian Democrats NSW	71,541	34,048	52,662	158,251
ALP NSW Branch	2,857,354	21,592,256	3,197,778	27,647,388
Australians Against Further Immigration	5,536	0	3,765	9,301
Christian Democratic Party (Fred Nile Group)	1,104,664	123,406	186,280	1,414,350
Country Labor Party	0	0	0	0
Horse Riders Party	61	0	0	61
Liberal Party NSW	5,298,785	22,326,909	2,271,397	29,897,091
NSW National Party	1,414,435	1,045,596	1,918,966	4,378,997
Outdoor Recreation Party	7,533	5,000	4,320	16,853
Peter Breen – Human Rights	0	0	0	0

²⁷² Election Funding Authority, *Summary of Political Contributions Received and Electoral Expenditure Incurred by Parties*, April 2008
www.efa.nsw.gov.au/__data/assets/pdf_file/0019/48115/Parties_Summary_Published_080409.pdf (accessed 20 May 2008)

Party Name	Political contributions \$			
	\$1,500 or less	Over \$1,500	Annual Subscriptions	Total
Party				
Restore The Workers Rights Party	0	0	20,613	20,613
Save Our Suburbs	9,610	5,000	0	14,610
The Fishing Party	754	0	2,200	2,954
The Greens NSW	946,143	679,467	468,109	2,093,719
The Shooters Party	110,622	556,748	166,405	833,775
Unity Party	206,436	292,939	6,155	505,530

7.4 The Greens NSW have produced a website, *Democracy 4 Sale*, to categorise political donations by funding source and industry type. This level of analysis is not available through the website of the Election Funding Authority (EFA). The following table shows the 12 biggest donors by category, according to the analysis on the *Democracy 4 Sale* website. The Committee is unable to verify these figures.

Table 7.3 Donations by category in NSW 2003-2007²⁷³

Rank	Category	Political contributions \$ (millions)
1	Property	12.6
2	Not categorised ²⁷⁴	11.6
3	Financial/Insurance	4.5
4	Hotels	2.7
5	Pharmaceutical/Health	1.6
6	Retail & Service companies	1.4
7	Food, Pastoral	1.3
8	Media/communication	1.1

²⁷³ <www.democracy4sale.org> (accessed 20 May 2008)

²⁷⁴ Defined by Democracy4Sale as “Companies for which information is not available, those still being categorised” <www.democracy4sale.org> (accessed 20 May 2008)

Rank	Category	Political contributions \$ (millions)
9	Clubs	1.0
10	Unions	0.9
11	Intra political party	0.9
12	Transportation	0.8

7.5 According to the *Democracy 4 Sale* website, individual donors declared approximately half a million dollars in donations in this period. The Committee notes that this does not capture individual donations under the applicable disclosure thresholds.

7.6 The following table also reflects analysis on the *Democracy 4 Sale website*. It shows the amount of political donations made by each category of donor to the four parties with the most members in the NSW Parliament: the Australian Labor Party (NSW Branch), the Liberal Party of Australia (NSW Division), the National Party of Australia – NSW and The Greens NSW. It also shows donations to independent candidates. Again, the Committee is unable to verify these figures.

Table 7. 4 Political donations by category and by party/independents in NSW 2003-2007²⁷⁵

Category	Total \$	ALP NSW \$	Liberal Party NSW \$	NSW National Party \$	Greens NSW \$	Independents \$
Accounting/ Advisory	504,142	299,725	202,417			2,000
Advertising Agencies	21,293	2,750	7,400		11,143	
Associated Entities	330,616	59,917	270,699			
Clubs	957,654	556,900	340,702	58,462		1,590
Clubs, Hotels	59,500	59,500				
Computing	158,042	13,050	144,992			
Consulting, Business	259,650	106,450	153,200			
Defence Industry	346,400	139,200	200,200	7,000		
Energy companies	173,006	112,300	40,175	20,531		
Engineering Firms	53,000		46,000	2,000		5,000
Entertainment	236,054	195,604	40,450			
Financial/Insurance	4,482,985	1,646,956	2,727,010	109,019		
Food, Pastoral	1,303,728	539,225	632,200	127,303		5,000
Gaming	565,949	303,149	225,300	37,500		
Hotels	2,675,841	1,682,856	867,219	105,266		20,500
Individual	477,976	12,190	55,310	3,725	406,751	
Industrial/Manufacturing	626,574	456,043	168,331	2,200		
Intra political party	850,094	316,927	147,448	8,113	377,606	

²⁷⁵ <www.democracy4sale.org>

SELECT COMMITTEE ON ELECTORAL AND POLITICAL PARTY FUNDING

Category	Total \$	ALP NSW \$	Liberal Party NSW \$	NSW National Party \$	Greens NSW \$	Independents \$
Law firms	556,135	362,975	193,160			
Media/communication	1,102,034	394,975	574,187	132,872		
Not categorised	11,635,610	6,049,422	4,674,496	121,236	67,045	723,411
Other political party	7,561				7,561	
Pharmaceutical/Health	1,630,410	487,915	1,077,910	47,105		17,480
Political party affiliates	40,300	40,300				
Property	12,569,974	7,999,535	4,374,335	103,386		92,718
Public relations	207,660	123,425	51,887	27,348		5,000
Religious groups	28,800	13,300	15,500			
Resource companies	364,567	213,340	122,500	25,727	2,000	1,000
Retail & Service companies	1,446,516	589,110	818,196	24,110		15,100
Tobacco/Alcohol	536,343	129,637	384,981	21,725		
Transportation	830,118	355,627	436,291	37,200		1,000
Unions	872,380	868,330	4,050			
Waste/water management	208,140	142,140	66,000			
Wholesale/import-export	325,568	108,950	209,118	7,500		
Totals	46,444,620	24,381,723	19,271,664	1,029,328	872,106	889,799

Dependence on political donations

- 7.7 The Committee heard that parties, groups and candidates are heavily dependent on political donations, with a large proportion of their funding coming from private finance.²⁷⁶ The ALP NSW said:

The rise of private donations to political parties has been well documented in the media. It is now estimated that private donations account for approximately 60 to 70 percent of the income for major Parties. This change in income for political parties from traditional methods, such as membership fees and affiliation fees, to private or corporate funding has accelerated in recent years.²⁷⁷

- 7.8 On several occasions witnesses expressed concerns that Australia may follow in the footsteps of the United States in relation to the level of election fundraising. According to Dr Norman Thompson, Director of The Greens Political Donations Research Project:

We watch in fascination as American presidential candidates scramble to raise millions of dollars each week to keep their campaigns alive. This makes us wonder if this is the path we will soon be taking in Australia ...²⁷⁸

Impact of donations on political system

- 7.9 Many people believe that the increasing dependence on donations by parties and candidates gives donors unequal access to politicians. This may allow donors to exert undue influence, and thus pose a danger to the integrity of the political system. Another view is that making donations is a legitimate way to participate in the political process, and should not be construed as an attempt to exercise undue influence.
- 7.10 Many countries have acted to cap or ban donations, as a means to regulate their influence. The International Institute for Democracy and Electoral Assistance reported that 29% of countries have imposed a ceiling on contributions to political parties. The Institute further reported that 55% of countries have a ban on some types of donations to political parties.²⁷⁹ Chapter 4 discussed the impetus for reforms of the electoral finance regimes in several international jurisdictions.
- 7.11 According to Dr Joo-Cheong Tham, Senior Lecturer in Law at Melbourne University, donations threaten the integrity of the political system:

²⁷⁶ Tabled document, Young S and Tham J, *Political finance in Australia: a skewed and secret system*, 2006, pp 13-14

²⁷⁷ Submission 107a, Australian Labor Party (NSW Branch)p 2

²⁷⁸ Submission 125, Dr Norman Thompson, p 2

²⁷⁹ Austin R and Tjermstrom M (eds), 'Matrix on Political Finance Laws and Regulations', *Funding of Political Parties and Election Campaigns*, Handbook Series, International Institute for Democracy and Electoral Assistance, 2003, p 195 and p 199. The sample size for the survey was 111 countries.

The flow of private money into politics threatens the integrity of representative democracy by posing the danger of two kinds of corruption. First, *corruption as graft* occurs when the receipt of funds directly leads to political power being improperly exercised in favour of contributors ... The second way in which political contributions threaten the integrity of democratic representation, *corruption as undue influence*, is more insidious ... corruption as undue influence does not require that a *specific act* be actuated by the receipt of funds. It exists when there is a *culture* of delivering preferential treatment to monied interests.²⁸⁰

7.12 Dr Tham's views were supported by the submission from Women Into Politics Inc: 'The culture of large and influential political donations and payoffs that has developed in Australia in recent years is an invitation to corruption, and it needs to be changed swiftly.'²⁸¹

7.13 The Committee notes that several members of the NSW Parliament have expressed similar fears about the potentially destructive influence of political donations. The Hon Eric Roozendaal MLC in his former position as General Secretary of the ALP NSW, had substantial experience in the area of political donations. In his inaugural speech, Mr Roozendaal described the current system as 'dangerously unsustainable,'²⁸² and said that:

There is no doubt the Australian public are uncomfortable with the interaction of donations and politics. They have every right to be. It is my strong belief that all political parties need to work together to change the funding of the political process.²⁸³

7.14 The danger posed by political donations was also recognised by the Opposition. In 2007 Mr Mike Baird MP, the Liberal Member for Manly, said:

Political donations are corrosive when the donors seek to influence outcomes, and directly taint or corrupt an impartial process. The potential remains today to buy legislation and this alone highlights how serious the issue has become. I have formed the view that donations are at a corrosive level in New South Wales ...²⁸⁴

7.15 Mr Baird also noted that 'donations themselves are not inherently bad. They are the way that many involve themselves in the political process ...' But like Mr Roozendaal, Mr Baird argued that donations needed to be better regulated.²⁸⁵

7.16 New South Wales relies on transparency (through disclosure of donations and expenditure) to protect the integrity of the political system. Professor Marian Sawer, Leader of the Democratic Audit of Australia, drew the Committee's attention to research comparing how different countries have regulated political finance. According to the research:

Australia was very much at the laissez faire end of the spectrum of democracies and the regulation of such finance. Particularly the lack of caps on expenditure or

²⁸⁰ Submission 154, Dr Joo-Cheong Tham, pp 10-11, emphasis as per original

²⁸¹ Submission 159, Women Into Politics Inc, p 1

²⁸² NSW PD (*Legislative Council*), 21 September 2004, p 11117

²⁸³ NSW PD (*Legislative Council*), 21 September 2004, p 11118

²⁸⁴ NSW PD (*Legislative Assembly*), 29 May 2007, p 364

²⁸⁵ NSW PD (*Legislative Assembly*), 29 May 2007, p 364

restrictions on the source or level of donations meant that Australia stood out from comparable democracies.²⁸⁶

7.17 On the other hand, the Committee was told that the making of donations should not be interpreted as an attempt to exercise undue influence. The Shooters Party said:

Significant corporate donations to political parties or candidates inevitably open channels of communication to government, ministers or members of parliament, but this in itself does not imply that an improper attempt is being made to influence political decision-making.²⁸⁷

7.18 The Urban Taskforce Australia likewise repudiated any suggestion that corporations make donations in an attempt to exert undue influence:

Today business is caught between a rock and a hard place. On one hand, there is a traditional expectation that business will support the great charitable, political and community causes of the day. Yet, on the other hand, individual businesses may face claims of exerting undue influence if they dare to financially back a political party.

Curiously a donation to Greenpeace is still seen as noble, but a donation to Liberal or Labor is somehow wrong.²⁸⁸

Committee comment

7.19 It is not inevitable that political donations will give rise to corruption. The Committee notes that many donors are not attempting to exercise undue influence, as demonstrated by corporations that donate similar amounts to both sides of politics. However, the lack of regulation of donations under the current system, and the heavy dependence on private finance, create the potential for donations to result in corruption and undue influence. The Committee therefore considers that further regulation of donations is essential.

²⁸⁶ Professor Marian Sawyer, Leader, Democratic Audit of Australia, Evidence, 3 March 2008, p 33

²⁸⁷ Submission 89, Shooters Party, p 4

²⁸⁸ Submission 101, Urban Taskforce Australia, p 1

Banning political donations

7.20 Much of the evidence to the Inquiry, in particular from individual community members, supported a ban on donations. This section considers the arguments for and against banning donations, and the arguments in favour of exempting individual donations from a complete prohibition on political donations.

Support for banning donations

7.21 In the context of deep community concern about political donations, the Premier said New South Wales would consider a proposal for radical reform: a total prohibition on all political donations. The Premier's views were outlined on his behalf by the ALP NSW:

This Supplementary Submission by NSW Labor advocates a ban on all private donations to political parties in favour of a system of full public funding... it is important to recognise that a perfect system of funding and disclosure does not exist but introducing full public funding would give NSW one of the best and most transparent systems in the nation and the world.²⁸⁹

7.22 In evidence, Mr Bitar clarified that:

... the meaning of "private" in this sense means "not public." So when I am talking about private, it is not just private companies; it refers to individuals, donations from unions, donations from third parties. So it is contributions received by political parties from anyone bar the Government, anything not public.²⁹⁰

7.23 The Premier's call for consideration of a ban on all political donations was well-received in principle, but many inquiry participants argued that small donations from individual community members should be exempted. For example, The Greens NSW have long advocated a ban on political donations from corporations and other organisations, but like many other witnesses, did not believe that this ban should be extended to individuals.²⁹¹

7.24 The Liberal Party NSW gave in principle support to the banning of donations from everyone except individuals:

There is a strong philosophical argument that, in a democracy, only those who have the right to participate as voting citizens should be able to influence elections with their political donations. Non-citizen residents, organisations, trade unions and corporations do not have votes, so they should not be able to influence the democratic process through donations.²⁹²

²⁸⁹ Submission 107a, p 2

²⁹⁰ Mr Bitar, New South Wales General Secretary, Australian Labor Party, Evidence, 4 April 2008, p 60

²⁹¹ Submission 121, The Greens, p 8

²⁹² Submission 140, The Liberal Party of Australia (NSW Division), p 6

7.25 The Democratic Audit of Australia supported the banning of all donations except capped donations from individuals,²⁹³ as did the Public Interest Advocacy Centre and Action on Smoking and Health Australia (ASH).²⁹⁴

7.26 A developer lobby group, the Urban Taskforce Australia, also supported a complete prohibition on political donations:

The Urban Taskforce supports a new model for political funding: a blanket national ban on any form of political party donations from business, non-profit organizations or individuals. Such a ban has to be complete. It should not single out any section of society for preferential treatment.²⁹⁵

7.27 The Urban Taskforce argued that such a ban would remove any perception of preferential treatment for corporate donors. The Taskforce concluded that a ban on political donations would not damage the development industry, because ‘frankly, the arguments in favour of development and urban renewal carry weight irrespective of any political donations.’²⁹⁶

Should individual donations be permitted?

7.28 As seen above, many inquiry participants made their support for a ban on donations conditional on an exemption for individual donations. Canada is an oft-cited example of a political finance regime that bans all but small individual donations. As noted in Chapter 4, Canada bans donations from corporations and trade unions but permits individual donations. Individual donations are capped at C\$1,000 per political party per year, and C\$1,000 per candidate per election.

7.29 The United States also caps individual donations, in conjunction with a ban on direct donations from corporations and trade unions. For each election cycle, individuals are permitted to donate \$US2,100 per candidate, US\$26,700 per national party committee and US\$5,000 per Political Action Committee. Individuals can donate up to a total of US\$101,400.

7.30 There are two main arguments in favour of exempting individual donations from a complete ban on political donations: one, that it provides a means for individuals to participate in the political process; and two, that donations are needed to support the emergence of new parties and independent candidates.

7.31 Dr Simon Longstaff, Executive Director of the St James Ethics Centre, explained that individual donations should be permitted, because they are ‘consistent with the desire amongst some in the community to lend practical support to political parties which articulate a case for the kind of good life that they believe ought to be provided in politics.’²⁹⁷

²⁹³ Professor Sawyer, Evidence, 3 March 2008, p 34

²⁹⁴ Ms Anne Jones, Chief Executive Officer, Action on Smoking and Health Australia, Evidence, 3 March 2008, p 55

²⁹⁵ Submission 101, p 2

²⁹⁶ Submission 101, p 3

²⁹⁷ Dr Simon Longstaff, Executive Director, St James Ethics Centre, Evidence, 31 March 2008, p 19

7.32 Similarly, Mr Greg Piper MP, Member for Lake Macquarie, said:

I believe that support for a candidate is something many people would wish to offer as a legitimate part of the political process. This support may come from friends, family, people one may have campaigned on issues with or from other who share or believe in one's principles.²⁹⁸

7.33 Ms Clover Moore MP, Member for Sydney, emphasised the importance of donations as an avenue for individuals to participate in the political process:

Giving donations provides an opportunity for people to participate in the political process and express their support. In such cases, donations may be selfless, even altruistic, or they may be made with the intention of supporting a candidate who broadly supports the donor's concerns.²⁹⁹

7.34 The Christian Democratic Party (NSW Branch) also supported the exemption of individual donations.³⁰⁰

7.35 The Greens NSW also supported the exemption of individual donations, and asserted that a ban on large corporate donors but not individuals would encourage parties and candidates to be more responsive to their constituencies, 'thereby increasing grassroots political involvement.'³⁰¹

7.36 Inquiry participants who supported the exemption of individual donations, tended to argue that they must be capped at a reasonable level. Ms Rhiannon and Mr Piper advocated a limit of \$1,000 for individual donations, per political party or candidate per year.³⁰² Ms Moore supported a cap of \$5,000,³⁰³ while Dr Longstaff called for individual donations to be restricted to a 'token' amount less than \$100.³⁰⁴ Dr Tham suggested a limit of \$200 for individual donations, per political party or candidate per year, up to an aggregate amount of \$1,000 per year.³⁰⁵

7.37 A benefit of permitting individual donations is that they could support the emergence of new parties and independent candidates. Several inquiry participants, including Mr Peter Draper MP, the Independent Member for Tamworth, were concerned that a ban on all donations could 'spell the end of minor parties and independents.'³⁰⁶

²⁹⁸ Mr Greg Piper MP, Member for Lake Macquarie, Evidence, 4 April 2008, p 24

²⁹⁹ Submission 153, Ms Clover Moore MP, p 1

³⁰⁰ Mr Arie Baalbergen, Treasurer, Christian Democratic Party NSW, Evidence, 31 March 2008, p 73

³⁰¹ Submission 121, p 8

³⁰² Ms Lee Rhiannon MLC, Evidence, 31 March 2008, p 39; Mr Piper, Evidence, 4 April 2008, pp 25-26

³⁰³ Answers to questions taken on notice during evidence 4 April 2008, Ms Clover Moore MP, p 1

³⁰⁴ Dr Longstaff, Evidence, 31 March 2008, pp18-19

³⁰⁵ Dr Joo-Cheong Tham, Senior Lecturer, Law Faculty, University of Melbourne, Evidence, 31 March 2008, p 3

³⁰⁶ Mr Peter Draper MP, Member for Tamworth, Evidence, 31 March 2008, p 66

7.38 This concern was shared by Ms Lee Rhiannon MLC of The Greens NSW:

I think also the individual donations are important for emerging parties. As we are all aware, each election largely throws up new parties and independent candidates and I have a real concern about not allowing there to be any donations from individuals. It could make it impossible for such parties to emerge, and that is an important part of the democratic process.³⁰⁷

7.39 Mr Bitar of the ALP NSW acknowledged that banning all donations would impact on new parties or candidates. Mr Bitar told the Committee that this would be one of the issues he would be raising in his discussions about the Premier's proposal to ban donations.³⁰⁸

7.40 Other inquiry participants, such as Mr Colin Barry, Chairperson of the EFA, agreed that there needed to be measures to support new entrants and independent candidates:

Clearly, there has to be a mechanism by which a new party or Independent candidates are able to participate in the public funding regime or, alternatively, are permitted to raise private funds. But they cannot double dip. They cannot have public funding and, at the same time, receive private funding.³⁰⁹

7.41 The question of funding for new or minor parties was examined in the United Kingdom recently by Sir Hayden Phillips. In March 2007, Sir Hayden concluded that 'there was no reason at present to include new parties and those smaller parties without elected representatives within the scope of a donation limit,' and recommended that new and minor parties be permitted to receive donations until they had two members elected to Parliament.³¹⁰

7.42 While a large number of inquiry participants believed that individual donations should continue to be permitted, others urged the Committee to ban all donations, including individual donations. The ALP NSW said:

Instead of recommending reforms which simply tinker at the edges of the current system, the Select Committee has an historic opportunity to endorse a new system of political funding which bans private contributions and restores public faith in our democracy.³¹¹

7.43 The NSW National Party cautioned that it would be impracticable to ban most donations but continue to permit individual donations. Based on the experience of the United State, the NSW Nationals predicted that such a system would fail:

The banning of all donations to political parties and candidates, other than individual donations would see the growth of third party advertising during election campaigns. As can be seen through the United States model where PAC's (Political Action Committees) are formed and place advertisements with the purpose of influencing the

³⁰⁷ Ms Rhiannon, Evidence, 31 March 2008, p 39

³⁰⁸ Mr Bitar, Evidence, 4 April 2008, p 70

³⁰⁹ Mr Colin Barry, Chairperson, Election Funding Authority of New South Wales, Evidence, 11 April 2008, p 4

³¹⁰ Phillips, H, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, March 2007, p 9

³¹¹ Submission 107a, p 4

election outcome ... The emergence of these groups would be inevitable under a system that banned all donations from corporations, unions and organisations and would then require further legislation to limit the third party activities.³¹²

7.44 Similarly, the Urban Taskforce Australia said of the exemption of individual donations:

In the United States that is easily circumvented by the use of political action committees to link up networks of wealthy individuals to finance favoured candidates. Each United States presidential campaign typically raised about \$200 million in privately financed donations.³¹³

Opposition to banning donations

7.45 Some inquiry participants did not agree that donations should be banned. The Festival of Light Australia told the Committee that banning donations would be incompatible with the democratic right to participate in the political process:

Of course it would be possible to have a system where elections were entirely publicly funded and political parties were prohibited from raising private funds for election campaigns but this is incompatible with a free, democratic society.³¹⁴

7.46 A similar view was put by The Shooters Party, which opposed banning donations as they ‘encourage citizen participation and engagement in the political process.’³¹⁵ The Shooters Party argued that ‘in relation to organisations, whether profit or non-profit, it would be unreasonable and highly immoral to ban, or for that matter, limit how much a private individual or organisation can give to a party as a political donation.’³¹⁶

7.47 Aside from the view of the NSW National Party that it would be impracticable to enforce a ban on all but individual donations, Mr Paul Davey, Vice Chairman of the NSW National Party, said that banning organisational and individual donations ‘to me infringes on the whole concept and desire of democracy and freedom of speech.’³¹⁷

7.48 Another point of view was that it would be time-consuming and cumbersome to solicit the number of small individual donations needed to finance a campaign. According to a youth participant in the Committee’s public forum: ‘One vice president compared \$1,000 donations, which is a donation limit [in the US], to filling his swimming pool with a teaspoon.’³¹⁸

³¹² Submission 120, The Nationals – NSW Secretariat, p 11

³¹³ Mr Aaron Gadiel, Chief Executive, Urban Taskforce Australia, Evidence, 3 March 2008, p 46

³¹⁴ Submission 40, Festival of Light Australia, p 5

³¹⁵ Submission 89, p 11

³¹⁶ Submission 89, p 5

³¹⁷ Mr Davey, Vice Chairman, National Party of Australian New South Wales Branch Evidence, 4 April 2008, p 46

³¹⁸ Youth A, Public Forum, 4 April 2008, p 8. The Committee notes that this statement was made by Congressman Jack Kemp.

- 7.49** Dr Tham also opposed a complete ban on private donations, instead advocating caps on corporate, trade union and individual donations. According to Dr Tham:

I do not actually support a complete ban on private donations. A key point to make is that political parties need to have strong connections to society in order to perform their legitimate functions. Those functions include the ability to represent society, the people, the citizens, and the ability to offer themselves as vehicles for participation.³¹⁹

Blind fund for political donations

- 7.50** Dr Longstaff of the St James Ethics Centre suggested that rather than banning corporate, trade union and other organisational donations, a blind fund be established and administered by the EFA, and the funds distributed equitably to all parties and candidates.³²⁰ That way, if corporations wished to donate to show their support for the democratic process, they would be able to do so in a neutral way.
- 7.51** Dr Thompson was not optimistic about the success of such a fund in attracting donations: ‘I am not sure I am as optimistic that corporations and property developers would be rushing to put hundreds of thousands of dollars into such a fund.’³²¹
- 7.52** Mr Barry said that the EFA would be able to administer such a blind trust, but cautioned: ‘As to how much money would ever go into the account, I think that would be another question.’³²²

Committee comment

- 7.53** Many inquiry participants believed that it was necessary to ban political donations, to remove any perception that donors can exert undue influence on politicians and the political system. As stated earlier, the Committee believes that tighter regulation of donations is necessary to prevent corruption and undue influence. However, proponents of a ban on political donations argued that there should be one key exemption: individual donations.
- 7.54** As an alternative to banning political donations, with the difficulties of determining whether individual donations should be exempted, inquiry participants instead suggested that the targeted restrictions be imposed on donations from particular industries or sources.

³¹⁹ Dr Tham, Evidence, 31 March 2008, p 2

³²⁰ Dr Longstaff, Evidence, 31 March 2008, p 17

³²¹ Dr Norman Thompson, Director, Greens Political Donations Research Project, Evidence, 31 March 2008, p 44

³²² Mr Barry, Evidence, 11 April 2008, p 7

Targeted restrictions on certain sources of political donations

7.55 As an alternative to a complete prohibition on donations, or a ban on all except individual donations, inquiry participants suggested introducing targeted restrictions on certain sources of donations. Many inquiry participants advocated targeted restrictions as a second best option, because they believed that the Government was unlikely to adopt a complete prohibition on donations, or a ban on all except individual donations.

7.56 Targeted restrictions could be implemented through either caps or bans on donations from certain sources or industries. While inquiry participants were particularly concerned about developer donations, concerns were also raised about a number of other industries or sources. Aside from the difficulties of deciding what sources of donations should be subject to tighter regulation, there are a range of impediments to implementing targeted restrictions. These include formulating workable definitions of the sources to be restricted, and ensuring that the restrictions are not circumvented.

Property developers

7.57 Inquiry participants raised serious concerns about the impact of developer donations on the planning process, at both State and local government level. As noted earlier in this chapter, the property development industry made the most donations of any industry or source in the lead up to the 2007 State election. The impact of donations on local councils' planning decisions is discussed in Chapter 11.

7.58 The reasons for concern about developer donations, and the high stakes involved, were described by Ms Clover Moore MP:

Developer donations are a particularly significant concern due to a combination of discretionary decision making, essential regulation to restrict some activities, potentially high profits and significant and permanent negative consequences from poor decisions...

Developers have the capacity to directly and significantly benefit from planning decisions through approval of multimillion dollar developments, while the broader community is directly impacted by these decisions as a result of factors such as overshadowing, increased traffic or inadequate sustainability.³²³

7.59 The submission from the Terrigal Area Residents' Association Inc (TARA) linked changes to the planning system to developer donations:

In the early 1990s the development industry began an intense campaign to overhaul planning legislation, planning instruments and development assessment practice across Australia. The ensuing fifteen years has seen a radical deregulation of environmental planning and assessment by successive governments in all States to facilitate the demands of the development industry.³²⁴

³²³ Submission 153, p 2

³²⁴ Submission 83, Terrigal Area Residents Association "TARA" Inc, p 1

- 7.60** The submission claimed that because governments became reliant on developer donations, they were receptive to lobbying from developers for deregulation of the planning process. The submission provides a detailed chronology of changes to planning legislation, and outlines alleged links between these changes and political donations from the property development industry.³²⁵
- 7.61** Several local councils opposed developer donations at all levels of government. For example, Leichhardt Council has been vocal in its opposition to developer donations, and has called on the Government to ban developer donations before the 2008 local government elections.³²⁶
- 7.62** Lane Cove Council also supported a ban on developer donations to candidates for local, state and federal government. In relation to the assessment of development applications, Council said that a ‘ban would go far in achieving a truly open consent process where Councils can make merits-based decisions without fear or favour.’³²⁷
- 7.63** Friends of Warringah is an umbrella organisation for community groups in the Warringah area. In July 2006 they put forward a Charter of Political Reforms to address ‘inappropriate and hidden developer interest, and the lack of transparency of the political backgrounds, financial interests and property interests of our candidates.’³²⁸ The Charter called on all candidates to abstain from developer donations, and to commit to pre-election disclosure of donations.³²⁹
- 7.64** On the other hand, Mr Aaron Gadiel, Chief Executive, Urban Taskforce Australia, opposed a targeted ban on developer donations. Mr Gadiel argued that such a ban would be illogical, because it is not just property developers who depend on government decisions but a range of other industries, including government contractors, and the liquor and gaming industries.³³⁰ According to Mr Gadiel:
- A ban on developer donations would, if it was to be effective, amount to a near blanket ban on corporate donations and would also prevent a large number of individuals from donating. That is because a very wide spectrum of people and companies are involved in property development.³³¹
- 7.65** As Mr Gadiel pointed out, there are significant difficulties in defining a developer for the purpose of regulating donations. This issue is discussed later in this chapter.

³²⁵ Submission 83

³²⁶ Submission 60, Leichhardt Council, p 2

³²⁷ Submission 76, Lane Cove Council, p 2

³²⁸ Submission 128, Friends of Warringah, p 1

³²⁹ Submission 128

³³⁰ Mr Gadiel, Evidence, 3 March 2008, p 44

³³¹ Mr Gadiel, Evidence, 3 March 2008, p 44

- 7.66** Mr Robert Drew also felt that the property development industry had been unfairly singled out for criticism: ‘In my experience, the development industry is no different from any other industry. The majority of people in business are trying to make an honest day’s wage for an honest day’s work.’³³²
- 7.67** As an alternative to tighter regulation of donations, it was suggested that the development application process itself needed to be made more transparent and less susceptible to corruption, such as through the reforms currently being proposed by the Planning Minister. These reforms are considered in Chapter 10.

Government contractors

- 7.68** Several inquiry participants argued that as with developer donations, donations from government contractors also needed to be restricted, because government contractors can be the direct beneficiaries of government decisions. Evidence to the Committee highlighted that if a government contractor was simply taken to be someone in receipt of government funds, this could encompass community or environmental organisations with government grants.
- 7.69** Mr Norman Kelly, member of the Democratic Audit of Australia, described the Canadian definition of a government contractor:

There are some definitions around that specify a proportion of an organisation’s total income. If they receive 50 per cent or more of their total revenue from government sources they are regarded as a government contractor.³³³

- 7.70** Dr Tham suggested that rather than the Canadian model, a ban on government contractors should be based on the United States provision:

My preference would be for the United States prohibition, which is a ban on all persons or entities that have any contracts with government departments. It basically bans them from directly or indirectly making any contribution or promising to do so from the time that they commence negotiations for a contract, which would include the tender process, until the contract ends. In terms of enforceability, it can be enforced in any court of law.³³⁴

- 7.71** Dr Tham said that because United States provision was targeted at contracts ‘for the provision of materials, supplies or equipment ...’ it did not capture people with employment contracts.³³⁵ For the same reason, non-government organisations would only be covered if their grant included conditions that could be considered to constitute a contract, such as the provision of services.³³⁶

³³² Mr Robert Drew, Evidence, 4 April 2008, p 53

³³³ Mr Norman Kelly, Democratic Audit of Australia, Evidence, 3 March 2008, p 39

³³⁴ Dr Tham, Evidence, 31 March 2008, p 4

³³⁵ Dr Tham, Evidence, 31 March 2008, p 4

³³⁶ Dr Tham, Evidence, 31 March 2008, p 5

7.72 Ms Robin Banks of the Public Interest Advocacy Centre supported a ban on donations from any organisation that was currently receiving government funds, or had received government funds in the past:

But once an organisation has begun working for government I think there should be an absolute ban on them donating further because I think many organisations that contract to government will seek to renew that relationship over time.³³⁷

7.73 Ms Banks said that the ban should cover grant recipients, including community and environmental groups.³³⁸

Foreign and anonymous donors

7.74 Two other possible areas for regulation include foreign and anonymous donations. The rationale behind banning foreign donations is that only those eligible to participate in an election, whether by voting or standing for election, should be able to influence its outcome. Of the four international jurisdictions examined in Chapter 4, Canada, the United Kingdom and the United States ban foreign donations.

7.75 Dr Norman Thompson of The Greens Political Donations Research Project noted that many countries do not allow foreign donations, but that:

In contrast Australia does accept donations from people who are not citizens or permanent residents, as well as from companies that are not registered in Australia. This means that individuals such as Lord Michael Ashcroft have been able to contribute \$1 million to the federal division of the Liberal Party. Many foreign companies have also made substantial donations to parties, such as the large Chinese property company Shimao Holdings Company Limited that gave \$100,000 to NSW Labor in 2002-03.³³⁹

7.76 Professor Sawyer of the Democratic Audit warned of the dangers of foreign donations:

If we are looking across democracies, the most common ban is on foreign donations because for a whole number of reasons – I mean, these are donations coming from non-citizens living somewhere else, and if they come from an entity overseas, it is hard for Australian law to tap into just where that money is coming from. So there are a lot of reasons why you might think it is very important to ban foreign donations, and many democracies do.³⁴⁰

7.77 In response to a question regarding the extent of foreign donations in New South Wales, the EFA advised that it had ‘received declarations from four overseas donors totalling amounts

³³⁷ Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, Evidence, 10 March 2008, p 10

³³⁸ Ms Banks, Evidence, 10 March 2008, p 10

³³⁹ Submission 125, p 11

³⁴⁰ Professor Sawyer, Evidence, 3 March 2008, p 41

declared as political contributions of \$462,385. Parties and candidates declared receiving \$337,935 from 13 overseas addresses.³⁴¹

- 7.78** The 2007 changes to the New Zealand electoral funding scheme introduced prohibitions on foreign and anonymous donations over NZ\$1,000 to parties and candidates, except in certain circumstances. Associate Professor Andrew Geddis said, in relation to anonymous donors:

However, when designing these disclosure rules, the Select Committee (and Parliament thereafter) also believed it necessary to provide an avenue by which donors may continue to fund political parties or Third Parties without having to disclose their identity. It was feared that, absent such an avenue, public disclosure might (i) dissuade some donors from giving, and thus (ii) make it impossible for parties or Third Parties to raise adequate funds for their election activities.³⁴²

- 7.79** In New Zealand, persons wishing to remain anonymous must make their donations to the Electoral Commission, which then forwards these donations to the party or candidate. The Electoral Commission is prohibited from disclosing the identity of the donor. A political party may receive up to \$240,000 in anonymous donations channelled through the Electoral Commission, with no more than \$36,000 coming from a single donor.³⁴³

Industries with negative public health and welfare impacts

- 7.80** Another area of concern was donations from industries that may be considered to have a negative impact on public health and welfare, for example the tobacco, gaming and racing and liquor industries. Action on Smoking and Health (ASH) Australia is a non-government health promotion charity. ASH described the tobacco industry as ‘unethical,’ and explained the impact of donations from the tobacco and related industries:

Tobacco companies have for years made large donations to major political parties ... In addition, other interests which now have or have once had various financial/business relationships with tobacco companies – including hotel, club, gambling and retail interests – also exert influence through political donations which have in some critical cases resulted in delays and/or ‘dumbing’ down of evidence-based policies aimed at improving community health.³⁴⁴

- 7.81** Ms Anita Tang, Director, Health Strategies, Cancer Council of NSW, supported a ban on such donations:

We have certainly strongly supported the moves that have been made by some political parties to voluntarily prohibit donations from certain sources, and we know that some parties have banned donations from the tobacco industry. We think that sends very important message to the community and to the parties that recognises that there are some industries that are inherently unethical and there are some

³⁴¹ Answers to questions taken on notice during evidence 3 March 2008, Mr Barry, Chairperson, Election Funding Authority of New South Wales, p 2

³⁴² Submission 6, Associate Professor Andrew Geddis, p 8

³⁴³ Submission 6, p 9

³⁴⁴ Submission 132, Action on Smoking and Health Australia, p 2

industries where there is an unavoidable conflict between the interests of the industry and the interests of the public good, and I think tobacco is a prime example of that.³⁴⁵

7.82 Ms Clover Moore MP supported a ban on donations from the gaming, racing and liquor industries, due to the ‘significant level of public harm’ associated with these industries:

Crime statistics clearly show the link between a concentration of liquor outlets and alcohol-related crime and anti-social behaviour; while research on problem gambling increasingly shows its serious impact on those who can least afford it.³⁴⁶

7.83 The Committee notes the April 2008 announcement by the Australian Hotels Association, a major political donor, that it has decided to freeze all political donations.³⁴⁷

Fundraising events

7.84 A number of inquiry participants were concerned about the impact of donations raised at fundraising events, such as dinners where attendees can buy a place at a table with a Minister. The main concern raised about fundraising events was the ability to buy time with Ministers and other politicians, resulting in unequal access for those with financial resources.

7.85 The Australian Centre for Democracy and Justice noted that:

Fundraising events are very difficult to monitor as well which leads us to the position that they should be banned. However, if they are not to be banned then significant obstacles should be put in the way of those who wish to exploit fundraising events. An itemised disclosure report of who bought/donated what and an inability to partake in these events anonymously would go a long way towards addressing this issue.³⁴⁸

7.86 A similar opinion came from Ms Tang of the NSW Cancer Council:

It is potentially a loophole if more and more opportunities to influence are channelled through purchasing tickets to those events as opposed to an outright political contribution. It is not as transparent as it could be as to who attends those events.³⁴⁹

7.87 Dr Tham was especially critical of fundraising dinners with politicians:

Those defending such fund-raisers sometimes deny that influence is being sold. According to them, all that is sold is access to political leaders, with leaders free to

³⁴⁵ Ms Anita Tang, Director, Health Strategies, Cancer Council of New South Wales, Evidence, 3 March 2008, p 25

³⁴⁶ Submission 153, p 2

³⁴⁷ Clennell A, *Pubs turn off the political donations tap*, 25 April 2008 <www.smh.com.au/news/national/pubs-turn-off-political-donations-tap/2008/04/24/1208743154202.html> (accessed 28 May 2008)

³⁴⁸ Submission 108, Australian Centre for Democracy and Justice, p 9

³⁴⁹ Ms Tang, Evidence, 3 March 2008, p 27

make up their own minds on particular issues. This beggars belief: influence is inseparable from access.³⁵⁰

7.88 Further criticism of fundraising events came from Dr Longstaff of the St James Ethics Centre, who called for restrictions on fundraising events:

... Ministers certainly should not attend any function that raises funds for their party or their electorate where the cost of attendance be any person is anything other than a nominal amount. So Ministers attending a barbeque in their electorate or something like that would be fine.³⁵¹

7.89 Dr Longstaff justified targeting Ministers because ‘when they attend they do so in part as members of the Executive in which they have a public office.’³⁵² Based on this rationale, Dr Longstaff said that similar restrictions should also apply to Shadow Ministers.

7.90 However, many fundraising events are barbeques or community get-togethers where supporters make small or nominal contributions. It is questionable whether these sort of fundraisers should be considered in the same light as large fundraising dinners that raise substantial sums of money and facilitate access to decision-makers. Mr Davey of the NSW National Party said:

My concern about this is if you say to members of Parliament, “You can have nothing to do with any donations,” does this mean you cannot attend a function that is going to raise money? To what extent might we be inhibiting the legitimate role of a member of Parliament to be meeting with his or her community leaders, business people, industry leaders, farmers and small businesses across the board? That is very much their job. I think that needs a lot of thought.³⁵³

Trade unions and corporations

7.91 Dr Tham argued that if donations from individuals were to be capped, then donations from both trade unions and corporations should also be capped.

7.92 This type of political finance regime is in place in the United Kingdom. The United Kingdom caps donations from corporations and trade unions, as discussed in Chapter 4, and requires trade unions to ballot their members every ten years for approval to make political donations, and corporations to seek shareholder authorisation every four years. If a trade union’s members authorise it to make donations, individual members can still opt out of contributing to the union’s political donations fund.

7.93 Dr Tham argued that caps on trade union and corporate donations should be differential, with higher caps for trade unions. Dr Tham’s argument was that corporations do not have a legitimate claim to political representation, as they are ‘inherently undemocratic in their decision-making structure,’ but trade unions do because they are comprised of citizens, who

³⁵⁰ Submission 154, p 25

³⁵¹ Dr Longstaff, Evidence, 31 March 2008, p 19

³⁵² Dr Longstaff, Evidence, 31 March 2008, pp 19-20

³⁵³ Mr Davey, Evidence, 4 April 2008, p 43

have the right to political representation.³⁵⁴ Corporations are acting from a profit motive, whereas trade unions largely give money through membership affiliations, which is predicated on agreement with the party's platform.³⁵⁵ The political agendas of trade unions are also much clearer than those of corporations.³⁵⁶

Defining restricted sources

7.94 This section considers the difficulty in formulating a workable definition for just one source of donations, namely the property development industry. The problems of arriving at a definition of property developer, is indicative of the difficulties in formulating definitions for a range of industries and sources. The need to curb the influence of developer donations on the planning system is discussed in Chapter 10.

7.95 The difficulties in defining a property developer were described by Mr Gadiel of the developer lobby group Urban Taskforce Australia:

If a developer is understood as someone who earns income from the development of land, any company with significant landholdings can be regarded as a developer. At some time or another banks, television networks, breweries, manufacturers, retailers, fast food chains, all need to sell and acquire land ...

A narrow definition of "property developer" for the purposes of any such ban would be so easily circumvented that the law would be a joke. A broad definition of "developer" would be required for a ban to be effective, which would be the same as banning most major Australian companies as donors to political parties.³⁵⁷

7.96 The Property Council of Australia explained that while they do not oppose a ban on developer donations, 'we note that in practice this option would be impossible to satisfactorily administer and those with a desire to do so would easily be able to circumvent any rules put in place.'³⁵⁸

7.97 The ICAC recognised the difficulties in arriving at a definition of a property developer, but was hopeful that these may be overcome:

There are some problems in defining terms such as "developers" which would need to be resolved if banning of donations from that source is to be explored. One possible would be to ban donations from entities whose regular course of business involves submitting rezoning proposals or development applications, whether directly or through agents (such as builders and architects).³⁵⁹

³⁵⁴ Submission 154, p 55

³⁵⁵ Submission 154, p 56

³⁵⁶ Submission 154, pp 57-58

³⁵⁷ Mr Gadiel, Evidence, 3 March 2008, pp 44-45

³⁵⁸ Submission 162, Property Council of Australia, p 1

³⁵⁹ Submission 81, Independent Commission Against Corruption, pp 3-4

7.98 The Charter of Political Reforms put forward by the Friends of Warringah included the following definition of a property developer:

...any person or body that carries out or has as one of its principal objectives the carrying out of development within the meaning of the Environmental Planning and Assessment Act 1979 “more or less” on a continuous or repetitive basis with a view to making a profit (whether or not a profit is made).³⁶⁰

7.99 In addition, the Charter also provided a further definition of a ‘major developer,’ namely persons who in the previous five years lodged development applications worth over \$5,000,000.

7.100 Emeritus Professor Colin Hughes argued against capping donations from particular sources such as developers, because such restrictions would be impossible to enforce:

On balance I think any prohibition is undesirable because of its encouragement of concealment and the difficulty in drawing a clean line. For example, if a developer stands for election himself, should he be prohibited from spending his own money or from receiving donations from spouse, children, partners?³⁶¹

7.101 Victoria is the only state in Australia that places targeted restrictions on a particular source of donations, by banning gaming licensees from donating over \$50,000. Mr Colin Barry, Chairperson of the EFA, told the Committee that these caps were simple to administer, as they were a ‘very narrow, prescribed class of organisation.’³⁶²

Enforcement of targeted restrictions

7.102 The Committee was told that it would be difficult to police a system of targeted restrictions. For example, Ms Tang from the NSW Cancer Council said:

... where a corporation that is not banned or restricted has such close ties to a banned source of donations, that the same effect is being held, and the example we have provided is the Australian Hotels Association, which is a large donor and which may not, depending on how the Committee recommends, end up being a banned source of contributions but may actually be getting a lot of money from the tobacco industry, which is a banned source.³⁶³

7.103 Mr Greg Piper MP, Member for Lake Macquarie, said: ‘Individuals may own companies in a variety of industries and companies may have intricate cross-ownerships that make it difficult to trace donors. This allows deliberate obfuscation of the sources and processing of donations.’³⁶⁴

³⁶⁰ Submission 128, p 3

³⁶¹ Submission 42, Emeritus Professor Colin Hughes, p 4

³⁶² Mr Barry, Evidence, 3 March 2008, p 7

³⁶³ Ms Tang, Evidence, 3 March 2008, p 25

³⁶⁴ Submission 188, Mr Greg Piper MP, p 3

7.104 Likewise, ASH argued that a ban on particular industries could lead to donations being funnelled through third parties.³⁶⁵

7.105 The Public Interest Advocacy Centre argued that it was ‘stronger and simpler’ to ban donations rather than restrict donations from certain sources, because ‘limiting only particular interest groups does not provide a whole-of-system protection against possible influence and corruption. At different times there will be strong interest from various quarters: other industries, forestry, mining, religious groups and so on.’³⁶⁶

7.106 Professor Hughes also argued against restricting donations:

Restricting amounts inevitably leads to “smurfing” [splitting donations] and other devices of avoidance which produce concealment when, as I have already said, maximum disclosure should be the goal. It should be left to electors to decide whether a donation might be on a scale likely to purchase undue influence on government decision-making.³⁶⁷

7.107 In evidence to the Committee, Mr Barry declined to comment on the merits of capping donations from particular sources, but said:

... I strongly recommend that members take careful note of what Professor Hughes has said in his submission to the Committee. Professor Hughes is a longstanding electoral commentator and the inaugural Commonwealth Electoral Commissioner. He is well regarded internationally on these matters. I implore members to take considerable note of his submission.³⁶⁸

Committee comment

7.108 The Committee is of the view that there are valid arguments in favour of capping or banning donations from each of the sources discussed in this chapter. In particular, the Committee acknowledges community unease about developer donations. Another area of unease related to fundraising events with prohibitive entry costs, where attendees could gain access to decision makers including Ministers.

7.109 The problem of arriving at a workable definition of even one source of donations, namely a property developer, demonstrates the complexity of devising a system of targeted restrictions. In addition, it is clear that it would be difficult to enforce restrictions targeted at particular sources or industries, given the potential for donors to circumvent the bans by funneling donations through other persons or bodies that are not subject to restrictions.

³⁶⁵ Ms Jones, Evidence, 3 March 2008, p 55

³⁶⁶ Submission 145, p 18

³⁶⁷ Submission 42, p 4

³⁶⁸ Mr Barry, Evidence, 3 March 2008, p 7

- 7.110** The Committee believes that due to the myriad sources of donations that could be singled out for higher standards of regulation, and the impediments to implementing targeted restrictions, the only workable solution is to impose a ban on political donations. However, the legal and constitutional validity of any such ban would need to be explored.
- 7.111** However, the Committee believes that individuals should not be prevented from participating in the political process. This was one of the key concerns raised by those who opposed a ban on political donations, namely, that a ban would erode democratic participation in the electoral process. The Committee believes that individual donations should be exempt from a ban on political donations, to facilitate community engagement, and encourage parties and candidates to be more responsive to their grassroots support bases.
- 7.112** An important benefit flowing from the exemption of individual donations is that they could become a means of financial support for new and minor parties, and independent candidates. Exempting individual donations would thus further one of the central aims of the electoral finance system, which is to level the playing field and encourage diversity of political representation.
- 7.113** The Committee therefore recommends that political donations from corporations and other organisations be banned, but that donations made by individuals be exempted from this prohibition. Donations by individuals should be capped at a low level of \$1,000, to prevent individuals from exerting undue influence on parties and candidates. It must be recognised that any bans on donations must be considered in conjunction with increased public funding.

Recommendation 7

That the Premier ban all but small political donations by individuals, to be capped at \$1,000 per political party per year, and \$1,000 per independent candidate per electoral cycle.

Further, the Premier should investigate all relevant legal and constitutional issues arising from such a ban, and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws.

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- 7.114** The Committee does not support the proposal to establish a blind fund to which donors could contribute anonymously. The rationale behind such a fund is that it would facilitate the making of donations yet prevent undue influence. The Committee doubts whether a blind fund would be successful in attracting donations.

Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008

- 7.115** The Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008 was proposed by The Greens NSW in April 2008 and referred to the Committee in May 2008. The provisions of the Bill were discussed in detail in Chapter 3.

- 7.116** The Committee's consideration of the Bill relates only to those provisions concerning developer donations. This consideration must be viewed in light of the evidence on the merits of imposing targeted restrictions on political donations, in relation to which the Committee concluded that targeted restrictions were not an appropriate means to regulate donations.
- 7.117** The Bill proposes to include a new section 148A in the *Environmental Planning and Assessment Act 1979*, creating an offence for a property developer to make a political donation, and for such a donation to be accepted. Further, donors would be banned from lodging a development application for one year after making a donation, and applicants would be banned from making a political donation for one year after their development application was determined.
- 7.118** The Bill is intended to capture the range of persons involved in property development, as described in Chapter 3.

Committee comment

- 7.119** The Committee agrees that developer donations need to be regulated, but does not believe that a ban on developer donations is an appropriate means to achieve this end. Rather, the Committee supports a comprehensive ban on all political donations, with the exception of small individual donations.
- 7.120** The Committee's proposal goes much further than the changes outlined in the Bill, and would remove the potential for property developers to circumvent a ban by funnelling donations through third parties. A ban on all but small individual donations would also avoid the need to reach an understanding of who is a developer and who is not.
- 7.121** Therefore the Committee does not support the provisions of the Bill in regards to political donations.

Recommendation 8

That the Legislative Council not support Schedule 1[8] of the Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008, inserting a new section 148A banning developer donations into the *Environmental Planning and Assessment Act 1979*.

Other possible exemptions from a ban on donations

- 7.122** A ban on all but small individual donations raises several issues that would need to be resolved by any new electoral funding scheme. One is whether party membership fees, union affiliation fees and intra-party transfers should be exempted from the ban. A particularly difficult issue is whether in-kind donations should continue to be permitted, and whether volunteer labour should be treated as an in-kind donation like any other. Other possible areas for exemption include loans and credit facilities, as well as donations by a candidate to his or her own campaign.

- 7.123** But perhaps most contentious of all is the question of whether third party spending should be exempted, if all but small individual donations were banned. Third party spending is discussed in Chapter 9.

Party membership and affiliation fees

- 7.124** If all but small individual political donations were banned, it would be necessary to consider whether party membership and affiliation fees, including union affiliation fees, should be treated in the same way as other contributions, and either capped or banned.
- 7.125** In the four years leading up to the 2007 State election, the ALP NSW received \$3.2 million in annual subscriptions, the Liberal Party NSW \$2.3 million, the NSW National Party \$1.9 million, The Greens NSW \$0.5 million, the Christian Democratic Party \$0.2 million and The Shooters Party \$0.2 million.³⁶⁹
- 7.126** Mr Bitar clearly premised his arguments concerning regulation of party membership and affiliation fees on the prevention of corruption and undue influence:

I think there is a big difference between membership fees, affiliation fees and donations. Remember, what we are talking about here is upholding the integrity of the system ...

The question is: Do membership fees in any way affect the public's perception of a party? Does a party change its decision, does a government change a policy, or is there a perception that the government or a party is changing its policy because of membership fees it receives from its members? I doubt it.³⁷⁰

- 7.127** The Australian Centre for Democracy and Justice, however, framed their consideration of regulation of party membership and union affiliate fees in the context of levelling the playing field for minor parties, independent candidates and new entrants. The Centre supported the continuance of membership and union affiliation fees as a way to fund political parties, but cautioned that they should be capped at a reasonable level and indexed annually, to avoid them being exploited by political parties for fundraising purposes. The Centre suggested that membership fees be capped at \$500 and affiliation fees considerably higher.³⁷¹
- 7.128** Regulation of affiliation fees raises questions around each party's right to determine its own structure. According to Mr Bitar:

In terms of union affiliation fees to the Labor Party, again I see them as being very different from donations, purely because unions affiliate. They are not an add-on to the Labor Party; under the party rules they are a part of the Labor Party. Unions make

³⁶⁹ Election Funding Authority, *Summary of Political Contributions Received and Electoral Expenditure Incurred by Parties*, 9 April 2008 <www.efa.nsw.gov.au/__data/assets/pdf_file/0019/48115/Parties_Summary_Published_080409.pdf> (accessed 20 May 2008)

³⁷⁰ Mr Bitar, Evidence, 4 April 2008, p 64

³⁷¹ Submission 108, p 5

up 50 per cent of the conference floor. So they are a part of the Labor Party; they are part of the decision making.³⁷²

- 7.129** According to Dr Tham, banning union affiliation fees would breach the principle of ‘respect for the diversity of party structures.’³⁷³

The fact is that some parties, like the Liberal Party, accept only individual members, and that is their right and prerogative to do so, whereas some other parties, like the ALP, are what I describe in my submission as indirect parties. They accept individual members but they also accept membership through collectives or organisations.³⁷⁴

Intra-party transfers

- 7.130** Intra-party transfers include donations from a party’s national head office to its state or territory branches, and donations from one state or territory branch to another. Another type of intra-party transfers is donations from a party’s state or territory office to its candidates in that jurisdiction.
- 7.131** In the four years leading up to the 2007 State election, the ALP NSW received approximately \$500,000 in intra party transfers, and the Liberal Party NSW over \$2.7 million, all of which (except \$3,000 to the Liberal Party) came from the parties’ national secretariats.³⁷⁵
- 7.132** As seen from these figures, intra party transfers may make a significant contribution to a party’s election campaign. If intra-party transfers were not regulated, this could give the major parties a financial advantage over minor parties, and new and independent candidates. The lack of national consistency in donation and disclosure laws could be exploited to conceal the source of donations included in intra-party transfers.
- 7.133** Evidence on the lack of transparency surrounding intra-party transfers is discussed in Chapter 9, in relation to disclosure of donations.

In-kind donations: volunteer labour and merchandising

- 7.134** A ban on all but small individual donations raises the question of whether in-kind donations should be regulated, to ensure that the caps on individual donations are not undermined. Areas of concern include volunteer labour and merchandising.

³⁷² Mr Bitar, Evidence, 4 April 2008, p 64

³⁷³ Submission 154, p 56

³⁷⁴ Dr Tham, Evidence, 31 March 2008, p 5

³⁷⁵ Election Funding Authority, *Details of political contributions of more than \$1500 received by parties*, 9 April 2008 <www.efa.nsw.gov.au/__data/assets/pdf_file/0016/48121/Parties_Details_Published_080409.pdf> (accessed 28 May 2008)

- 7.135** Under the current electoral funding and disclosure scheme, in-kind donations are treated in the same way as monetary donations and must be disclosed to the EFA if they exceed the applicable threshold. Typical forms of in-kind donations include providing free printed material, postage, advertising or office space.
- 7.136** The provision of free office space to candidates in the 2007 State government election became the subject of media attention during the Inquiry. The media revealed several instances in which candidates had been given free use of an office, some of which were not disclosed to the EFA.³⁷⁶
- 7.137** The difficulty of ensuring that in-kind donations are valued appropriately is discussed in Chapter 9.
- 7.138** A particular problem arises with volunteer labour, and whether this should also be considered as an in-kind donation. Volunteers perform a range of vital functions such as delivering election material, door knocking, assisting in campaign offices or maintaining campaign accounts, and of course, staffing election booths on polling day.
- 7.139** Ms Moore MP told the Committee of the importance of volunteers to her campaigns:
- My campaigns have always been community campaigns and people have contributed if they wanted to and had the ability to carry out an activity that needed to be done, and it is in the spirit of supporting that community campaign.³⁷⁷
- 7.140** Many inquiry participants argued that individuals have the right to participate in the political process, and that volunteering to assist with election campaigns is a vital means of political participation. This is a similar argument to the one in support of continuing to permit individual donations. The Committee was therefore told that volunteer labour should not be treated as an in-kind donation. According to Mr Paul Davey, Vice Chairman of the NSW National Party:
- Is a party member who letterboxes, who goes to a pre-poll and hands out how-to-votes on a pre-poll and who may drive a ute around town with a couple of posters stuck on the back of it making an in-kind donation, or is he just doing what you might ordinarily expect a party member to do, if they feel so inclined? I suppose if you really wanted to tighten it up that would be an in-kind donation and I think if you are going to ban that I think it would be grossly unfair.³⁷⁸
- 7.141** The Committee heard evidence from Councillor Judith Lambert of Manly Council, concerning the type of volunteer labour that should be treated as an in-kind donation. Cr Lambert described the prevailing view within her council, that volunteer labour should be

³⁷⁶ Carty L, 'Emma bans campaign trail perks', *Sun Herald*, 2 March 2008, p 24; Clennell A, Smith A and Robins B, 'MP took year to declare \$65,000', *The Sydney Morning Herald*, 5 March 2008 <<http://www.smh.com.au/news/national/mp-hay-back-in-hot-water/2008/03/04/1204402456325.html>>

³⁷⁷ Ms Clover Moore MP, Member for Sydney, Evidence, 4 April 2008, p 38

³⁷⁸ Mr Davey, Evidence, 4 April 2008, p 48

considered as an in-kind donation if it involved 'professional services that would otherwise be the subject of a fee.'³⁷⁹ Cr Lambert used herself as an example:

I work professionally in environmental sciences. If I was to go out and letterbox for our next candidate to some enormous amount that added up to a capped level in terms of if there was a fee associated with it, then that would not be an in-kind contribution. If I was to provide some kind of major professional advice on an environmental campaign that was a hot issue for our local government area then that would be an in-kind contribution.³⁸⁰

7.142 Mr Bitar was asked to comment on the example of a person being funded by their employer to work for a party or candidate full-time. Questioned on whether this should be treated as an in-kind donation, Mr Bitar answered:

That is something we have to look at. How do you put a financial value on it? I know there is a financial value on an office, a car and a mobile phone. Those things are easy to address. I think we just have to work on the detail in the legislation to make sure we do not disadvantage volunteers. Most of us are volunteer organisations and we rely on volunteers to hand out how-to-votes, to letterbox, to door knock et cetera. I do not think anyone is suggesting they get caught up in these amendments.³⁸¹

7.143 Mr Barry emphasised that legislation to reform the electoral funding system would need to be carefully crafted to address the issue of volunteers:

... one needs to be careful that it would not preclude candidates and registered parties from being able to have access to that array of people who provide services to the party, like candidate workers handing out hot-to-vote cards on election day ... Yet, I can see there has to be a balance between that and if a person is providing business services.³⁸²

7.144 Merchandising could include the sale of a range of goods, such as T-shirts in support of a political party, or fund-raising diaries produced by a party. The Committee heard that at present, merchandising should be treated as any other type of in-kind donation, and disclosed to the EFA.³⁸³

Loans and other credit facilities

7.145 Another difficult issue in banning all but small individual donations is whether loans and other credit facilities should also be banned. Loans include personal loans from a bank, as well as informal loans from family, friends and acquaintances. As with in-kind donations, informal loans can be more susceptible to corruption given their opacity. The Premier has announced

³⁷⁹ Cr Judith Lambert, Manly Council, Evidence, 4 April 2008, p 10

³⁸⁰ Cr Lambert, Evidence, 4 April 2008, pp 10-11

³⁸¹ Mr Bitar, Evidence, 4 April 2008, p 68

³⁸² Mr Barry, Evidence, 11 April 2008, p 5

³⁸³ Mr Trevor Follett, Secretary, Election Funding Authority of New South Wales, Evidence, 3 March 2008, p 11

that loans and other credit facilities will now need to be disclosed. The Premier's announcement is discussed in Chapter 9.⁷

7.146 As discussed in Chapter 4, the United Kingdom passed legislation in 2006 to clarify that loans were governed by the same regulations as other types of political donations. In the United Kingdom, loans are subject to the same disclosure threshold as donations, and are only permitted from the same sources that are permitted to make donations to parties.

7.147 The Committee heard that parties may take out bank loans in advance of an election, to cover the costs of the election campaign. Parties are eligible for an advance payment of public funding to cover campaign costs, equal to 10% of their entitlement for the previous election.³⁸⁴ The remainder of a party's public funding entitlement is reimbursed after the election has taken place.

7.148 There was support for treating loans in the same way as donations from Ms Lee Rhiannon MLC:

We think that they would need to come under the same requirements as donations. We really need to ensure that is included in the system because you could well have a process where a party takes out a big loan during an election and then is not able to pay it. That becomes a donation, so we clearly need to have that covered.³⁸⁵

7.149 Mr Peter Draper MP, Member for Tamworth, did not believe that candidates should be required to declare bank loans:

I would have thought that if I believe enough in myself to go and have a conversation with my bank manager and extend my mortgage, I do not know that that is a matter of public disclosure, it is a private issue between me and my wife and the bank manager.³⁸⁶

7.150 On the other hand, in response to a question on whether she would be willing to disclose personal loans from the bank, Ms Clover Moore MP, Member for Sydney, said: 'I certainly would not have a problem with disclosing that.'³⁸⁷

7.151 Dr Longstaff did not perceive that loans from banks or other reputable financial institutions would give rise to a conflict of interest that should be disclosed. However, he said that informal or non-bank loans could give rise to a conflict of interest and therefore should be disclosed.³⁸⁸

7.152 The issue of credit arrangements became controversial during the 2004 local government election in Port Macquarie. The Residents' Action Network (RAN), a community organisation in the Port Macquarie-Hastings local government area, raised concerns about many aspects of

³⁸⁴ *Election Funding Act 1981*, s 69

³⁸⁵ Ms Rhiannon, Evidence, 31 March 2008, p 45

³⁸⁶ Mr Draper, Evidence, 31 March 2008, p 71

³⁸⁷ Ms Moore, Evidence, 4 April 2008, p 37

³⁸⁸ Dr Longstaff, Evidence, 31 March 2008, p 21

the election campaign, in particular the campaign run by the YES ‘team.’³⁸⁹ RAN was critical of a loophole in the legislation, which allowed the YES team to postpone disclosure of in-kind donations for the 2004 election until after the following election in 2008:

Thus it transpired that the YES team by using credit facilities made available to them by an advertising agency that was also their campaign manager, effectively manipulated the requirements of the legislation to their advantage.

The ability for candidates or groups to have funding channelled to them through credit arrangements made by third parties such as printers or advertising agencies must be curtailed.³⁹⁰

7.153 Ms Sandy McClimont, also from the Port Macquarie area, said:

In my view the ability of candidates or groups to have funding channelled to them through credit arrangements made by third parties, such as printers or advertising agencies, must be stopped. This cynical manipulation of the system which allows a debt to be written off or paid off by a third part must not be tolerated.³⁹¹

Donations to own campaign

7.154 The question also arises of whether a candidate should be able to contribute to his or her own campaign, and if they do, whether this contribution should be treated as a donation like any other. For example, should contributions to one’s own campaign be capped, as the Committee supports for all other individual donations? If not, would this unfairly advantage wealthy candidates?

7.155 Professor Sawyer of the Democratic Audit told the Committee that the Canadian limit of C\$1,000 on individual donations ‘includes the candidates themselves cannot put more than \$1,000 into their campaign – a Malcolm Turnbull type provision.’³⁹²

7.156 Inquiry participants strongly favoured the idea of a level playing field, including being opposed to the idea that wealthy citizens should be at an advantage in standing for office. Mr Peter Draper MP said: ‘... the American system of having to be independently wealthy before you would consider standing for public office is not something I would like to see encouraged.’³⁹³

³⁸⁹ Submission 77, Residents’ Action Network, p 2

³⁹⁰ Submission 77, p 3

³⁹¹ Ms Sandy McClimont, Public Forum, 4 April 2008, p 12

³⁹² Professor Sawyer, Evidence, 3 March 2008, p 34

³⁹³ Mr Draper, Evidence, 31 March 2008, p 72

Committee comment

- 7.157** The Committee believes that membership of political parties is an important means for individuals to participate in the political process. Membership fees are necessary for parties to provide services to their members, as well as subsidizing other ongoing party administration costs. The Committee considers that membership fees should not be encompassed by the Committee's proposed ban on all but small individual donations. However, there is the potential for parties to circumvent restrictions on individual donations by allowing members to pay inflated membership fees. The Committee therefore supports caps to limit the level of membership fees.
- 7.158** Similarly, the Committee believes that trade union affiliation fees should be permissible, despite the proposed ban on union donations. To ban union affiliation fees would be to place unreasonable restrictions on party structures. As with membership fees, union affiliation fees should be capped at a reasonable level, with the Auditor General to determine what would constitute a reasonable limit. The Committee considers that this would address the concern that the ALP NSW could capitalise on union affiliation fees to the detriment of other parties.

Recommendation 9

That the Premier exempt party membership and affiliation fees, including union affiliation fees, up to a reasonable limit, from the ban on all but small individual donations. The limit should be set by the Auditor General.

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- 7.159** The Committee believes that intra-party transfers to cover State election campaign costs should be prevented by the Committee's proposed ban on all but individual donations. To do otherwise would be to entrench the electoral advantage of the major parties. However, the Committee is of the view that consideration should be given to allowing limited intra-party transfers for non-election purposes, such as subsidising the ongoing costs of party administration. The Committee notes that the Secretariats of the State branches, divisions or affiliates of registered political parties also have substantial responsibilities for campaigning in Federal elections which will also need to be taken into account.

Recommendation 10

That the Premier, as part of the ban on all but small individual donations, ban intra-party transfers to cover State election costs. Consideration should be given to allowing intra-party transfers, up to a reasonable limit, to subsidise the costs of party administration. The limit should be set by the Auditor General.

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- 7.160** Evidence to the Committee raised a range of in-kind donations, from providing free office space or printing services, to merchandising and T-shirt sales, to the assistance provided by volunteers. The Committee considers that an in-kind donation, other than through merchandising and volunteer labour, should be treated as a donation like any other, and subject to the ban on all but small individual donations.

Recommendation 11

That the Premier, as part of the ban on all but small individual donations, ban in-kind donations other than volunteer labour and the purchase of merchandise.

- 7.161** Merchandising is a different issue, as it is a fundraising activity typically run by a political party, rather than a donation in the usual sense. As the Committee understands it, it typically involves accumulating funds from small purchases of merchandise such as T-shirts. The Committee believes that the issue of merchandising should be investigated further, to see if it could be treated in a different way to other political donations, and at least in the case of political parties, merchandising proceeds could be used to support parties' administration costs.
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Recommendation 12

That the Premier, as part of the ban on all but small individual donations, ensure that the proceeds of merchandising, up to a reasonable limit, be used to support the costs of party administration. The limit should be set by the Auditor General.

- 7.162** The issue of volunteer labour is yet more complex. The Committee notes that volunteering is a crucial way for people to participate in the political process and show their support for a party or candidate. Parties, candidates and groups rely heavily on this grassroots support to assist with their election campaigns. The Committee opposes any restrictions on genuine volunteer labour, but believes that this issue must be carefully considered to ensure that an exemption on volunteer labour is not exploited to circumvent the Committee's proposed ban on all but small individual donations.
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Recommendation 13

That the Premier ensure that the legislation to ban all but small individual donations places no restriction on genuine volunteer labour.

- 7.163** Non-bank loans and other informal credit arrangements can be hidden from public scrutiny, and should be regulated to avoid the potential for corruption and undue influence. The Committee believes that such informal credit facilities should be banned. The issue of disclosure of informal credit arrangements is discussed in Chapter 9.
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Recommendation 14

That the Premier, as part of the ban on all but small individual donations, ban non-bank loans and other informal credit arrangements.

- 7.164** Bank loans to a candidate to fund his or her own campaign, or to a party to pay for the costs of an election, are a more difficult issue. As noted earlier, it is common for political parties to take out loans to cover the costs of election expenses. The Committee believes that parties and candidate should continue to be permitted to take out genuine bank loans to cover their campaign costs, but that the amount of these loans should be strictly limited, and that this limit should be determined by the Auditor General.

Recommendation 15

That the Premier, as part of the ban on all but small individual donations, exempt bank loans to parties, groups and candidates to fund their election costs, up to a reasonable limit. The limit should be set by the Auditor General.

- 7.165** The Committee believes that donations by a candidate to his or her own campaign should be restricted in the same way as all other individual donations, to prevent wealthy candidates from being advantaged in the electoral contest.

Recommendation 16

That the Premier, as part of the ban on all but small individual donations, treat donations by a candidate to his or her own campaign in the same way as other individual donations, and that they be capped at \$1,000.

Interim reforms

- 7.166** Two of the interim reforms announced by the Premier in February, and outlined in detail in April, apply to donations. First, to require donations to be made to and administered by party headquarters rather than individual candidates, and to require campaign accounts for independent MPs and candidates to be managed by the EFA. Second, to ban in-kind donations including the provision of offices, cars and phones. This section discusses the pros and cons of these changes.

Candidates banned from having individual campaign accounts

- 7.167** The most contentious of the Premier's interim reforms was the announcement that candidates would be banned from having personal campaign accounts and that donations would be managed at arms-length, by party headquarters for endorsed candidates and by the EFA for independent candidates.
- 7.168** The rationale behind this 'more centralised approach' is that the quality of disclosure would be improved, as responsibility for donations would be 'shifted to organisations with the expertise and resources to properly manage and account for them.'³⁹⁴ In addition, the proposal is intended to address 'public perceptions of bias by distancing individual politicians from the

³⁹⁴ Submission 182, Department of Premier and Cabinet, p 3

process of soliciting and accepting private donations, at least for those who are members of political parties.³⁹⁵

7.169 Mr Barry was consulted by the Department of Premier and Cabinet on the proposal for the EFA to manage the campaign accounts of independent MPs. Mr Barry advised the Committee that the scheme was intended to operate as follows:

- Candidates to register with the EFA
- EFA to establish a trust account in the name of the candidate
- Candidate to be issued with an account number and pay-in book
- Candidates to collect donations
- Candidates to advise donors of their account number, to deposit donations directly into this account, or candidates to deposit donations into the trust account themselves
- Donors to disclose donations to the EFA
- EFA to release donations only after receipt of donor disclosure declarations.³⁹⁶

7.170 Mr Barry advised that from the EFA's point of view, the scheme was not so much intended to ensure candidates' probity, but rather to encourage donor disclosure:

I think where we were heading for was to maximise public disclosure. At the moment we have somewhere around a third of the donations not being declared by the donor and that was the concept behind suggesting that the funds should go into a trust account and then be cleared from the trust account upon receipt of the declaration.³⁹⁷

7.171 The Committee did not hear evidence from parties, or their candidates, on whether they supported all donations being managed by the central party office. The Committee did hear evidence from a number of independent members of Parliament and independent councillors, several of whom insisted that independent candidates should not be treated differently from candidates endorsed by a party. Councillor Ian Longbottom, Mayor of Lane Cove, gave evidence that:

I think that is absolute garbage, to be honest with you. I am not going to put my money in a central fund or central State government bank, if you want, to run my campaign ... this is all about entrenching the two-party system.³⁹⁸

³⁹⁵ Submission 182, p 3

³⁹⁶ Mr Barry, Evidence, 11 April 2008, p 6

³⁹⁷ Mr Barry, Evidence, 11 April 2008, p 9

³⁹⁸ Cr Ian Longbottom, Mayor, Lane Cove Council, Evidence, 4 April 2008, p 8

7.172 The Premier's proposal was also opposed by Ms Clover Moore MP:

I strongly oppose suggestions that a new authority could manage donations to Independents while the parties administer their own donations. Any distinction between the requirements imposed on political parties and independent candidates is difficult to justify and suggests bias in favour of political parties.³⁹⁹

7.173 Similarly, Councillor Genia McCaffery, Mayor of North Sydney, said: 'What the Premier is virtually proposing is to stop the community campaigns, stop them dead, and then ensure that you have party dominance in local government.'⁴⁰⁰

7.174 Mrs Dawn Fardell MP told the Committee that funding for independent candidates was very transparent, as there was no opportunity for funding to be funnelled through party head office and not listed on the candidate's campaign return.⁴⁰¹ Mrs Fardell objected to the proposed distinction between donations to independent candidates and candidates endorsed by a party: 'I have a grave problem with that. I believe the same situation should be for all.'⁴⁰²

7.175 These sentiments were shared by Mr Peter Draper MP:

If we are going to have change it has to affect everybody. I am more than happy with increasing transparency through whatever method is deemed necessary, but I do not know how you are going to further increase transparency for independents.⁴⁰³

7.176 Mr Greg Piper MP, however, questioned the resources needed for such a scheme, rather than any disparity it would create:

As to the recommendation that the Election Funding Authority or another independent body provide a similar service for Independent members of Parliament, once again I think the resourcing of that would obviously have to be quite substantial. I do not believe that the EFA right now could do it⁴⁰⁴

7.177 Ms Moore was similarly concerned about the resources needed to implement the proposed scheme:

Any authority required to provide this level of financial management for a large number of independent candidates (in the case of local government elections, possibly exceeding 4,000) would have to be extremely well-resourced in both staff and technology ... The cost of providing the necessary resources to the EFA or some new body to do this cannot be justified.⁴⁰⁵

³⁹⁹ Ms Moore, Evidence, 4 April 2008, p 31

⁴⁰⁰ Cr Genia McCaffery, Mayor, North Sydney Council, Evidence, 4 April 2008, p 9

⁴⁰¹ Mrs Dawn Fardell MP, Member for Dubbo, Evidence, 31 March 2008, p 26

⁴⁰² Mrs Fardell, Evidence, 31 March 2008, p 27

⁴⁰³ Mr Draper, Evidence, 31 March 2008, p 67

⁴⁰⁴ Mr Piper, Evidence, 4 April 2008, p 27

⁴⁰⁵ Submission 153a, Ms Clover Moore MP, p 3

7.178 The Committee also heard concerns about the proposal for donations to candidates endorsed by a party to be managed by head office. Rather than preventing corruption, Dr Norman Thompson argued that requiring donations to be managed centrally would obfuscate the influence of donations:

It will become more difficult to track the relationship between donors and MPs, councillors and candidates at the local level if all these donations are funnelled through the central party office. It is these relationships which are often the most troubling and revealing of how donations buy influence.⁴⁰⁶

7.179 Councillor Bruce Miller also expressed his concerns: ‘If personal campaign accounts are to be banned, how can the Premier imagine that a skeptical public will believe that Sussex Street is a less corruptible banker than the local candidate?’⁴⁰⁷

7.180 A different view was held by Mr Piper:

The issue of banning individual members from having their own personal campaign accounts, I do think that is something that could be well managed by the parties, certainly the major parties, and possible quite well by the Greens, who I think already have quite a scrupulous system. It would be more problematic probably for emerging parties ...⁴⁰⁸

Ban in-kind donations

7.181 The Premier has proposed that in-kind donations be banned, including providing candidates with offices, cars and phones, ‘in order to further reduce the risk of private funding affecting the decisions of public officials.’⁴⁰⁹

7.182 Ms Moore told the Committee that she was ‘seriously concerned’ about this proposal:

Apart from donating their time, many supporters also provide the use of their telephones, home computers and cars to the campaign ... Some supporters also provide their professional skills, such as design, writing, administrative, legal and accountancy skills. Under the Premier’s proposal, these contributions would be classified as “in kind” and would be banned.⁴¹⁰

⁴⁰⁶ Submission 125, Dr Norman Thompson, p 2

⁴⁰⁷ Tabled document, Councillor Bruce Miller, Shires’ Association of NSW, *Draft answers to the Committee’s questions*, 31 March 2008, p 5

⁴⁰⁸ Mr Piper, Evidence, 4 April 2008, p 27

⁴⁰⁹ Submission 182, p 4

⁴¹⁰ Submission 153a, p 5

Committee comment

- 7.183** The Committee considers that the Premier's proposal for candidates to be banned from having individual campaign accounts is problematic in many respects. The problems include the different treatment of independent candidates as opposed to candidates endorsed by political parties, and the substantial staffing and other resources needed to establish and administer the scheme. The Committee would support the Premier's proposal as an interim measure, if it could be implemented before the September 2008 local government elections, however the Committee does not believe this to be feasible. In this report the Committee is recommending that substantial reforms be put in place before the next elections in 2011.
- 7.184** The Committee welcomes the Premier's decision to ban in-kind donations of offices, cars and phones, believing that this will aid transparency and lessen the risk of undue influence. However, the Committee reiterates its concern that volunteer labour should not be captured by such a ban. As discussed previously in this chapter, this matter deserves close attention in any legislation on in-kind donations.

Recommendation 17

That the Premier implement his proposal to ban in-kind donations of offices, cars and phones, ensuring that the legislation does not restrict volunteer labour.

Chapter 8 Election spending

Election spending has increased markedly since the electoral funding scheme was introduced in 1981. Spending has been fuelled by private finance, and is inextricably linked to the increasing appetite for political donations and escalating use of political advertising, and the expansion of the range of media types and outlets such as pay television and the Internet. Spending caps are one means to curb the appetite for political donations by imposing demand-side restrictions. Another way to curb spending is through supply-side reforms to restrict access to political donations. While the Committee believes that restricting political donations may address concerns about corruption and undue influence, it would not level the playing field. This is because established parties and wealthy candidates would be free to spend non-donations income, such as accrued assets or investment income, as they wished. Therefore restrictions on both donations and spending are needed to achieve the twin aims of the election funding system.

This chapter considers the extent of election spending and how increased spending can be attributed to greater use of political advertising. The chapter then discusses arguments for and against spending caps, and examines the difficulties associated with the introduction of such caps.

Extent of election spending

8.1 The introduction of public funding has not reduced election spending, but rather public funding seems to have become a supplement to the increasing amounts of private funding donated to parties, groups and candidates. Inquiry participants expressed concern about current spending levels, and in particular, the amount of money spent on political advertising.

Current levels

8.2 Parties, groups and candidates spent \$36.4 million on the 2007 State election.⁴¹¹ The following table shows total election spending by parties, groups and candidates.

Table 8.1 Total election spending by each party for the 2007 NSW State election⁴¹²

	Electoral expenditure \$
Parties	25,736,138
Groups	1,925
Candidates	10,667,592
Total	36,405,655

⁴¹¹ Email from Mr Trevor Follett, Secretary, Electoral Funding Authority of New South Wales, to the Secretariat, 28 March 2008

⁴¹² Email from Mr Trevor Follett, Secretary, Election Funding Authority of New South Wales, to the Secretariat, 28 March 2008

8.3 The following table shows the election spending of each party for the 2007 State election and highlights the proportion of that expenditure that was devoted to advertising.

Table 8.2 Election spending by each party in the four years leading up to the 2007 NSW State election⁴¹³

Party Name	Electoral expenditure \$				
	Advertising			Other expenditure	Total
	Newspapers & periodicals	Radio, TV & cinema	Other advertising		
Australian Democrats NSW	0	0	0	0	0
ALP NSW	226,724	11,679,496	1,704,356	3,208,540	16,819,116
Australians Against Further Immigration	0	0	0	0	0
Christian Democratic Party (Fred Nile Group)	217,423	43,070	175,701	0	436,194
Country Labor Party	0	0	0	0	0
Horse Riders Party	0	0	2,482	1,070	3,552
Liberal Party NSW	108,895	1,553,400	627,391	2,994,181	5,283,867
NSW National Party	10,564	1,003,511	313,455	392,368	1,719,898
Outdoor Recreation Party	0	0	5,541	1,568	7,109
Peter Breen – Human Rights Party	0	0	0	0	0

⁴¹³ Election Funding Authority, *Summary of Political Contributions Received and Electoral Expenditure Incurred by Parties*, April 2008 <www.efa.nsw.gov.au/__data/assets/pdf_file/0019/48115/Parties_Summary_Published_080409.pdf> (accessed 20 May 2008). The Committee notes the discrepancy that some parties have declared nil election expenditure, although they have been reimbursed public funding to cover their campaign costs.

Party Name	Electoral expenditure \$				
	Advertising			Other expenditure	Total
	Newspapers & periodicals	Radio, TV & cinema	Other advertising		
Restore The Workers Rights Party	0	0	12,661	0	12,661
Save Our Suburbs	0	4,191	5,360	0	9,551
The Fishing Party	1,370	0	0	3,909	5,279
The Greens NSW	56,613	110,179	121,166	179,204	467,162
The Shooters Party	186,479	346,978	132,158	17,345	682,960
Unity Party	16,101	27,500	46,310	198,878	288,789

Escalation of election spending

- 8.4 Evidence to the Committee showed that the cost of political advertising has increased markedly since the mid-1970s, when there began to be greater use of radio and television advertising.⁴¹⁴ Inquiry participants expressed disquiet about this escalation of election spending. For example, the Liberal Party of Australia (NSW Division) questioned whether ‘the escalating expenditure of both major parties is in the public interest.’ The Liberal Party NSW attributed increased spending to greater use of political advertising:

Election campaigns have increasingly become all about the “media buy.” We have been following American trends where the amount of printed campaign literature has been declining and the amount of negative political advertising on television has been increasing.⁴¹⁵

- 8.5 The Shooters Party agreed that spending was fuelled by the increased use of political advertising, and expressed concern about the impact on minor parties and independents:

The cost, in advertising, of electoral campaigns is staggering and continues to grow, not just because of competition between parties and candidates, but also because of the growing cost of advertising across all media and the growing competition between all advertisers for media “space”.

⁴¹⁴ Callinan R, *Election Finance Law: Public Funding, Donations and Expenditure*, New South Wales Parliamentary Library Research Service Briefing Paper 15/2001, p 4; Tabled document, Young S and Tham J, *Political finance in Australia: a skewed and secret system*, 2006, p 104

⁴¹⁵ Submission 140, The Liberal Party of Australia (NSW Division), p 3

The escalating costs of communicating party or candidate policies to voters during elections has impacted on all parties, but **has affected minor parties and independent candidates most of all.**⁴¹⁶

- 8.6** Increased fundraising, and more political donations, are needed to fund escalating spending costs. Ms Clover Moore MP, Member for Sydney, said:

NSW, and Australia generally, appear to be experiencing a progressive increase in campaign costs based on increasing competition to grab the electorate's attention. This escalation of costs increases pressure for more fund raising and ever larger donations in order to compete.⁴¹⁷

- 8.7** As with donations, inquiry participants expressed concern about the future of the electoral system if spending costs continue to escalate. According to Ms Robin Banks, Chief Executive Officer of the Public Interest Advocacy Centre:

I understand on current estimates that in the recent Federal election the two major parties are thought to have spent about double what they spent in 2004. That is a pretty significant ratcheting up and if that continues, it is hard to imagine where it might go...⁴¹⁸

Committee comment

- 8.8** The Committee is concerned about escalating spending levels, and in particular the extensive use of political advertising. The Committee does not consider this escalation to be healthy or sustainable. It increases pressure on parties and candidates to engage in more fundraising, thus taking time from their other representative and policy functions; it squeezes minor parties and independents, who do not have access to the same resources as the major parties; and it makes it harder for new entrants to break into the political arena, thus adversely impacting on the diversity of political representation. The increased reliance on private funding also fosters strong ties between politicians and donors, giving rise to perceptions of undue influence.
- 8.9** The Committee therefore supports measures to halt the escalation of campaign costs. This is discussed in the next section.

Spending caps

- 8.10** The arguments for and against capping spending during election campaigns were fiercely debated during the Inquiry. While some inquiry participants argued that it would be fruitless to strengthen regulation of political donations without also implementing spending caps, others said that spending caps would unfairly restrict third parties from participating in the electoral process, and would not work anyway. This section considers these claims.

⁴¹⁶ Submission 89, Shooters Party, p 2, emphasis as per original

⁴¹⁷ Submission 153, Ms Clover Moore MP, p 4

⁴¹⁸ Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, Evidence, 10 March 2008, p 5

Support for spending caps

8.11 Spending caps are a common feature of a number of international systems to regulate electoral finance. The International Institute for Democracy and Electoral Assistance reports that 24% of countries impose a ceiling on election expenditure.⁴¹⁹ Of the four international jurisdictions discussed in Chapter 4, all have implemented limits on election spending. Canada has capped spending nationally and in each constituency. New Zealand has a similar system, with a party's total spending cap calculated based on a national limit of NZ\$1 million plus NZ\$20,000 for each electorate contested. Candidates are limited to spending NZ\$20,000 in their electorate. In the United Kingdom, there is a limit on national expenditure, which is calculated based on the number of constituencies contested. The United States also imposes spending caps for presidential candidates in receipt of public funding.

8.12 A number of inquiry participants argued that spending caps are needed to stop the escalation of election spending. For example, Professor Marian Sawer, Leader of the Democratic Audit of Australia, told the Committee that spending caps are needed 'to stop the arms race which is driving up the cost of elections.'⁴²⁰

8.13 One of the main arguments in favour of spending caps was that they are a means to level the playing field and increase the parity of the electoral contest. In the words of Dr Joo-Cheong Tham, Senior Lecturer in Law at Melbourne University:

I should stress that in my view campaign spending limits are particularly crucial. They can be seen as a kind of regulatory armistice, if you like, that properly designed will promote fairness and will take the heat out of competitive extravagance that is driving the more unsavoury fundraising practices.⁴²¹

8.14 The Public Interest Advocacy Centre also supported the introduction of spending caps:

Introducing limits on expenditure in election campaigns is potentially a way of addressing concerns about the spiralling costs of campaigns and political activity, and the unequal fund-raising capacity of minor parties and new entrants compared to the minor parties.⁴²²

8.15 Inquiry participants questioned whether there was community support for the current levels of election spending. Ms Anne Jones, CEO of Action on Smoking and Health Australia, asked:

Do people really want to have millions of dollars spent on funding very long election campaigns when if there were limits on electoral spending by the parties and

⁴¹⁹ Austin R and Tjermstrom M (eds), 'Matrix on Political Finance Laws and Regulations', *Funding of Political Parties and Election Campaigns*, Handbook Series, International Institute for Democracy and Electoral Assistance, 2003, p 207. The sample size for the survey was 111 countries.

⁴²⁰ Professor Marian Sawer, Leader, Democratic Audit of Australia, Evidence, 3 March 2008, p 38

⁴²¹ Dr Joo-Cheong Tham, Senior Lecturer, Law Faculty, University of Melbourne, Evidence, 31 March 2008, p 2

⁴²² Submission 145, Public Interest Adbocacy Centre, p 20

candidates we might have some good controls in place that would give us shorter election campaigns?⁴²³

8.16 An important argument in favour of spending caps was that they reduce the pressure to raise money. According to the Liberal Party NSW: ‘Campaign spending limits would change the landscape because if you can’t spend the money, there’s no need to raise it.’⁴²⁴

8.17 The Australian Centre for Democracy and Justice agreed that spending caps would dampen the pursuit of political donations:

Perhaps the most effective way of limiting inappropriate political donations is by limiting electoral expenditure. If electoral expenditure is limited (and that limit is not excessively high) it becomes irrelevant how a political party or candidate is funded as they will only need to raise a certain amount.⁴²⁵

8.18 Dr Tham said that ‘if effective, expenditure limits will also regulate the time spent by the parties on fund-raising and allow them to devote more time to their legitimate functions.’⁴²⁶

8.19 Spending caps would also reduce the amount of political advertising. Ms Banks of the Public Interest Advocacy Centre gave evidence that capping expenditure would ‘affect the advertising and the use of spots on prime time ... It may be that people have to be clearer about the messages they want to get out and be more focused on who those messages should get to.’⁴²⁷

8.20 The desirability of limiting political advertising was supported by Mr Barry O’Farrell, Leader of the NSW Opposition, who said:

Frankly, the sooner we get back to debating issues and to debates in policy forums between the parties, as opposed to carpet bombing of negative advertisements against each other, the better we will start to address community concerns about the state of politics and attempt to raise the standards ...⁴²⁸

8.21 Some witnesses cautioned that for spending caps to be effective, they must be accompanied by greater regulation of donations. Dr Tham told the Committee that:

... contribution limits are very unlikely to work without effective spending limits. That is perhaps one of the lessons from the US regulatory experience where there are extensive contribution limits but meager expenditure controls.⁴²⁹

8.22 According to this argument, banning political donations would be ineffective in levelling the playing field without introducing spending caps, because the major parties in particular would

⁴²³ Ms Anne Jones, Chief Executive Officer, Action on Smoking and Health Australia, Evidence, 3 March 2008, p 58

⁴²⁴ Submission 140, p 7

⁴²⁵ Submission 108, Australian Centre for Democracy and Justice, p 10

⁴²⁶ Submission 154, Dr Joo-Cheong Tham, p 46

⁴²⁷ Ms Banks, Evidence, 10 March 2008, pp 5-6

⁴²⁸ Mr Barry O’Farrell MP, Leader of the NSW Opposition, Evidence, 31 March 2008, pp 48-49

⁴²⁹ Dr Tham, Evidence, 31 March 2008, p 2

be free to spend their own financial resources accrued before donations were banned. For example, a major party with significant investments, funded by political donations, would be free to spend the income from these investments as they pleased in any election campaign. This would be an ongoing disadvantage to new entrants, who would never be able to accrue such wealth in the absence of political donations.

8.23 The question of investment income was raised by Mr O’Farrell:

Is income based on dividends from investment vehicles going to be considered to be private donations? That is certainly an issue for the Labor Party which, as I understand it, relies on a company called Labor Holdings for some contributions.⁴³⁰

8.24 Mr Karl Bitar, General Secretary of the Australian Labor Party (NSW Branch), acknowledged that:

... you get the public funding but then there is the potential for some parties to spend over and above the public funding. Some parties have investments. Some parties have raised money over time and they have investments. I guess they would be able to either draw down on those investments or spend the return on those investments as well.⁴³¹

8.25 Mr Bitar gave evidence that in canvassing support for a ban on all donations he was open to suggestions about what should happen with investment income, as well as income from other sources such as membership fees.⁴³²

Opposition to spending caps

8.26 There are two main arguments against spending caps: how to address third party spending, and how to penalise those who breach spending caps. Emeritus Professor Colin Hughes of the University of Queensland, warned the Committee against imposing spending caps:

The fixing of maximum amounts for expenditure merely brings additional players into the campaign to spend sums of money over and above what the parties, groups and candidates may spend. It would be a return to a system that was more honoured in the breach than in the observance, and logically would raise the question of how “unauthorized” expenditure should be dealt with.⁴³³

8.27 The Chairperson of the Election Funding Authority (EFA), Mr Colin Barry, speaking in a personal capacity, agreed with Professor Hughes. Mr Barry argued that complex restrictions were not conducive to an environment of absolute transparency:

I think Professor Hughes is probably right. Once you limit by legislation what a participant in the process can do, people with fertile minds will almost certainly look

⁴³⁰ Mr O’Farrell, Evidence, 31 March 2008, p 48

⁴³¹ Mr Karl Bitar, New South Wales General Secretary, Australian Labor Party, Evidence, 4 April 2008, p 66

⁴³² Mr Bitar, Evidence, 4 April 2008, p 67

⁴³³ Submission 42, Emeritus Professor Colin Hughes, p 6

to conceal and avoid complying. I think what Professor Hughes is saying makes a lot of sense.⁴³⁴

8.28 Ms Clover Moore MP, Member for Sydney, cautioned that:

While overall limits on campaign expenditure are superficially attractive, there are significant problems in establishing and monitoring an equitable overall cap. A limit would need to be realistic and recognise varying campaign costs due to where a campaign is conducted.⁴³⁵

8.29 The ALP NSW were opposed to spending caps on the grounds that they would be overly complex to administer and impossible to enforce. Instead, as discussed in Chapter 7, the ALP NSW advocated a ban on all donations. According to Mr Bitar, General Secretary:

... banning donations to political parties would pretty much neutralise or get rid of the argument for any cap on expenditure. The reasoning you go out and advocate caps on expenditure ... is because by putting a cap on expenditure you stop the hunger or the need for political parties to go out and raise political funds...

What I would like to put to you is that by banning donations to political parties, by properly addressing the supply side by just banning all donations to political parties, you would not then have to place a cap on expenditure.⁴³⁶

8.30 Enforcement issues are discussed later in the chapter.

How would spending caps be determined?

8.31 A number of factors need to be considered to determine spending caps. One of the biggest issues is whether there should be universal or differential spending caps. For example, should the same spending caps apply to independent candidates as to candidates endorsed by a party? Should new candidates have the same caps as incumbent MPs? Or should candidates in rural and regional areas have the same caps as those in metropolitan areas?

8.32 The Committee heard that independent members should not be subject to the same spending caps as candidates endorsed by a party, because they will not be supported by a state-wide campaign. This view was put by Mr Peter Draper MP, the Independent Member for Tamworth:

... having gone through a couple of elections, as an Independent you do not have the back-up of a party having oversight of a campaign and saying, "Look, our bloke's in trouble in this seat. It may well be at risk, so we're going to put in head office funding" ... One individual Independent candidate, for example, who looks like winning a campaign may well have a substantial amount of head office's funds that

⁴³⁴ Mr Colin Barry, Chairperson, Election Funding Authority of New South Wales, Evidence, 3 March 2008, p 19

⁴³⁵ Answers to questions taken on notice during evidence 4 April 2008, Ms Clover Moore MP, p 1

⁴³⁶ Mr Bitar, Evidence, 4 April 2008, p 61

have been allocated for the entire State diverted against him and he has no method of responding to that. That is a very unfair playing field.⁴³⁷

8.33 Ms Clover Moore MP agreed:

Again, there is this situation for independents where it is quite different. You are running on your own in your electorate, whereas the members of political parties have the benefits of the statewide campaign that is being run by the major party.⁴³⁸

8.34 First-time candidates may also have greater costs than incumbents, who are already known in the community, and who have access to the benefits of office. According to Councillor Greg Watson, Mayor of Shoalhaven City Council:

... if you are starting from scratch and you are not an incumbent, then you need to spend more money to get elected than quite clearly you do once you are in office. What is going to happen, in my view, with caps on expenditure is that you advantage the people in office ...⁴³⁹

8.35 Candidates in rural and regional areas also face very different costs, as described by Mrs Fardell:

... I do not believe that one figure would suit all in a campaign ... In saying that I take 2 to 2.5 hours to get from one end of my electorate to the other. In fairness, if I look at the Nationals member for Murray Darling or the member for Barwon they have large areas to travel around, as does the Speaker of the House, the member for the Northern Tablelands. The cost of fuel in getting around that electorate – if everyone was given \$40,000 – would not cover their cost. How we juggle that figure ... or who gets what amount is a concern to me.⁴⁴⁰

8.36 Candidates in rural and regional areas may also have higher advertising costs, because they need to use multiple media outlets. Mr Draper said of the cost of his election campaign:

I spend \$100 grand in my campaigns. You have to. I live in the country where you have to reach all areas of your electorate, which involves a very substantial spend on television advertising. Candidates in the city do not need that sort of expenditure.⁴⁴¹

8.37 When questioned on whether there should be differential caps for metropolitan and rural areas, Mr Barry O'Farrell responded:

... I am not aware of a system overseas that does that, but I do note for the record that in the way in which we determine parliamentary allowances there is recognition in that the members for Barwon and Murray-Darling, who represent I think almost a third to half of the State, do get two electorate offices ... So good luck trying to get a

⁴³⁷ Mr Peter Draper MP, Member for Tamworth, Evidence, 31 March 2008, pp 66-67

⁴³⁸ Ms Clover Moore MP, Member for Sydney, Evidence, 4 April 2008, p 33

⁴³⁹ Cr Gregory Watson, Mayor, Shoalhaven City Council, Evidence, 4 April 2008, p 21

⁴⁴⁰ Mrs Dawn Fardell MP, Member for Dubbo, Evidence, 31 March 2008, p 27

⁴⁴¹ Mr Draper, Evidence, 31 March 2008, p 67

system, but I do note that the current system does recognise those disadvantages suffered by members who represent vast areas of this State.⁴⁴²

- 8.38** Another important questions is, what is the period in which spending caps should apply? The Committee heard proposals for the year before an election, or after the issue of writs. Either of these periods is feasible because New South Wales has fixed-term elections.
- 8.39** The Committee did not hear detailed evidence on campaign costs, other than from the independent members who gave evidence to the Inquiry. Mr Draper's campaigns usually cost \$100,000. Mrs Fardell spent \$98,000 on her last campaign,⁴⁴³ and Ms Moore spent \$83,500.⁴⁴⁴ Every candidate is required to report on their election spending, but the Committee has not analysed these figures to determine average spending levels, because they may not give an accurate indication. This is because the campaign spending of endorsed candidates may appear on their party's return, rather than their own. In addition, the Committee notes that figures on past campaign spending cannot be used to predict the level of the spending caps, given that part of the rationale for spending caps is to reduce the current levels of campaign spending.
- 8.40** Some inquiry participants made recommendations on appropriate spending caps. The Liberal Party NSW advocated spending caps of \$30,000 for each candidate standing for the Legislative Assembly, and in addition, a State-wide allocation of \$1.5 million per party.⁴⁴⁵ The Greens NSW also supported a cap of \$30,000 for each Legislative Assembly candidate, but with a lower State-wide cap of \$1 million per party.⁴⁴⁶
- 8.41** Mrs Fardell suggested a cap of \$60,000: 'I would think that a country candidate you could easily say if you had \$60,000 will have a good life.'⁴⁴⁷ Mr Greg Piper MP, Member for Lake Macquarie, suggested a cap of \$45,000 to \$65,000.⁴⁴⁸
- 8.42** Given the difficulty of determining spending caps, Mr O'Farrell suggested that this task could fall to the Auditor General in conjunction with the Parliament.⁴⁴⁹

Committee comment

- 8.43** The Committee believes that spending caps are necessary to further the second aim of the NSW electoral funding scheme, namely, to level the playing field. It is not enough to place supply-side restrictions on political donations, as without demand-side restrictions on election spending, established parties and wealthy candidates will always have a financial advantage. The Committee believes that spending caps would ensure greater equality in electoral contests

⁴⁴² Mr O'Farrell, Evidence, 31 March 2008, p 56

⁴⁴³ Mrs Fardell, Evidence, 31 March 2008, p 27

⁴⁴⁴ Ms Moore, Evidence, 4 April 2008, p 33

⁴⁴⁵ Submission 140, p 7

⁴⁴⁶ Submission 121, The Greens, p 7

⁴⁴⁷ Mrs Fardell, Evidence, 31 March 2008, p 32

⁴⁴⁸ Mr Greg Piper MP, Member for Lake Macquarie, Evidence, 4 April 2008, p 25

⁴⁴⁹ Mr O'Farrell, Evidence, 31 March 2008, p 49

by reducing the disparity in financial resources available to parties, groups and candidates, and encourage diversity of representation by lowering barriers to participation for new entrants. The Committee is particularly supportive of spending caps for their potential to stop the escalation of campaign costs, and reduce the current excessive levels of political advertising.

8.44 While the Committee supports the introduction of spending caps, the Committee does not have the expertise to determine an appropriate level for the caps. This is a complex issue, because spending caps must be set high enough to allow candidates and parties to conduct a reasonable election campaign, but not so high as to impose an excessive demand on the public purse. Another issue is whether there should be one spending cap for everyone, or whether the cap should be adjusted to take into account the needs of independent candidates, candidates in rural areas and new candidates. Another complexity is that spending caps should not be determined by past election spending, because part of the rationale for caps is to rein in election spending.

8.45 The Committee cannot determine the level of spending caps, but it does support a spending cap for all candidates. Therefore, the Committee considers that there should be a spending cap for candidates for election to the Legislative Assembly, and a State-wide cap for political parties and groups contesting the Legislative Council election. The State-wide cap should encompass spending by candidates for election to the Legislative Council as well as a party or group's State-wide campaign costs, including costs relating to Legislative Assembly and Legislative Council elections. Spending caps should be set based on expert advice and that this advice should come from the Auditor General, looking at caps in overseas jurisdictions for guidance.

Recommendation 18

That the Premier cap election spending for parties, groups and candidates. There should be two spending caps, to apply to:

- candidates contesting the Legislative Assembly election
- parties and groups contesting the election. The cap should encompass the campaign costs of candidates contesting the Legislative Council election as well as State-wide spending by the party or group, including costs relating to both Legislative Assembly and Legislative Council elections.

Spending caps should be set by the Auditor General using caps in overseas jurisdictions for guidance.

Further, the Premier should investigate all relevant legal and constitutional issues arising from capping election spending for parties, groups and candidates, and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws

8.46 The Committee takes very seriously the concerns raised by inquiry participants that spending caps may inhibit participation in the democratic process. However, the Committee considers that these concerns can be addressed by implementing third party spending caps that are not unduly restrictive. Caps on third parties are discussed in the following section.

Difficulties in implementing spending caps

- 8.47** A central objection to spending caps is that they would be too difficult to enforce. This section begins by asking, are spending limits enforceable? The section then goes on to consider particular areas of difficulty, including that most contentious area, third party spending.

Enforcement

- 8.48** The submission from the ALP NSW argued that spending caps are not enforceable, and that introducing spending caps would lead to funding being channelled through third parties.⁴⁵⁰ Mr Bitar pointed to problems with policing spending caps in other jurisdictions:

I did a simple Google search on the Internet this morning and I found significant problems in New Zealand and in Canada. This is from the last election in New Zealand. I found that the Labour Party exceeded the statutory maximum on its election expenses by over \$400,000. The National Party failed to account for GST when booking its election broadcasting time, which caused them to overspend their limit by \$112,000 ...

Again I took a look on the Internet this morning, without having to do much research into the Canadian system, and I found that in the last couple of months the Conservative Party is currently under investigation by Elections Canada for allegedly funnelling over \$1.2 million in national advertising costs to regional candidates during the 2006 Federal election in order to circumvent Federal election spending limits.⁴⁵¹

- 8.49** One of the difficulties with enforcing spending caps is reaching the definition of ‘campaign expenditure,’ to which the spending caps will apply. According to Young and Tham: ‘... regulating campaign expenditure can be administratively difficult. In particular, it may be difficult to distinguish between a routine or a campaign activity or an ‘election’ and a ‘non-election’ expense.’⁴⁵²
- 8.50** The National Party of Australia – NSW also highlighted the difficulties with enforcing spending caps, and the likely use of third parties to evade the limits imposed.⁴⁵³
- 8.51** The Shooters Party questioned how those who breached spending limits would be penalised:

Such limits would be impractical to police in real time, in the run up to an election, and if a party was found to have exceeded such a limit when all the expenses are collated and submitted to the Electoral Commission following the election, it would be too late to impose any relevant and meaningful penalty.⁴⁵⁴

⁴⁵⁰ Submission 107, Australian Labor Party (NSW Branch), p 6

⁴⁵¹ Mr Bitar, Evidence, 4 April 2008, p 61

⁴⁵² Tabled document, *Political finance in Australia: a skewed and secret system*, p 93

⁴⁵³ Submission 120, The Nationals – NSW Secretariat, p 12

⁴⁵⁴ Submission 89, p 9

- 8.52** In the 2005 election, the New Zealand Labor Party overspent their cap and was referred to the New Zealand police for investigation. The police found ‘that there was insufficient evidence that an offence had been committed by the party secretary.’⁴⁵⁵ Similarly, the New Zealand National Party’s overspending of their broadcast allocation also resulted in a referral to the police for investigation. Again, the police did not press charges against any person involved, because of difficulties in corroborating the events that led to the overspending.⁴⁵⁶
- 8.53** Dr Tham of Melbourne University rejected assertions that spending caps are unenforceable:
- ... claims made in relation to the unworkability of campaign spending limits have been quite overstated. One only has to look at the recent reports by the UK Electoral Commission on the 2005 election or the report by the Chief Electoral Officer of Canada on the 2006 Canadian general election. You will find nothing there that calls into question the fundamental workability of campaign spending limits.⁴⁵⁷
- 8.54** Some inquiry participants acknowledged the difficulties of implementing spending caps but argued that they could be overcome. These inquiry participants believed that the difficulties encountered would be worth it, considering the greater good of creating a fairer political system. The submission from the Public Interest Advocacy Centre said: ‘While there may be an ‘enforcement gap’ in any political finance regulation system other countries such as Canada and the United Kingdom have shown that it is a workable system.’⁴⁵⁸
- 8.55** Mr Norman Kelly, a member of the Democratic Audit of Australia, argued that spending caps would be enforceable if they were backed by appropriate enforcement powers:
- It then becomes a case of the powers that given to either the commission or the authority to investigate and be able to audit party records and crack down in that way. A lot comes down to having sufficient legislation to enforce any expenditure caps.⁴⁵⁹
- 8.56** The Committee heard that as with all other laws, compliance would depend on the cooperation of those being regulated. According to Dr Tham: ‘Certainly, all laws are vulnerable to non-compliance. Political finance regulation is no exception and the degree of compliance will depend on various factors. It will depend on the willingness of the parties to comply.’⁴⁶⁰ Dr Tham also said that enforcement of spending limits would be helped by the highly visible nature of election spending.⁴⁶¹
- 8.57** Evidence to the Committee questioned whether there would be a legal impediment to introducing spending caps. In 1991 the Federal Government brought in legislation to ban paid political advertising in the electronic media. The High Court struck down the legislation in its

⁴⁵⁵ New Zealand Electoral Commission, ‘*Annual Report of the Electoral Commission for the year ended 30 June 2006*’, November 2006, p 7

⁴⁵⁶ New Zealand Electoral Commission, ‘*Annual Report of the Electoral Commission for the year ended 30 June 2006*’, November 2006, p 20

⁴⁵⁷ Dr Tham, Evidence, 31 March 2008, p 2

⁴⁵⁸ Submission 145, p 21

⁴⁵⁹ Mr Norman Kelly, Democratic Audit of Australia, Evidence, 3 March 2008, p 37

⁴⁶⁰ Submission 154, p 48

⁴⁶¹ Submission 154, p 49

1992 decision *Australian Capital Television Pty Ltd and New South Wales v The Commonwealth*, which found ‘that the Constitution contained an implied guarantee of freedom of political communication in relation to political matters.’⁴⁶²

8.58 Dr Tham, however, argued that this decision was not directly applicable to the imposition of spending limits:

... the first point is that the Australian Capital Territory case was dealing with a ban on political broadcasting. If you are talking firstly in terms of spending limits as opposed to a complete prohibition on political advertising, it is clearly seen by the court as a much less severe limitation on freedom of communication.⁴⁶³

8.59 In terms of the case’s relevance for determining spending limits, Dr Tham said:

Clearly, following the *Australian Capital Television* case, such limits would have to be high enough to allow for a reasonable amount of broadcast advertising by the party or group concerned ... the critical question then is whether the instituted limit is reasonably appropriate and adapted to a legitimate aim.⁴⁶⁴

Third party spending

8.60 Third parties can be defined as ‘individuals or organisations that are not candidates, groups, parties or associated entities such as, lobby groups and individual, corporate or institutional supporters.’⁴⁶⁵

8.61 Many inquiry participants were concerned at the potential for limits on election campaign spending to be circumvented by third party spending. On the other hand, other inquiry participants were concerned that regulation of third party spending would restrict freedom of speech and hinder democratic participation.

8.62 An example of third party spending would be an intermediary advertising in support of a party or candidate, or an intermediary paying for campaign activities, such as printed materials.

8.63 Third party spending is capped in Canada and New Zealand, as noted in Chapter 4. Canada has a national expenditure limit on third party election advertising. In New Zealand, the restrictions include requiring a group or person spending over \$12,000 nationally, or \$1,000 in an election district, to register as a third party and comply with additional restrictions.⁴⁶⁶ Once registered, a third party can spend \$120,000 nationally or \$4,000 in an election district.

⁴⁶² Miskin, S and Grant, R, Research Brief No. 5 2005-2005, *Political advertising in Australia*, November 2004 <www.aph.gov.au/library/pubs/rb/2004-05/05rb05.htm#bans> (accessed 20 May 2008)

⁴⁶³ Dr Tham, Evidence, 31 March 2008, p 3

⁴⁶⁴ Submission 154, pp 50-51

⁴⁶⁵ Callinan R, *Election Finance Law: Public Funding, Donations and Expenditure*, New South Wales Parliamentary Library Research Service Briefing Paper 15/2001, p 13

⁴⁶⁶ Submission 6, Associate Professor Andrew Geddis, pp 4-5

- 8.64** Ms Lee Rhiannon MLC of The Greens NSW warned that without third party spending caps, ‘we could just see a shift in the corrupting influence of donations to another area.’⁴⁶⁷
- 8.65** There was also community support for imposing third party spending caps. According to Ms Yvonne Jayawardena:
- Moreover, services rendered or donations in-kind should be taken into account. They may take various forms, from the occasional photocopying, postage paid, printing of leaflets to the vast sums paid by corporations or trade unions for print and TV advertising. It would be somewhat difficult to ban altogether such advertising without infringing on the right to free speech, but a limit should be put on the amount and frequency of such spending.⁴⁶⁸
- 8.66** Dr Tham also believed that third party spending must be regulated: ‘Political finance laws that do not deal adequately with the ‘third party’ problem risk not evasion but irrelevance.’⁴⁶⁹
- 8.67** The lead-up to the last Federal election provided a prominent example of extensive third party advertising. Both the trade union movement and employer groups ran a series of advertisements worth millions of dollars opposing or supporting the Work Choices legislation of the incumbent Government.⁴⁷⁰
- 8.68** An illustration of the type of problems that could be encountered in New South Wales if spending caps were introduced, but third party spending was not restricted, can be found in the 2005 New Zealand election campaign. Associate Professor Andrew Geddis of the University of Otago told the Committee that in 2005, media attention on the activities of the Exclusive Brethren threw the spotlight on the relatively weak regulation of third party advertising. Members of the Exclusive Brethren distributed pamphlets nation-wide criticising the Labor and Greens parties.⁴⁷¹ Because the pamphlets did not encourage voters to vote for a particular candidate or party, they did not have to be endorsed by a party or candidate, or counted under the spending cap of a party or candidate. Thus the Exclusive Brethren could spend as much as they liked on ‘negative advocacy.’ The cost of the pamphlets was estimated at \$500,000 to \$1.5 million. New Zealand responded by imposing tight restrictions on third party advertising.
- 8.69** The Committee heard some concrete suggestions on an appropriate level of cap for third party spending. The Liberal Party NSW suggested a cap of \$250,000 for the year preceding an election, for organisations that had registered as third parties. The Greens NSW recommended that a lower cap of \$50,000 apply but for a shorter period, namely the four months leading up to an election.⁴⁷²

⁴⁶⁷ Ms Lee Rhiannon MLC, Evidence, 31 March 2008, p 41

⁴⁶⁸ Ms Yvonne Jayawardena, Public Forum, 4 April 2008, p 31

⁴⁶⁹ Submission 154, p 49

⁴⁷⁰ Mark Davis, *Unions spent \$10m backing Rudd campaign*, 2 February 2008, <www.smh.com.au/news/national/unions-spent-10m-backing-rudd-campaign/2008/02/01/1201801034920.html> (accessed 26 May 2008); *Business groups launch pro-Work Choices campaign*, 8 August 2007 <www.abc.net.au/news/stories/2007/08/08/1999667.htm> (accessed 26 May 2008)

⁴⁷¹ Submission 6, p 3

⁴⁷² Submission 121, p 10

8.70 While not nominating a specific figure, Dr Tham argued that third party spending caps should be lower than those for parties and candidates because:

... third parties – I more or less call them, electorally speaking, non-competitors – of course should have a role to play, but they should not have a role to play to the same extent as those who are actually competing for the support of the citizens.⁴⁷³

8.71 Despite being strong advocates of third party spending caps, the Liberal Party NSW underscored that the introduction of spending caps must be balanced against the right to free speech: ‘However, the limits cannot be so low as to limit the ‘free speech’ of third parties. Advocacy organisations need to be able to raise their concerns in the lead-up to the election.’⁴⁷⁴

8.72 On the other hand the ALP NSW was strongly opposed to any restrictions on third party spending. Mr Bitar told the Committee:

We have got an issue here with people’s democratic rights as well ... let us just assume you have a disability group out there in the community and the local member of Parliament has done so much for them or the local member of Parliament has not done very much for them and they want to go out there and run a campaign for or against that local member of Parliament ... I think it is pretty harsh ... within a democracy to say to some group representing families with disabilities “Sorry, but you can’t spend in the campaign” or “You can’t campaign on behalf or against a candidate.”⁴⁷⁵

8.73 The NSW National Party also opposed spending caps on principle, stating that ‘individuals and corporations are entitled to provide support to parties and candidates of their choice in the democratic process.’⁴⁷⁶

8.74 A related issue that would need to be considered in any reform of electoral finance laws is the issue of associated entities, or ‘front organisations.’ An associated entity can be defined as ‘an organisation such as a company, trust fund or foundation that is closely associated with a political party, operating for that party’s benefit.’⁴⁷⁷

8.75 Dr Tham asserted that:

... there is a gaping hole in relation to ‘associated entities’ of parties ... These groups are not subject to separate disclosure requirements. This provides an avenue for the wholesale circumvention of the NSW disclosure scheme: funnelling money through these groups provides a simply and completely legal method to evade the disclosure obligations that apply to the parties.⁴⁷⁸

⁴⁷³ Dr Tham, Evidence, 31 March 2008, p 6

⁴⁷⁴ Submission 140, p 7

⁴⁷⁵ Mr Bitar, Evidence, 4 April 2008, p 68

⁴⁷⁶ Submission 120, p 13

⁴⁷⁷ Callinan R, *Election Finance Law: Public Funding, Donations and Expenditure*, New South Wales Parliamentary Library Research Service Briefing Paper 15/2001, p 13

⁴⁷⁸ Submission 154, p 22

- 8.76** According to Dr Tham, this problem could be addressed through adopting similar legislative provisions as the Federal Government:

The answer to this problem is to adopt the fairly robust approach towards ‘front organisations’ found in the CEA. The definition of ‘associated entity’ is potentially broad and the scheme treats ‘associated entities’ as if they were registered political parties by subjecting them both to identical obligations.⁴⁷⁹

Committee comment

- 8.77** The Committee is of the view that the impediments to introducing spending caps have been overstated. For spending caps to work, there needs to be appropriate legislation in place to ensure effective monitoring, and strong penalties to deter non-compliance. The issue of policing the electoral funding scheme is discussed in Chapter 11.
- 8.78** The Committee can see the potential for spending caps to be undermined by third party expenditure, and thus supports the capping of such expenditure. The Committee does not have the expertise to determine the level of third party spending caps, and suggests that this task be left to the Auditor General. The Committee suggests that stronger regulation of spending by associated entities also be considered.
- 8.79** However, the Committee notes that in the United Kingdom and New Zealand there are differential third party spending caps in place at a national and constituency level during campaign periods, depending upon whether the third parties have availed themselves of a higher limit by registering. In both jurisdictions, the national caps on registered third parties equate to approximately 5% of the overall national spending limits on major political parties. In Canada, there is a national cap of C\$183,300 on third parties⁴⁸⁰ with the national party spending limit set at C\$18.5 million (about 1%).
- 8.80** As previously noted in this report, the Committee is alert to any potential for reforms to the electoral funding scheme to create a barrier to participation in the political process. In the Committee’s opinion, third party spending caps should not impose such a barrier, if set at appropriate levels. Similarly, the Committee does not believe that the precedent set by the *Australian Capital Television* case should impose any legal barrier to the introduction of spending caps.

⁴⁷⁹ Submission 154, p 49

⁴⁸⁰ ‘*Limit on Election Advertising Expenses Incurred by Third Parties*’
<http://www.elections.ca/content.asp?section=fin&document=limit_tp&dir=lim&lang=e&textonly=false>
(accessed 17 June 2008)

Recommendation 19

That the Premier cap election spending by third parties as part of the cap on election spending by parties, groups and candidates, and consider whether spending by associated entities should also be capped. Third party spending caps should be set by the Auditor General using caps in overseas jurisdictions for guidance.

Further, the Premier should investigate all legal and constitutional issues arising from capping third party election spending and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws

Interim reforms

- 8.81** Two of the interim reforms announced by the Premier in February are relevant to this chapter on spending: first, the introduction of legislation to ensure that funds raised for elections are used only for electioneering; and second, the ban on third parties paying election expenses.

Require funds raised for elections to be spent on election campaigns

- 8.82** The Premier announced that he would act to remove uncertainty in the current legislation, by requiring that funds raised for elections would be used only for election campaigns. The aim is to prevent donations being used for personal gain and remove any doubt about the purpose for which donations are used.⁴⁸¹

- 8.83** According to the submission from the Department of Premier and Cabinet:

The Government believes that donors are entitled to expect that any money donated by them will be used by the party, group or candidate primarily for the purposes of contesting an election and not for the personal private gain of a candidate.⁴⁸²

- 8.84** The Committee received no evidence on this proposal.

Ban payment by third parties of election expenses

- 8.85** The Premier proposed to ban third parties from paying candidates' election expenses, as another measure to reduce undue influence and corruption. Again, the Committee received no direct evidence on this proposal, although some of the issues related to third parties are addressed in this chapter.

Committee comment

- 8.86** The Committee supports both of these changes, as they will improve the transparency of the current electoral funding system and lessen the potential for undue influence.

⁴⁸¹ Submission 182, Department of Premier and Cabinet, p 4

⁴⁸² Submission 182, p 4

Recommendation 20

That the Premier implement his proposals to:

- require funds raised for elections to be used for campaigning
 - ban the use of funds raised for elections for the personal private gain of a candidate
 - ban payment by third parties of election expenses.
-

Chapter 9 Disclosure of political donations and campaign spending

The NSW electoral funding scheme relies on transparency to prevent corruption and undue influence. The current scheme aims to achieve transparency by disclosure of donations, and disclosure of election expenditure. Transparency is not only a fundamental element of the current electoral funding scheme, but will be an important part of any new system to regulate donations or spending. The current system is not as transparent as it could or should be, and the Committee believes that reforms are needed to increase the accuracy, timeliness and accessibility of the information disclosed.

This chapter examines deficiencies of the current disclosure scheme and ways to address them. Of particular concern to inquiry participants was the complexity of the current scheme. The chapter also discusses the frequency and timeliness of disclosure, together with greater use of the Internet to submit and publish disclosure returns.

Current disclosure scheme

9.1 Inquiry participants emphasised the importance of transparency in fostering a political system free from corruption and undue influence. However, the Committee heard that the current disclosure scheme is extremely complex. Inquiry participants said that the requirements should be simplified, to improve the level of compliance and quality of disclosure, and thus enhance the transparency of the scheme. In particular, there was strong support for greater national consistency.

Importance of transparency

9.2 Many jurisdictions require compulsory disclosure of donations. The International Institute for Democracy and Electoral Assistance reports that 53% of countries have provisions for the disclosure of contributions to political parties.⁴⁸³ As noted in Chapter 4, Canada, New Zealand, the United Kingdom and the United States all require compulsory disclosure of donations.

9.3 The arguments in support of disclosure and transparency were articulated by Ms Clover Moore MP, Member for Sydney:

They do say that daylight is the best disinfectant when it comes to ensuring integrity and decision making and the prospect of public scrutiny will influence the behaviour of decision makers and safeguard the public interest.⁴⁸⁴

⁴⁸³ Austin R and Tjermstrom M (eds), 'Matrix on Political Finance Laws and Regulations', *Funding of Political Parties and Election Campaigns*, Handbook Series, International Institute for Democracy and Electoral Assistance, 2003, p 191. The sample size for the survey was 111 countries.

⁴⁸⁴ Ms Clover Moore MP, Member for Sydney, Evidence, 4 April 2008, p 31

- 9.4 The Public Interest Advocacy Centre agreed that transparency was essential to the electoral funding scheme:

While strong disclosure and transparency requirements cannot stop the potential purchase of undue influence of donors, they at least ensure that citizens can see who is giving money to which parties, and when this occurs. Transparency is an essential tool in curbing corruption.⁴⁸⁵

- 9.5 The Committee is mindful that both donations and spending need to be disclosed, to allow for a system of checks and balances. Emeritus Professor Colin Hughes noted that ‘the strongest justification for expenditure disclosure is that access to expenditure figures allows a check on the accuracy of donations disclosure.’⁴⁸⁶

- 9.6 However, the Cancer Council of NSW warned that disclosure alone is not enough:

I reiterate that disclosure reporting is a secondary safeguard to address the issues we are concerned about. It contributes a lot to transparency, but because it occurs after the fact it may not fully deal with the concerns around influence.⁴⁸⁷

- 9.7 Similarly, Professor Marian Sawer, Leader of the Democratic Audit of Australia, said:

... timely disclosure is terribly important. People should know before an election where the money has come from to fund campaigns. But it is not enough in itself to achieve our goal of a level playing field ...⁴⁸⁸

Complexity of current scheme

- 9.8 As outlined in Chapter 5, there are multiple and overlapping disclosure periods for Federal, State and local government elections, and for parties, groups, candidates and donors. After an election, all parties, groups and candidates, as well as donors, must declare political donations above the applicable threshold in the previous four-year period. Political donations are usually donations of money, but also include in-kind donations of goods and services. Parties, groups and candidates must declare any election spending in the four-year period, while third parties must disclose election spending of more than \$1,500. In addition, the Federal scheme has its own disclosure requirements which overlap with those of New South Wales.

- 9.9 When questioned on the complexity of the disclosure scheme, Mr Karl Bitar, General Secretary of the Australian Labor Party (NSW Branch), responded:

Is it complex? It is so complex it is not funny. To fill out a funding and disclosure return you need an accounting degree, a law degree and almost a political science degree to work through the legislation ... Over time we keep closing loopholes in the legislation. Closing loopholes is a good thing, but it tends to increase the complexity

⁴⁸⁵ Submission 145, Public Interest Advocacy Centre, p 13

⁴⁸⁶ Submission 42, Emeritus Professor Colin Hughes, p 6

⁴⁸⁷ Ms Anita Tang, Director, Health Strategies, The Cancer Council of New South Wales, Evidence, 3 March 2008, p 29

⁴⁸⁸ Professor Marian Sawer, Leader, Democratic Audit of Australia, Evidence, 3 March 2008, p 43

of the system as well. People talk about the Tax Act. This is becoming just as complex ...⁴⁸⁹

9.10 Mr Greg Piper MP, Member for Lake Macquarie, told the Committee:

This system should not be so complicated or difficult that it deters people from participating in the democratic process. It should not be so difficult that inadvertent mistakes can be made by participants nor so complicated that an interested member of the public could not easily view and understand contribution and expenditure declarations.⁴⁹⁰

9.11 The Christian Democratic Party (NSW Branch) was also concerned that the disclosure scheme may deter candidates from standing for public office:

CDP is very concerned at the complexity of returns required by the NSW Electoral Commission. If ever there was a disincentive to become involved in standing as a candidate, it is the onerous requirements of the candidate to provide all receipts of expenses, and all sources of income and in kind to the EFA.⁴⁹¹

9.12 Mr Piper highlighted the discrepancies between the information on donations to NSW political parties on the website of the Australian Electoral Commission, and that of the Election Funding Authority (EFA). Mr Piper said: ‘The public cannot have confidence in a system that can’t be understood. It is quite clear that current systems of reporting cannot provide this confidence.’⁴⁹²

9.13 In evidence to the Committee, Mr Barry agreed that donations were disclosed twice, both to the Australian Electoral Commission and to the EFA, therefore creating a misleading picture of the level of political donations. When questioned on whether this should be remedied, Mr Barry said: ‘...if the purpose of this is to give the public an accurate picture – at the moment, unless you understand how it all works, then it is not clear to people and they can draw wrong conclusions.’⁴⁹³

9.14 The National Party of Australia – NSW supported making the disclosure system more user-friendly, for example by providing a simple procedure manual and completed pro-forma disclosure forms, as well as training sessions for the people (often volunteers) who fill in the forms.⁴⁹⁴

⁴⁸⁹ Mr Bitar, New South Wales General Secretary, Australian Labor Party, Evidence, 4 April 2008, p 71

⁴⁹⁰ Mr Greg Piper MP, Member for Lake Macquarie, Evidence, 4 April 2008, p 24

⁴⁹¹ Submission 99, Christian Democratic Party (NSW Branch), p 1

⁴⁹² Submission 188, Mr Greg Piper MP, p 5

⁴⁹³ Mr Colin Barry, Chairperson, Election Funding Authority of New South Wales, Evidence, 11 April 2008, p 13

⁴⁹⁴ Submission 120, The Nationals – NSW Secretariat, p 5

Support for reforms to the scheme

- 9.15** Inquiry participants supported reforming the scheme, to improve the level of disclosure and aid transparency. The Greens NSW said:

There is a widely held perception that donors and politicians exploit loopholes and weaknesses in our disclosure laws to hide donations and avoid public scrutiny. Disclosure procedures need to be tightened to restore public confidence in the system.⁴⁹⁵

- 9.16** Another criticism was that the scheme was not strong enough to deter persons from engaging in corrupt conduct. According to Dr Joo-Cheong Tham, Senior Lecturer in Law at Melbourne University:

The disclosure scheme provides for poor transparency. One of its principal deficiencies is its lack of timeliness. By requiring only post-election declarations that are disclosed months *after* an election result, this scheme clearly does not facilitate informed voting ... Through its lack of timeliness, the NSW disclosure scheme also provides a very limited deterrent for corruption as graft or undue influence.⁴⁹⁶

- 9.17** Mrs Dawn Fardell MP, Member for Dubbo, argued that the current disclosure scheme does not accurately reveal campaign spending:

... it is virtually impossible for those who do not have the backing of a party machine, to keep track of the spending by other candidates during a campaign, and therefore impossible to prove afterwards.

The upshot is that election expenditure reports are virtually worthless as an accurate picture of campaign spending.⁴⁹⁷

- 9.18** The Committee heard that there needs to be greater national consistency, to simplify the differences between the schemes in New South Wales and federally, and thereby improve understanding of the scheme and support compliance. The Liberal Party of Australia (NSW Division) told the Committee:

It would better serve the public interest in terms of transparency, plus yield administrative efficiencies for Party agents, if the reporting requirements and periods were, as far as possible, made uniform across Commonwealth and State jurisdictions.⁴⁹⁸

- 9.19** Greater uniformity was also advocated by The Greens NSW:

The majority of political parties, particularly the larger ones, are registered both with the NSW EFA and the AEC. The NSW EFA and the AEC have very different

⁴⁹⁵ Submission 121, The Greens, p 5

⁴⁹⁶ Submission 154, Dr Joo-Cheong Tham, p 20

⁴⁹⁷ Submission 139, Mrs Dawn Fardell MP, p 2

⁴⁹⁸ Submission 140, The Liberal Party of Australia (NSW Division), p 11

disclosure regimes. This is confusing and means a duplication of the work by both the donors and the political parties in reporting donations.⁴⁹⁹

- 9.20** The EFA called for more education, of both the public and election participants, to raise awareness of obligations under the current disclosure scheme:

... events of recent times show us that the main case in this play does not understand their obligations, the candidates. If the candidates do not understand their obligations, the public who give money to candidates or parties are even further down the food chain, so to speak ...⁵⁰⁰

Committee comment

- 9.21** The Committee agrees that disclosure is essential to the regulation of electoral funding. The rest of this chapter focuses on much-needed reforms to strengthen the current disclosure scheme. However, recent events in New South Wales have proved that disclosure alone is not enough to ensure the integrity of our electoral funding scheme. In addition to disclosure, this report therefore recommends the introduction of new measures to regulate donations and spending.
- 9.22** The Committee considers the current disclosure scheme to be bewildering: there are myriad disclosure thresholds and timeframes, for local, State and Federal levels, and poor understanding of these requirements. The Committee supports, as far as possible, consistency between the disclosure requirements for Federal, State and local governments. Achieving greater consistency should be a key consideration of liaison between Senator the Hon John Faulkner, Special Minister of State, and the states and territories for the Federal Government's Green Paper review.

Improvements to disclosure scheme

- 9.23** The current disclosure scheme needs to be strengthened in a range of areas, regardless of whether more wide-ranging reforms to the electoral funding scheme are implemented. This section discusses several areas for improvement, that were raised in evidence to the Committee.

Donor identification

- 9.24** The Committee heard that donor identification would strengthen the disclosure scheme. Not only would it clearly identify donors and improve the quality of disclosure returns, it would facilitate cross-matching of donor and recipient returns, thus detecting inconsistencies.
- 9.25** The EFA described its difficulties in matching donor and recipient returns:

Currently, we have issues matching names on declarations. For instance, the Rail, Bus and Tram Union may describe themselves as such, however, on the party declaration

⁴⁹⁹ Submission 121, p 4

⁵⁰⁰ Mr Barry, Evidence, 11 April 2008, p 7

it may describe the organisation as the RBTU. S. Brown of PO Box 35, Paddington, NSW 2021, could that be Samantha Brown, Apartment 4, Ocean Street, Woollahra? ... We do not know whether in many instances on is the same person or same organisation as the other.⁵⁰¹

- 9.26** The EFA recommended that ‘to improve identification of donors it is suggested that in the case of a company an ABN be supplied, and for an individual, details for that person as they appear on the New South Wales electoral roll.⁵⁰²
- 9.27** Therefore under the EFA’s proposal, individual donors must be resident in New South Wales, but organisations from across Australia would be able to donate.
- 9.28** Mr Colin Barry, Chairperson of the EFA, explained the rationale behind limiting donations to NSW residents: ‘The underlying principle being that people who are eligible to vote, participate and stand as candidates in the process should be those who can donate money to candidates and political parties.’⁵⁰³
- 9.29** As noted in Chapter 7, the Committee gives the same rationale in favour of banning donations from foreign donors, namely that they cannot vote or stand as a candidate in New South Wales elections.
- 9.30** In terms of the benefits of requiring organisations to provide an Australian Business Number (ABN), Mr Barry said: ‘You could then link to the ASIC site and you could see who the owners or directors of the company are.’⁵⁰⁴ The EFA’s recommendations were supported by the ALP NSW.⁵⁰⁵

Intra-party transfers

- 9.31** Many inquiry participants were critical of the major party practice of intra-party donations. This could involve asking individual donors to donate to a party’s State Electoral Council, and from there distributing the money to individual candidates. Candidates then list the State Electoral Council as the donor on their disclosure returns, rather than the original source of the donation. Alternatively, a donor could make multiple donations below the applicable disclosure threshold to several branches of the same party, and then have that money directed to one jurisdiction, thereby avoiding disclosure obligations.
- 9.32** Speaking at the Committee’s public forum, Mr Brad Pederson, President of Democracy Watch, called for tighter regulation of intra-party transfers:

⁵⁰¹ Mr Trevor Follett, Secretary, Election Funding Authority of New South Wales, Evidence, 3 March 2008, p 4

⁵⁰² Submission 106, Election Funding Authority of New South Wales, p 2

⁵⁰³ Mr Barry, Evidence, 3 March 2008, p 8

⁵⁰⁴ Mr Barry, Evidence, 3 March 2008, p 8

⁵⁰⁵ Submission 107, Australian Labor Party (NSW Branch), p 4

Money is fluid and is now and will continue to be shifted around through back doors, through the major parties, through their branches and unless all these doors are shut, it will leave the opportunity for corruption to flourish.⁵⁰⁶

- 9.33** The Greens NSW believed that intra-party transfers from a party's state head office to its candidates obscured the influence of political donations on individual candidates:

For example, in the 2007 state election returns lodged with the EFA, the Liberal Party candidates did not disclose receipt of any donations. Yet each sitting member has declared election expenditure averaging around \$40,000 to \$50,000 ... The Liberal party candidates channelled all their election donations through the NSW branch party office. While strictly speaking this practice is permissible under the current regime, it is flouting the basic tenets of accountability and transparency. People's expectation of a donations disclosure regime is that it will show then who has donated to an election campaign.⁵⁰⁷

- 9.34** Another speaker at the public forum, Ms Jo Holder, also claimed that intra-party transfers have hidden the influence of developer donations: 'Some candidates would be seen to ban developer donations at a local level, while taking funds via head office, a sort of bob each way for candidates in more PC or politically aware electorates.'⁵⁰⁸

- 9.35** Action on Smoking and Health Australia (ASH) recommended that 'money given to each SEC [State Electoral Council] should clearly be identified by the donor's name in the candidate's return.'⁵⁰⁹

- 9.36** Mr Norman Kelly, a member of the Democratic Audit of Australia, criticised the practice of splitting donations between a party's state, territory and national branches, to avoid disclosure:

The current what I would call loophole in the Commonwealth legislation which allows people to donate to the various State and Territory divisions of the one party and have each of those divisions treated as a separate party ... allows significant amounts of money to be secretly given. So I think there is a good argument that you get a cohesive and consistent approach across jurisdictions ...⁵¹⁰

- 9.37** As noted in Chapter 5, the Federal Government announced in March 2008 that intra-party transfers would be regulated to 'prevent[ing] large donations from being hidden across state and territory branches of the party.'⁵¹¹ Under the proposed amendment, an existing definition of related political parties will be used to ensure that donations to different party branches will be treated as donations to the same party. Senator the Hon Joe Ludwig, on behalf of Minister Faulkner, said that 'this will mean that a donor will need to disclose where he or she has made

⁵⁰⁶ Mr Brad Pederson, Public Forum, 4 April 2008, p 18

⁵⁰⁷ Submission 121, p 6

⁵⁰⁸ Ms Jo Holder, Public Forum, 4 April 2008, p 21

⁵⁰⁹ Submission 132, Action on Smoking and Health Australia, p 4

⁵¹⁰ Mr Norman Kelly, Democratic Audit of Australia, Evidence, 3 March 2008, p 40

⁵¹¹ The Hon John Faulkner, Special Minister of State, 'Electoral Reform', *Media Release 06/2008*, 28 March 2008

donations totalling \$1,000 or more to any combination of the branches and divisions of the party ...⁵¹²

Fundraising events

- 9.38** Parties, groups and candidates are required to disclose each fundraising activity or function. Details to be disclosed include the net proceeds of the activity of function, a description of the activity or function, and the date on which the function was held or the period in which the activity occurred.⁵¹³ For fundraising events, donors must disclose if they purchased any entry tickets, raffle tickets, auction items or other memorabilia (if the amount paid falls above the applicable threshold).⁵¹⁴ The declarations relating to fundraising events can be inspected at the EFA office.⁵¹⁵
- 9.39** While the Inquiry was underway, there was intense media criticism of the practice of holding fundraising events.⁵¹⁶ Fundraising events, and in particular fundraising dinners, are a controversial form of fundraising as they give donors the opportunity to meet directly with party members, which can include ministers or shadow ministers. The media has interpreted fundraising events as a means to 'buy' lobbying time thus allowing wealthy citizens unequal access to members of the government and other politicians. Inquiry participants' concerns about fundraising events were discussed in Chapter 7.
- 9.40** Dr Norman Thompson, Director of The Greens Political Donations Research Project, claimed that there tighter disclosure requirements should apply to fundraising events:

I believe money spent for attending a fundraising event is qualitatively different from a direct donation of money to a political party or candidate. Attendance at such events allows the contributor to become acquainted with ministers and other politicians. Attendance at the fundraiser potentially gives the contributor an opportunity to lobby the politician about issues of concern. Therefore, I argue more information needs to be disclosed about fundraising events.⁵¹⁷

⁵¹² *Commonwealth PD (Senate)*, 15 May 2008, p 9

⁵¹³ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, p 38; *Election Funding Guide for Candidates and Groups for State Elections*, March 2007, p 46

⁵¹⁴ Election Funding Authority, *Election Funding Guide for Political Donors*, March 2007, p 11

⁵¹⁵ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, p 43;

⁵¹⁶ 'Sartor fundraising dinner invitation inappropriate: Greens', ABC, 18 February 2008, <www.abc.net.au/news/stories/2008/02/18/2165412.htm>; Benson S, ICAC inquiry: Liberal's \$60,000 slice of Wollongong pie, *Daily Telegraph*, 26 February 2008 <www.news.com.au/dailytelegraph/story/0,22049,23275153-5006009,00.html>; Steketee M, 'NSW scandal could happen anywhere', *The Australian*, 28 February 2008, <www.theaustralian.news.com.au/story/0,25197,23286698-5006784,00.html>; Benson S, 'NSW Libs to host \$1m fundraiser', 14 March 2008, *Daily Telegraph*, <www.news.com.au/dailytelegraph/story/0,22049,23372385-5006009,00.html> (accessed 10 June 2008)

⁵¹⁷ Submission 125a, Dr Norman Thompson, p 3

- 9.41** In the case of a table bought by a company for a fundraising dinner, Dr Thompson recommended that the names of the people attending the dinner be disclosed.⁵¹⁸ Further, Dr Thompson said that donations made through fundraising events should be labelled as such on the EFA's website, and clearly distinguished from direct donations.⁵¹⁹
- 9.42** In Dr Tham's opinion, the current disclosure requirements for fundraising events are adequate, but the information disclosed should be made more accessible.⁵²⁰ The accessibility of disclosure returns is discussed later in this chapter.
- 9.43** On the other hand, the NSW National Party was concerned that the disclosure requirements for fundraising events were too onerous for small, grassroots events. The NSW National Party therefore recommended that:

The disclosure threshold should be increased to \$1,500 and the requirement for specific details of each individual income item should only apply for functions and events where the total income for that function or even is more than \$10,000.⁵²¹

Valuation of in-kind donations

- 9.44** As noted in Chapter 7, both donors and recipients are required to declare in-kind donations (for example, printed material produced for a candidate at no cost) if the value of the donation exceeds the applicable threshold. The Committee heard that disclosure returns may undervalue the worth of in-kind donations, or their in-kind donations may be valued differently by the donor and the recipient.
- 9.45** The difficulty of valuing in-kind donations was acknowledged by Mr Greg Piper MP:
- In-kind donations to election campaigns are very significant, from the very grassroots of handing out on polling day to letterboxing beforehand, through to the assistance in preparation of materials or providing other services. It is very difficult, and I would suggest that there will always be a possibility for people to misrepresent the value of in-kind contributions.⁵²²
- 9.46** Mr Barry highlighted the importance of ensuring that reforms to the electoral funding scheme addressed the valuation of in-kind donations:

The important thing is that Parliament needs to consider very carefully such legislation to ensure that there is a workable way to value in-kind matters, if people do provide services in kind.⁵²³

⁵¹⁸ Submission 125a, p 3

⁵¹⁹ Submission 125, Dr Norman Thompson, p 7

⁵²⁰ Dr Joo-Cheong Tham, Senior Lecturer, Law Faculty, University of Melbourne, Evidence, 31 March 2008, p 11

⁵²¹ Submission 120, p 4

⁵²² Mr Piper, Evidence, 4 April 2008, p 26

⁵²³ Mr Barry, Evidence, 11 April 2008, p 5

Audit certificates

- 9.47 Parties, groups and candidates are required to have their declarations of donations and spending audited by a Registered Company Auditor.⁵²⁴ In relation to the provision of audit certificates, Mr Follett said:

I think it gives us another level of comfort from dealing purely with the parties or candidates. A third party comes in and reviews the documentation we have been provided with. The Act sets out the declaration or the words that the auditor must provide, so it give us an additional level of comfort compared with not having it.⁵²⁵

- 9.48 The NSW National Party was critical of the requirement that two audit certificates must be submitted with each funding claim. They recommended that ‘the audit certificates be incorporated onto the front page of each of the Claim and Declaration forms, as was previously the case.’⁵²⁶ The National Party also described the difficulties of finding a Registered Company Auditor to audit candidates’ claims, and recommended that this requirement be reviewed.⁵²⁷

- 9.49 Inquiry participants complained of the expense of retaining a Registered Company Auditor. Mr Eric Jones, for example, managed the campaign of a candidate for the Christian Democratic Party NSW in the 2007 State election. Mr Jones told the Committee that his candidate’s income and expenditure declarations consisted of two A4 pages, and that:

For audit statements setting out receipts of \$9029 and payments of \$8385 **WE HAD TO PAY \$495** to the Company Auditor ... I feel that for the small audit job involved and the statement amount involved the requirement and the fee was unreasonable.⁵²⁸

- 9.50 Mr Jones suggested that the requirement for a Registered Company Auditor be altered to allow the audit to be performed by a CPA Auditor or equivalent.⁵²⁹

- 9.51 The requirement to provide audit certificates would only become more expensive with more frequent disclosure. Dr Tham told the Committee that the cost of audit certificates should not be prohibitive as then ‘we are basically setting up another barrier to entry into politics into the electoral arena.’ Dr Tham suggested two alternatives:

... one could take the cue from the United Kingdom system where the audit requirement only applies when the income of the party exceeds a certain threshold ... the other way ... is that we could give thought to in kind public funding to smaller parties who are required to actually conduct an audit. So the Election Funding

⁵²⁴ Election Funding Authority, *Election Funding Guide for Parties for State Elections*, March 2007, p 39; *Election Funding Guide for Candidates and Groups for State Elections*, March 2007, p 47

⁵²⁵ Mr Follett, Evidence, 3 March 2008, p 19

⁵²⁶ Submission 120, p 2

⁵²⁷ Submission 120, pp 2-3

⁵²⁸ Submission 127, Mr Eric Jones, p 3, emphasis as per original

⁵²⁹ Submission 127, p 4

Authority, or it could be the NSW Electoral Commission, could organise and have paid through the public purse the cost of auditors to minor small parties.⁵³⁰

- 9.52 Mr Barry O'Farrell, Leader of the NSW Opposition, said that it would be reasonable to require an annual audit of disclosure returns. If disclosure was to be made more frequent, Mr O'Farrell did not believe that more frequent audits would be necessary.⁵³¹

Disclosure thresholds

- 9.53 The Committee heard little evidence concerning the appropriateness of the current disclosure thresholds. Some inquiry participants did, however, feel strongly that the current thresholds should not be increased to the higher Federal limits that were in place under the previous Federal Government.

- 9.54 The Committee notes the significant differences in disclosure thresholds between the four international jurisdictions examined in Chapter 4. Canada and the United States have low disclosure thresholds, of C\$200 and US\$200 respectively. The disclosure thresholds of New Zealand the United Kingdom are far higher, namely NZ\$10,000 and £5,000.

- 9.55 According to Professor Colin Hughes of the University of Queensland:

As for amounts, I believe that, given the rising scale of campaign expenditures, it is better to concentrate on identifying original sources rather than fine-tuning acceptable thresholds for disclosure and whether the recipient is the party, group or individual candidate.⁵³²

- 9.56 There was some support for full disclosure. For example, Mr Greg Piper MP supported disclosure of all donations and spending, with no threshold.⁵³³

- 9.57 Another issue is that of consistency: namely, whether there should be the same disclosure threshold for donations to parties, groups and candidates, or whether there should continue to be a lower disclosure threshold for donations to candidates (\$200, instead of the \$1,000 that the Premier has announced will be in place for parties and groups). The Federal Government has announced that it will introduce a flat disclosure threshold of \$1,000.

Political parties' internal financial dealings and donations policies

- 9.58 Another issue raised in the media during the Inquiry was the non-disclosure of the internal financial dealings of political parties, namely a party's financial position, including its assets and balance sheets.⁵³⁴ A related issue is whether parties should be required to publish their donations policies.

⁵³⁰ Dr Tham, Evidence, 31 March 2008, p 11

⁵³¹ Mr Barry O'Farrell MP, Leader of the NSW Opposition, Evidence, 31 March 2008, p 52

⁵³² Submission 42, p 5

⁵³³ Mr Piper, Evidence, 4 April 2008, pp 25-26

⁵³⁴ Mayne S, 'Revealed: ALP's \$10m loan with CommSec', *The Sun Herald*, 10 February 2008, p 4

9.59 The Public Interest Advocacy Centre said that political parties should be required to disclose their internal financial dealings:

... PIAC is of the view that the internal financial dealings of political parties should also be subject to full disclosure, as is the case for corporations. Any political financing regime that is based on the principles of fairness and accountability must recognise the advantage accrued wealth can give political parties and should therefore require full disclosure of financial circumstances of parties including capital assets.⁵³⁵

9.60 In evidence, Ms Robin Banks, Chief Executive of the Public Interest Advocacy Centre, argued that political parties should be treated in the same way as other organisations in receipt of public funding:

Many of those who currently make donations are open to more public scrutiny than political parties and their financial arrangements ... So I think that requiring disclosure of financial records is an important part of trying to gain the trust of the people...⁵³⁶

9.61 Similarly, Dr Tham told the Committee that the accountability of political parties should be increased, through improved transparency of their internal workings. Dr Tham recommended that parties should, as a requirement of registration, be obliged to lodge a complying party constitution setting out various internal governance procedures.⁵³⁷ Parties should also be required to lodge their donations policies, which would then be made public.

9.62 According to Dr Tham:

... the public is entitled to know how money influences politics. They are entitled to know for the purpose of accountability and for the purpose of informed voting. What we have here in terms of registered parties is that they clearly influence politics through the spending of money, and most notably through competitive spending. The public is therefore entitled to know how decisions are made and how that form of money is actually influencing politics.⁵³⁸

Committee comment

9.63 The Committee supports linking individual donations to the NSW electoral roll, and organisational donations to an ABN. This would ensure the accuracy of donor returns and facilitate cross-checking of donor and recipient returns. The Committee notes that the requirement to link organisational donations to an ABN is an interim measure, because the Committee has proposed to ban organisational donations.

⁵³⁵ Submission 145, p 5

⁵³⁶ Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre, Evidence, 10 March 2008, p 6

⁵³⁷ Submission 154, pp 36-37

⁵³⁸ Dr Tham, Evidence, 31 March 2008, p 8

- 9.64** While these measures are important for compliance purposes, there are some legitimate privacy concerns about online disclosure. This has been addressed in a number of overseas jurisdictions. In Canada, for example, the addresses of donors are not published on the Elections Canada website. While electoral roll and ABN details should be available for inspection, that does not mean that they need to be placed on the EFA's website.

Recommendation 21

That the Premier amend the disclosure scheme to introduce donor identification. Individual donors should be linked to the NSW electoral role, and organisations should be linked to an Australian Business Number.

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- 9.65** In relation to intra-party transfers being used to evade disclosing political donations, the Federal Government has proposed to change the definition of related political parties, to ensure that different divisions of a party are no longer treated as separate entities, for the purposes of applying the disclosure thresholds. The Committee is of the view that a similar definition should be introduced in New South Wales.

Recommendation 22

That the Premier amend the disclosure scheme to introduce a new definition of related political parties, modelled on the Federal Government's definition, to ensure that different divisions of a party are no longer treated as separate entities for the purposes of applying the disclosure thresholds.

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- 9.66** It is clear that there is a public perception that fundraising events can provide the wealthy with unequal access to decision makers. The Committee considers that its proposed ban on all but small individual donations would go some way to addressing this issue. In the Committee's view, political donations made through fundraising events must be open to scrutiny, because fundraising events facilitate direct contact between donors and recipients. This creates the perception that fundraising events may give donors an opportunity to develop a personal relationship with politicians and then use this relationship to advantage.
- 9.67** The Committee recommends tighter disclosure requirements for fundraising events: donations made through fundraising events must be clearly labelled to distinguish them from direct donations.

Recommendation 23

That the Premier amend the disclosure scheme to require that political donations made through fundraising events be clearly labelled to distinguish them from direct donations.

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- 9.68** The Committee is of the view that valuation of in-kind donations needs to be addressed, by ensuring that the EFA has the expertise and resources to test the values nominated by donors and recipients. The resources needed by the EFA are discussed in Chapter 11.

- 9.69** The cost of meeting audit requirements for disclosure returns should not be a barrier to participation in the political process. The Committee does, however, support the continued use of audits as a minimal external check on the veracity of declarations. Audits should be required no more frequently than annually, regardless of the frequency of disclosure. In addition, auditors other than Registered Company Auditors should be able to provide audit disclosure declarations, to reduce costs for parties, groups and candidates.
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Recommendation 24

That the Premier ensure that audit certificates to accompany declarations of donations and spending are required annually, regardless of the frequency of disclosure. Auditors other than Registered Company Auditors should be able to provide the required audit certificates, to reduce the high costs of audits.

- 9.70** If the electoral funding scheme were reformed and all but small individual donations of \$1,000 or less were banned, as recommended by the Committee, under the current disclosure thresholds there would no longer be any obligation to disclose the majority of donations (that is, donations to parties or groups). The disclosure threshold should therefore be less than \$1,000. The Committee recommends a single disclosure threshold of \$500 to apply to all donations. This would be a significant step to simplify the NSW scheme. The Committee considers that the NSW Government should then initiate discussions with the Federal Government, to encourage them to follow suit.
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Recommendation 25

That the Premier, as part of the ban on all but small individual donations, introduce a disclosure threshold of \$500 for all donations. Discussions should be initiated with the Federal Government to encourage them to introduce the same threshold.

- 9.71** If the Committee's proposed model for reform of the electoral funding scheme is not implemented, and the Premier does not ban all but small individual donations, the Committee would support a \$1,000 disclosure threshold for political parties to conform with the new Federal limit. The disclosure threshold for donations to groups is already \$1,000. The disclosure threshold for donations to candidates is \$200, much lower than that of the Federal Government, and the Committee considers that it would be a retrograde step to raise it.
- 9.72** The Committee believes that there may be merit in holding political parties to greater account, by maximising the transparency of their internal workings. The Committee believes that there may be merit in the proposals that political parties be required to lodge their annual financial statements with the EFA. While there has been insufficient evidence for the Committee to reach a conclusion on these issues, the Committee would encourage further examination of these issues, as a measure to restore public confidence in political parties.
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Recommendation 26

That the Premier investigate the merits of requiring political parties to lodge their annual financial statements with the Election Funding Authority.

Frequency and timeliness

- 9.73** Inquiry participants advocated more frequent and timely disclosure than at present. Under the current scheme donations are not disclosed until after an election. One of the strongest themes running through evidence to the Committee was the need for donations to be disclosed before an election, so that voters can make informed decisions at the ballot box.
- 9.74** This section discusses the optimum frequency for disclosure, as well as the possibility of online lodgement of disclosure returns as a means to simplify the disclosure process, and speed up the publication of disclosure returns.

Optimum frequency

- 9.75** The four international jurisdictions examined in Chapter 4 have taken a variety of approaches to how often donations, and sometimes spending, should be disclosed. Canada requires registered political parties to report quarterly, as a condition of receiving quarterly allowances, as well as requiring annual and post election disclosure. New Zealand requires registered parties to report annually and candidates to report after an election. In the United Kingdom, registered parties report quarterly, increasing to weekly during election campaigns. Parties must also provide an annual statement of accounts and a post-election report on electoral expenditure. The United States requires monthly reports from presidential candidates, and disclosure reports 12 days before and 20 days after an election.
- 9.76** As noted in Chapter 5, the Premier has announced his intention to move to six-monthly disclosure of donations. The Federal Government has followed the example set by New South Wales, and announced that it will also require six-monthly disclosure of political parties.
- 9.77** In New South Wales, donors and recipients are required to declare political donations above the applicable thresholds once every four years following a State or local government election. Parties, groups and candidates must also declare all electoral expenditure one every four years following an election. The current disclosure scheme is described in Chapter 5.
- 9.78** Save Our Suburbs supported more timely and frequent disclosure: "Timeous public disclosure of donations received and election expenditure should be mandated so that the media and the public can be rapidly informed of trends and of any transgressions."⁵³⁹

⁵³⁹ Submission 55, Save Our Suburbs, p 3

- 9.79** The EFA recognised that it was onerous to keep records for four years and recommended annual returns, in line with tax and other requirements.⁵⁴⁰ When asked for his opinion on the Premier's announcement that donations would be required to be disclosed every six months, Mr Barry said: '... annual returns would be a lot simpler for all of the players – the parties, the candidates and the donors. Biannual returns, or six-monthly returns, I think would make it even simpler for people.'⁵⁴¹
- 9.80** Mr O'Farrell acknowledged the difficulties of four-yearly disclosure: '... in asking volunteers to remember to do something every four years is a complicated process. Our first observation is that reporting should at the very least be annual.'⁵⁴² Mr O'Farrell recommended quarterly reporting as well as online lodgement of disclosure returns.
- 9.81** Other inquiry participants also supported quarterly disclosure returns. For instance, Dr Tham recommended quarterly returns for political parties and associated entities, increasing to weekly during election periods.⁵⁴³ Dr Tham agreed that more regular disclosure would ease the compliance burden on donors, parties, groups and candidates.⁵⁴⁴
- 9.82** ASH called for 'prompt and transparent reports at least quarterly and in the month before an election, to a public website maintained by the Election Funding Authority.'⁵⁴⁵
- 9.83** Ms Anita Tang from the NSW Cancer Council was another supporter of quarterly disclosure, because 'we are wanting to track specific policy debates, a particular piece of legislation, so annual reporting might not be frequent enough.'⁵⁴⁶
- 9.84** It was argued that if all donations were to be disclosed before an election, there would need to be a cut-off point before the election after which donations could not be accepted. Mr Greg Piper MP for example suggested a cut-off of one week before election day.⁵⁴⁷

Real-time disclosure

- 9.85** The Committee heard evidence in support of real-time (or instantaneous) disclosure, but there were questions about whether this would be practicable. Professor Colin Hughes advocated a system based on disclosure and maximum transparency, as opposed to restrictions on donations or spending. Professor Hughes argued for much more timely disclosure, including real-time disclosure in election periods:

⁵⁴⁰ Mr Follett, Evidence, 3 March 2008, p 3

⁵⁴¹ Mr Barry, Evidence, 11 April 2008, p 11

⁵⁴² Mr O'Farrell, Evidence, 31 March 2008, p 51

⁵⁴³ Submission 154, p 41

⁵⁴⁴ Dr Tham, Evidence, 31 March 2008, p 10

⁵⁴⁵ Submission 132, p 6

⁵⁴⁶ Ms Tang, Evidence, 3 March 2008, p 29

⁵⁴⁷ Mr Piper, Evidence, 4 April 2008, p 24

... in the absence of significant evidence of improper influence apart from the local government level, it would be preferable to concentrate on ensuring early access to comprehensive and accurate information about the amounts and sources of donations. It should be possible, and not very expensive, to set up a system whereby such information would be accessible to the public electronically on the day after receipt from the donor.⁵⁴⁸

- 9.86** The Australian Centre for Democracy and Justice also supported real-time disclosure, for both donations and spending, but questioned whether this was possible:

We believe that during an election campaign these expenses should be disclosed weekly or fortnightly along with political donations. Similarly, expenditure should be disclosed quarterly or monthly outside an election campaign. If real-time disclosures were possible we would view this as a very positive development but are concerned with the practicality of such an arrangement.⁵⁴⁹

- 9.87** When questioned on the desirability of real-time disclosure, Dr Tham responded that it was unnecessary.⁵⁵⁰

- 9.88** The Committee notes that New Zealand has not implemented real-time disclosure, but big donations (a donation over \$20,000 by itself, or in combination with other donations in the previous 12 months) are required to be disclosed within 10 days of receipt.⁵⁵¹ Similarly, the United States requires donations over US\$1,000 made during an election campaign to be reported within 48 hours of receipt.

- 9.89** Ms Clover Moore MP, Member for Sydney, supported more timely disclosure, but opposed real-time disclosure:

As an Independent, my fundraising and accounting is undertaken by volunteers who could not provide for the full-time or routine involvement presupposed by real time disclosure. The problem is significantly compounded during the hectic campaign period. A change in the system must not result in a systemic bias favouring major parties with centralised resources.⁵⁵²

- 9.90** The EFA explained that while they supported real-time, or continuous, online disclosure, the information entered should not be published instantaneously, but should be verified first. This would prevent fraudulent or malicious data input, such as a person going online and declaring a non-existent donation, to discredit a particular party or candidate.⁵⁵³

⁵⁴⁸ Submission 42, p 6

⁵⁴⁹ Submission 108, Australian Centre for Democracy and Justice, p 11

⁵⁵⁰ Dr Tham, Evidence, 31 March 2008, p 10

⁵⁵¹ Submission 6, Associate Professor Andrew Geddis, p 10

⁵⁵² Submission 153a, Ms Clover Moore MP, p 1

⁵⁵³ Mr Barry, Evidence, 3 March 2008, p 12

- 9.91** Mr Follett said that the need to verify the data entered would lead to a time-lag between when the information is disclosed and when that information is made publicly available:

I do not see any technical impediment to making that information available on a very short time frame. The questions are more around the validity of the data and giving the chance to the other side of the equation to say, "Yes, that record is correct."⁵⁵⁴

Online lodgement

- 9.92** Many inquiry participants supported online lodgement of disclosure returns. The *Election Funding Act 1981* (the Act) does not allow for online lodgement, as it was introduced well before the Internet became a part of everyday life. Hence the disclosure scheme is paper-based, with donors and recipients being legally required to submit hard copies of their disclosure returns.
- 9.93** Mr Martin Laverty, Interim State Director, the Liberal Party NSW, described his party's experience of submitting disclosure returns:

We, at the moment, are required to provide every four year reports on our revenues and reports on our expenditure for the for-year period. Mr Chairman, it might surprise you to learn that means we physically deliver hundreds of pages of documents that the EFA are then required to wade through over a period of time... That is not necessary in 2008 and a period where you can lodge a BAS statement and other financial disclosures to other bodies electronically and on a more regular basis.⁵⁵⁵

- 9.94** The Committee heard that once the paper forms are delivered, the EFA faces a huge data entry task. According to Mr Follett: 'It is fairly onerous to process a manual piece of paper. Some of the declarations are quite sizeable; they come to use in ring binders and there is a lot of paper behind it.'⁵⁵⁶

- 9.95** The submission from the EFA expanded on the problems of processing paper forms:

Currently the volume of data entry to be made is extensive and requires significant resources to be applied to the task in a very short period of time. The fact that the material is 'double handled' as the EFA staff are then required to data enter what is provided by the parties, groups, candidates and donors increases the risk of errors being made. At the last State election there were: 18 parties, 17 groups, 870 candidates and 4,973 donors and the total number of records entered was approximately 180,000.⁵⁵⁷

⁵⁵⁴ Mr Follett, Evidence, 11 April 2008, p 12

⁵⁵⁵ Mr Martin Laverty, Interim State Director, Liberal Party of Australia (New South Wales Division), Evidence, 31 March 2008, p 54

⁵⁵⁶ Mr Follett, Evidence, 3 March 2008, p 4

⁵⁵⁷ Submission 106, p 3

9.96 The EFA called for the Act to be updated to allow them to make use of modern technology:

The system provided for in the Election Funding Act 1981 (the Act) is very much paper-based and has not been updated to reflect the changes now possible with modern information technology. For example, returns by registered political parties, groups, candidates or donors could be made on-line.⁵⁵⁸

9.97 The EFA submission added: ‘One of the most useful reforms would be to require online lodgement of declarations by parties, groups, candidates and donors in real time.’⁵⁵⁹ In response to a question taken on notice, Mr Barry advised that ‘there is some uncertainty about whether a declaration made on-line (and therefore not signed) would be a valid declaration unless an amendment was made to the Act.’⁵⁶⁰

9.98 Criticisms of the EFA’s website are raised in Chapter 11.

Should online lodgement be compulsory?

9.99 The EFA recommended compulsory online lodgement of disclosure returns. When questioned on whether online lodgement should be optional or compulsory, Mr Barry answered:

Compulsory. It is information that would only be handled once. At the moment that information is being entered onto forms. The forms may then have to be downloaded from the website and then somebody is handwriting onto those forms and sending them into our office. Our staff are re-keying it. Across the State the information has been handled several times. We would like it as compulsory.⁵⁶¹

9.100 However, the Committee heard that it was mainly volunteers who prepare disclosure returns, and that compulsory online lodgement may disadvantage them. When asked whether it would be beneficial for the EFA to provide a software program which would be used to record the required data, Mr Paul Davey, Vice Chairman, NSW National Party, said:

I am sure it would help, but you still have to cater for those people are not computer literate. I know plenty of people who, when you give them a CD and say, “Shove it in your computer” – and I am a bit like this myself, I have to confess – look at you and say, “Whoa!” I think we have to be mindful of the fact that there a lot of people to whom this is all pretty foreign stuff.⁵⁶²

⁵⁵⁸ Submission 106, p 1

⁵⁵⁹ Submission 106, p 3

⁵⁶⁰ Answers to indicative pre-hearing questions not answered during evidence 3 March 2008, Mr Colin Barry, Chairperson, Election Funding Authority of New South Wales, Question 19, p 2

⁵⁶¹ Mr Barry, Evidence, 11 April 2008, p 16

⁵⁶² Mr Davey, Vice Chairman, National Party of Australian New South Wales Branch, Evidence, 4 April 2008, p 47

- 9.101** Mr Davey argued that the EFA should therefore allow people to choose between lodging declarations online or on paper. Mr Davey also claimed that the limited availability of broadband Internet in some rural areas could pose problems:

It is very easy for us in Sydney, for instance, to think that every man and his dog have broadband, they are on the Internet and are fully au fait with it. But if you have volunteers who are branch or electorate treasurers somewhere out in the western division of New South Wales, broadband does not exist, they are on a dial-up line ... I think it is very important that we do keep in mind the rural and remote areas of the State, and that there is a lot of country out there.⁵⁶³

Committee comment

- 9.102** In relation to political donations, the Committee supports more regular disclosure, to ease the record keeping burden on donors and recipients, and improve the accuracy of the data provided. Donation declarations should be required to be submitted every six months, to bring about consistency between the NSW and Federal schemes. For expenditure by parties, groups and candidates, the Committee recommends that expenditure returns be required every six months, in line with the donations reporting requirement. Timely disclosure of expenditure is needed particularly if parties are to be given some form of ongoing funding to support their administration costs.
- 9.103** There is considerable support for pre-election disclosure of donations in the current political climate. In the United Kingdom, where there are no donations caps, there is a requirement for weekly disclosure of all donations over £5,000 during campaign periods. However, the Committee has recommended a system of small individual donations capped at \$1,000 in Chapter 7. In Canada, where a similar regime of donation caps applies, disclosure returns are lodged quarterly with no special arrangements for the election period. The Committee believes the caps on donations and the restrictions on who can donate meet the community's concerns.

Recommendation 27

That the Premier amend the disclosure scheme to require disclosure of donations and expenditure every six months.

- 9.104** The six-monthly disclosure returns for donations and spending should be published on the EFA's website within one month of being submitted. This would facilitate timely disclosure, but also allow sufficient time for parties, groups, candidates and donors to verify the information submitted.

⁵⁶³ Mr Davey, Evidence, 4 April 2008, p 45

Recommendation 28

That the Premier amend the disclosure scheme to require that six-monthly disclosure returns be published on the website of the Election Funding Authority within one month of being submitted.

- 9.105** The Committee does not support real-time disclosure, due to the difficulty of ensuring that the data provided is verified before it is published. The Committee does, however, support real-time or continuous entry of donations and spending on the EFA website. For example, a donor should be able to make a donation at any point in time, and then immediately go on the Internet to declare that donation to the EFA. Consideration should be given to amending the Act, to clarify that a declaration lodged on-line is a valid declaration.
- 9.106** The Committee is convinced of the benefits of online lodgement: it would make it easier for the EFA to process disclosure returns; increase the accuracy of the data, and increase the amount of data available. Most importantly, it would allow information to be available to the public much sooner. Therefore, the Committee is of the view that online lodgement of disclosure returns should be compulsory. The Committee recognises that some volunteers may experience difficulties with online lodgement, but considers that the benefits for the disclosure scheme as a whole are so great as to outweigh the difficulties.
- 9.107** Online lodgement should be introduced prior to the 2011 State election, to allow all those concerned to adjust gradually before the peak demand period of election time. The Committee supports thorough investigation of all options to assist volunteers with online disclosure, for example face-to-face training sessions run by the EFA prior to the 2011 State and 2012 local government elections. The resources needed to implement online lodgement are discussed in Chapter 11.
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Recommendation 29

That the Premier amend the disclosure scheme to introduce online lodgement of disclosure declarations for donations and expenditure. Online lodgement should:

- be compulsory
- facilitate real-time or continuous entry of donations and spending data
- be introduced before the 2011 State election
- be accompanied by training and other assistance to parties, groups, candidates and donors.

The *Election Funding Act 1981* should be amended to ensure that a declaration lodged online is considered valid.

Interim reforms

- 9.108** A number of the interim reforms announced by the Premier apply to the disclosure of donations and election expenditure. These reforms include more frequent disclosure and online publication of donations, lower disclosure thresholds, and disclosure of loans and other credit arrangements.

Twice-yearly disclosure of donations and online publication of returns

- 9.109** The Premier's announcement included the introduction of six-monthly disclosure of donations in June and December each year, with the donations disclosed to be published on the EFA's website. The submission from the Department of Premier and Cabinet said: 'These changes to the disclosure regime are significant and will provide the community with more timely updates on donation activity.'⁵⁶⁴
- 9.110** In response to the proposal for biannual disclosure, Dr Norman Thompson, Director, The Greens Political Donations Research Project, noted that 'this means all the money coming to the parties between December 2010 and the next state election in March 2011 won't be available to the public when they vote. There will be hundreds of thousands of dollars hidden from voters.'⁵⁶⁵

Lower disclosure threshold

- 9.111** The Premier announced that the disclosure threshold for parties would be lowered to \$1,000 (from \$1,500), as a consequence of the Federal Government's decision to lower the disclosure threshold for parties, groups and candidates to \$1,000 (from \$10,500). According to the submission from the Department of Premier and Cabinet:

The reduced disclosure threshold will make the details of a broader range of donations available for public scrutiny. This will ensure that electors have access to more information about donations when casting their vote.⁵⁶⁶

- 9.112** The Committee notes that the disclosure threshold for candidates remains \$200, and for groups \$1,000.

Disclosure of loans and other credit facilities

- 9.113** The Premier proposed the compulsory disclosure of loans and other credit facilities. The rationale behind the proposal was outlined in the submission from the Department of Premier and Cabinet:

In order to further strengthen the quality of disclosure, the *Election Funding Act* will be amended to clarify that the provision of loans and other credit facilities to parties,

⁵⁶⁴ Submission 182, Department of Premier and Cabinet, p 2

⁵⁶⁵ Submission 125a, p 1

⁵⁶⁶ Submission 182, p 3

MPs, councillors and candidates are subject to the disclosure requirements under Part 6 of the *Election Funding Act*. This reform will remove any uncertainty in the existing provisions which may allow parties and candidates to avoid disclosure of loans. These changes are consistent with the Commonwealth approach.⁵⁶⁷

- 9.114** The Committee did not receive any direct evidence on this proposal. The issues associated with loans and other credit facilities are discussed in Chapter 7.

Committee comment

- 9.115** As noted earlier in this chapter, the Committee supports more frequent, six-monthly disclosure of donations, achieving as it does consistency between the NSW and Federal schemes. The Committee is concerned that the Premier did not also propose pre-election disclosure of donations. In the Committee's view, this is of paramount importance.
- 9.116** As an interim measure prior to the Committee's proposed model being implemented, the Committee supports the proposal for a lower disclosure threshold of \$1,000 for political parties, introducing as it does a uniform threshold for political parties between the NSW and Federal Governments.
- 9.117** The Committee also supports the Premier's proposal to introduce legislation to clarify that loans and other credit facilities must be disclosed. In addition, in Chapter 7 the Committee supported greater regulation of loans and other credit facilities. The Committee recommended that bank loans to a candidate to fund their campaign should be allowed, but only up to the individual donation limit, and that non-bank loans and other informal credit arrangements be banned.

Recommendation 30

That the Premier implement his proposal to make compulsory the disclosure of loans and other credit facilities.

⁵⁶⁷ Submission 182, p 3

Chapter 10 Local government

Local government is the level of government closest to the people. It has a direct and immediate impact on peoples' daily lives through the services it provides. Corruption-proofing local government is vital, as is ensuring a level playing field for local government elections. The current electoral funding and disclosure scheme was not designed with local government in mind. Because of this the intricacies of local government have never been considered in their own right. While local government deserves nothing less than close and careful attention in the process of reforming the electoral funding and disclosure scheme, this inquiry is not placed to do that. Rather, the Committee identifies areas to be addressed in the ongoing consultation about reforming the electoral funding and disclosure scheme.

Much of the discussion in previous chapters concerning the key elements of public funding, donations, spending and disclosure, is relevant to local government. This chapter examines the advantages and disadvantages of implementing these reforms at local government level. The chapter concludes by considering whether it is feasible to make changes in time for the September 2008 local government elections.

Applying the electoral funding scheme to local government

10.1 In principle, the same provisions should apply to both local and State government. However, it is impossible to have a one-size-fits all model, given the complexity of local government. Evidence to the Committee highlighted that local government elections are far more complex than those for State government. The challenges include the number of council areas, the different sizes of council areas, the number of candidates standing for office, and the proportion of candidates who stand as independents. Therefore to devise an electoral funding scheme is not as easy as simply applying the same provisions to local government, as have been recommended by the Committee for State government.

Complexity of local government elections

10.2 The complexity of local government elections was described by Mr Colin Barry, Chairperson of the Election Funding Authority (EFA):

These elections are far more complex than State elections – make no bones about it ... I mentioned before that a State election has 870 candidates, of which something like 85 per cent are endorsed by a registered political party, and the registered political parties impose considerable discipline on their candidates. Now you move from that 870 to 5000, of which 90 per cent of them are Independents and are putting their hand up for something that they think is an honourable thing to do, and all of a sudden they are confronted with the Election Funding Act with a whole raft of provisions and obligations there and the complexities of whether or not they form a group. It is a very complex environment. It is not an easy one to manage.⁵⁶⁸

⁵⁶⁸ Mr Colin Barry, Chairperson, Election Funding Authority of New South Wales, Evidence, 11 April 2008, pp 13-14

10.3 Mr Barry also explained the difficulties of dealing with different sized councils:

In the State election we had 93 Legislative Assembly districts, and there are roughly the same number of voters in them, whilst they are geographically small and large. In local government some local councils have 160,000 voters ... They have four times the size of a State district ... On the one hand you have a council area of 160,000 voters, nearly four times the size of a State district, and on the other hand we have got an electorate with 800 voters.⁵⁶⁹

10.4 To further underscore the complexity, Mr Barry added: ‘Whereas at the State election for the Upper House it is one election, in local government – as I said before – we are running 300 elections. Now that is complex.’⁵⁷⁰

Consistency between provisions for State and local government

10.5 The Committee heard from a number of inquiry participants that the same provisions should apply at local and State government level. The Local Government and Shires Association advised that it ‘has a longstanding policy of support for public funding, transparency of donations, and consistent regulation of donations across all three spheres of government.’⁵⁷¹ Councillor Bruce Miller elaborated: ‘I don’t think the public perceive elected politicians as more or less open to influence depending on which level of government they represent.’⁵⁷²

10.6 North Sydney Council also believed that the same provisions should apply to local and State government: ‘It is considered that the same overarching principles and controls should be equally applied irrespective of whether it is a State or a Local Government election.’⁵⁷³ This opinion was shared by Councillor Ian Longbottom, Mayor of Lane Cove: ‘Anything we do must cover the three levels. As I said, we are all in this together; let us make it a level playing field.’⁵⁷⁴

Committee comment

10.7 The Committee recognises the complexity of local government elections, and the diversity between different local government areas. Careful thought must therefore be given to how to apply the provisions of the electoral funding scheme to local government. The following sections consider how the arguments put in previous chapters about public funding, donations, spending and disclosure should apply to local government.

⁵⁶⁹ Mr Barry, Evidence, 11 April 2008, p 15

⁵⁷⁰ Mr Barry, Evidence, 11 April 2008, p 14

⁵⁷¹ Answers to questions on notice taken during evidence 10 March 2008, Cr Genia McCaffery, President, Local Government Association of NSW, and Cr Bruce Miller, President, Shires Association of NSW, p 1

⁵⁷² Tabled document, Councillor Bruce Miller, Shires’ Association of NSW, *Draft answers to the Committee’s questions*, 31 March 2008, p 4

⁵⁷³ Submission 135, North Sydney Council, p 2

⁵⁷⁴ Cr Ian Longbottom, Mayor, Lane Cove Council, Evidence, 4 April 2008, p 11

Public funding

10.8 A contested issue was whether public funding should be provided for local government elections. Not surprisingly, many within the local government sector argued that it should. If public funding was provided, this would raise questions in relation to the eligibility requirements for public funding, and how to determine an adequate level of public funding. Of concern to local government representatives was how public funding would be financed, and whether local government should be expected to foot the bill.

Should public funding be extended to local government?

10.9 Previous chapters have described the reasons why public funding of State government elections was introduced in 1981, namely to prevent corruption and undue influence, and to level the playing field. There is no reason why this rationale should not also apply to local government, and it could be argued that it is in fact more relevant, given the potential for donors to exert undue influence.

10.10 Mr Barry O'Farrell, Leader of the NSW Opposition, supported public funding of local government elections: 'When you consider that local councillors can have greater executive power than almost half of the Parliament, there is a need for it.'⁵⁷⁵

10.11 Similarly, The Greens NSW said: 'There would be wide support for public funding of local council elections, bringing local council elections into line with state and federal elections.'⁵⁷⁶

10.12 The Public Interest Advocacy Centre argued that public funding was needed for local government elections, due to the close ties between councillors and council clients:

... at local government level, there is greater involvement of councillors with individual constituent proposals. It is therefore particularly important that accountability and transparency is strongly mandated and enforced.⁵⁷⁷

10.13 The Residents' Action Network, a Port Macquarie-based community organisation, advocated public funding, because 'as it is, the current situation clearly favours those with access to political party or developer funding.'⁵⁷⁸

10.14 The Local Government and Shires Association supported public funding for local government elections. Councillor Genia McCaffery, President of the Local Government Association told the Committee that if there was no public funding, then there needed to be tighter regulation of the current scheme of private finance.⁵⁷⁹

⁵⁷⁵ Mr Barry O'Farrell MP, Leader of the NSW Opposition, Evidence, 31 March 2008, p 52

⁵⁷⁶ Submission 121, The Greens, p 8

⁵⁷⁷ Submission 145, Public Interest Advocacy Centre, p 7

⁵⁷⁸ Submission 77, Residents' Action Network, p 2

⁵⁷⁹ Cr Genia McCaffery, Mayor of North Sydney and President of the Local Government Association of New South Wales, Evidence, 10 March 2008, p 20

- 10.15** As with public funding for State government elections, inquiry participants suggested that public funding could be provided through in-kind support such as advertising resources. Councillor Warren Welham, Mayor of Wyong Shire Council, said:

I would support public funding of campaigns. It might not be in a dollar figure but in resources. You may get a council or the Electoral Commission purchasing space in newspapers and allocating that to candidates or purchasing time on radio and allocating that to candidates once nominations are closed. They may have preferred tenderers for printing services and there is an allocation of a letterbox drop and a flyer.⁵⁸⁰

- 10.16** While a number of inquiry participants supported the introduction of public funding for local government elections, the Committee also heard that public funding could raise a range of problems, including the potential for an escalation of campaign spending. As was noted in Chapter 8, the introduction of public funding for State government elections in 1981 did not rein in campaign spending. Instead, public funding has been used to supplement the increasing political donations financing election campaigns.

- 10.17** Mr Peter Draper MP, Member for Tamworth, questioned whether public funding was needed for local government elections: 'I think we just encourage people to spend more money when it is not necessary to spend it in the first instance.'⁵⁸¹

- 10.18** Another possibility is for public funding to act as an enticement to people considering standing for public office, thus increasing the number of candidates. The concern here is the possible emergence of nuisance candidates, who only stand for election in the hope that they will be eligible for public funding.

- 10.19** These issues again highlight the difficulty of introducing a system of public funding for local government elections. In the words of Councillor Longbottom:

I do support public funding, but I do not know how we get to that. As I said, 58 candidates in Lane Cove – do you give them all \$5,000? If they do not get elected, how do you get the money back? Do you go for the money? I do not know how you do this.⁵⁸²

Eligibility

- 10.20** If public funding was introduced for local government elections, it must be preceded by detailed consideration of eligibility requirements. For State government elections, the eligibility criteria for receiving public funding are that candidates must receive at least 4% of the first preference vote, or be elected.

- 10.21** Eligibility criteria should not disadvantage minor parties or independents, or new entrants, as it has been argued happens with public funding for State government elections. This is of

⁵⁸⁰ Cr Warren Welham, Mayor, Wyong Shire Council, Evidence, 4 April 2008, p 14

⁵⁸¹ Mr Peter Draper MP, Member for Tamworth, Evidence, 31 March 2008, p 69

⁵⁸² Cr Longbottom, Evidence, 4 April 2008, p 3

particular importance, given that the majority of candidates for local government are independents. Councillor Longbottom told the Committee:

I do support public funding but my major concern is that if we go this route to complete public funding and this money is paid after the event, how does an Independent or a candidate from a small party raise the funds to enter the race.⁵⁸³

10.22 This issue was also raised by Councillor Judy Lambert of Manly Council:

Linked with that abolition of donations it would be essential ... that there are mechanisms in place to ensure political equity, and Mayor Longbottom has referred to the challenges faced by smaller parties and individuals running as independents. That could perhaps be addressed by an allocation arrangement prior to the election, whether that be a loan or on some other basis.⁵⁸⁴

Adequacy

10.23 If a scheme of public funding were to be introduced, it would be necessary to determine an adequate but not excessive level of funding. The Committee heard little concrete evidence on this issue. Indeed, Councillor McCaffery told the Committee that the Local Government and Shires Association had not done any work on the level of public funding that it would like to see for local government elections.⁵⁸⁵

10.24 As described earlier, there are significant differences in the size of councils, as well as great diversity between metropolitan and rural councils. These issues would need to be considered in determining an appropriate level of public funding.

10.25 Several inquiry participants gave evidence about the diversity between rural areas, including Ms Robin Banks, Chief Executive Officer of the Public Interest Advocacy Centre: 'The diversity of communities in the bush is significant and, I think, very misunderstood by those who live in the city. So it is important to get that diversity in government across the State, but particularly in rural areas.'⁵⁸⁶

10.26 Councillor Miller of the Shires Association also described the diversity between rural areas:

... particularly in rural and regional areas, is that the type of funding that is made available for election campaigns is certainly different to perhaps what is the growth centres and metropolitan area ... Just to give you an example of that, and I can speak from my own campaign at my last election where I know that in filling out the returns after the election I was the biggest spender in my election in Cowra. There were 22 or 24 candidates for 11 positions and I actually spent \$1,000 on my campaign, and that was the most spent by any candidate.

⁵⁸³ Cr Longbottom, Evidence, 4 April 2008, p 1

⁵⁸⁴ Cr Judith Lambert, Manly Council, Evidence, 4 April 2008, p 2

⁵⁸⁵ Cr McCaffery, Evidence, 10 March 2008, p 26

⁵⁸⁶ Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre Evidence, 10 March 2008, p 8

Many do not spend any money at all and certainly I am aware of others around the rural and regional parts that may have spent \$80 or \$100.⁵⁸⁷

10.27 Similar comments came from Councillor Neville Castle, Mayor of Lithgow City Council:

In our last election I do not think any particular group spent more than \$3,000 in total. So, some of the discussions as far as electoral funding, I would suggest in many regional parts, not to be to such an extent as it is in city areas.⁵⁸⁸

10.28 Councillor Welham told the Committee that approximately \$20,000 was needed for a 'decent campaign' in Wyong. Councillor Welham attributed this cost to the large number of media outlets in the area that candidates needed to cover.⁵⁸⁹

10.29 Mr Draper agreed that there are much lower spending costs for local government candidates in rural areas:

In local government, traditionally you do not have the expenditure that you need in a State campaign. I can only speak from having watched the local government elections in my area over quite a number of years with a great deal of interest. The average person up there would spend \$2,000 at the most. That is a few leaflets and maybe one T-shirt for every booth or something.⁵⁹⁰

10.30 The only evidence that the Committee heard concerning the costs of campaigns in Sydney came from Councillor McCaffery, Mayor of North Sydney Council, who told the Committee that her campaigns cost \$20,000.⁵⁹¹

10.31 Another complicating factor is that some mayors are popularly elected every four years, as part of the general election, whereas others are elected annually by a vote of councillors.⁵⁹² Consideration would need to be given to whether candidates running for popular election as mayor should receive a higher level of public funding.

10.32 Those inquiry participants who did make concrete recommendations on an appropriate level of public funding for local government elections, suggested a level much lower than for State government elections. Dr Norman Thompson, Director of The Greens Political Donations Research Project suggested that the funding pool be calculated based on a maximum of 50c per voter, with the total cost therefore being approximately \$2.4 million.⁵⁹³

⁵⁸⁷ Cr Bruce Miller, Mayor of Cowra and President of the Shires Association of New South Wales, Evidence, 31 March 2008, p 59

⁵⁸⁸ Cr Neville Castle, Mayor, Lithgow City Council, Evidence, 4 April 2008, p 14

⁵⁸⁹ Cr Welham, Evidence, 4 April 2008, p 15

⁵⁹⁰ Mr Draper, Evidence, 31 March 2008, p 69

⁵⁹¹ Cr Genia McCaffery, Mayor, North Sydney Council, Evidence, 4 April 2008, p 4

⁵⁹² NSW Department of Local Government and Local Government and Shires Association, *Becoming a councillor*, April 2008, <www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Becoming_A_Councillor.pdf> (accessed 28 May 2008)

⁵⁹³ Dr Norman Thompson, Director, Greens Political Donations Research Project, Evidence, 31 March 2008, p 38

Source of public funding for local government elections

- 10.33** Local council representatives questioned how public funding for local government election campaigns would be financed. The Committee heard that local councils are already stretched: in addition to the rising cost of service provision, the costs of staging elections are also on the increase. Several inquiry participants suggested that it would be untenable to expect local councils to foot the bill for the introduction of public funding.
- 10.34** This view was encapsulated by Lithgow City Council:
- Local government is already struggling to meet the increasing demands of its community, fulfil additional responsibilities the State government has passed on and maintain aging infrastructure due to the Government's rate pegging limit ... any public funding for local government elections cannot be funded by ratepayers.⁵⁹⁴
- 10.35** Similarly, Ms Penny Holloway, General Manager of North Sydney Council, said:
- I can just imagine that if public funding does become a reality, it will be the councils that will have to provide the public funding, because currently we have to pay for our own elections and they cost a lot of money ...
- If councils were required to provide funding to candidates, as opposed to funding coming from some other source, like the State Government, that would be crippling for councils.⁵⁹⁵
- 10.36** The local government representatives appearing before the Committee underscored the substantial increases in the cost of holding the 2008 elections. For example, inquiry participants estimated that the 2008 election for North Sydney Council would cost \$260,000,⁵⁹⁶ for Lithgow City Council \$300,000,⁵⁹⁷ for Shoalhaven City Council \$500,000⁵⁹⁸ and for Wyong Shire Council \$700,000.⁵⁹⁹
- 10.37** Councillor Welham complained about the \$700,000 predicted cost of holding an election in his area: 'It is an enormous figure that, at the end of the day, our ratepayers are going to wear, whereas we could run it efficiently at a council level for about \$100,000...'⁶⁰⁰
- 10.38** In response to these complaints, Mr Barry told the Committee that the increased costs of holding the elections resulted from changes to centralise administration, and provide a consistent level of service State-wide. Mr Barry acknowledged that it is expensive for councils to hold elections, but said that:

⁵⁹⁴ Submission 86, Lithgow City Council, p 1

⁵⁹⁵ Ms Penelope Holloway, General Manager, North Sydney Council, Evidence, 4 April 2008, p 5

⁵⁹⁶ Ms Holloway, Evidence, 4 April 2008, p 5

⁵⁹⁷ Cr Castle, Evidence, 4 April 2008, p 16

⁵⁹⁸ Cr Gregory Watson, Mayor, Shoalhaven City Council, Evidence, 4 April 2008, p 21

⁵⁹⁹ Cr Welham, Evidence, 4 April 2008, p 16

⁶⁰⁰ Cr Welham, Evidence, 4 April 2008, p 16

... it is an expensive operation that has to be paid for. The Federal Government pays for its elections. The State Government pays for its elections. And local government is required by law to pay for its elections. I am doing the best I can in that environment.

It is a difficult environment to manage because I have got the legal obligation to run these elections, and the council has got a legal obligation to pay the bill. That is not the best commercial environment that anyone wants to be in ...⁶⁰¹

- 10.39** Mr Barry added: 'I am not going to enter into the argument about what it cost last time because quite frankly councils do not really know it cost them last time because they provided so much of what you call 'in-kind' services.'⁶⁰²
- 10.40** If local government is not in a position to provide public funding for their own election campaigns, public funding could only be provided if it was funded by the State Government. In this case, a crucial question, as was raised in relation to public funding for State election campaigns, is whether the community is prepared to pay for public funding for local government election campaigns. According to Councillor Welham:

I think that is a debate the community probably needs to have: whether they believe the democracy we have at a local level should be publicly funded or whether they are happy for that money to continue to come out of private sources?⁶⁰³

Committee comment

- 10.41** The Committee received very little evidence about public funding for local government election campaigns compared with public funding for State government elections. Even the body representing local councils, the Local Government and Shires Association, had few concrete proposals. For example, while supporting public funding for local government elections, the Association had not done any work on an appropriate level of funding. This lack of concrete evidence should perhaps not be surprising, given that there is no accessible data on the level of donations, or spending, for local government elections. The Committee considers that such data, which will be available electronically for the first time following the September 2008 local government elections, will be crucial in investigating public funding for local government elections.
- 10.42** The Committee considers that the principles underlying the public funding scheme for NSW State elections, namely to prevent corruption and to level the playing field, are equally applicable to local government. However, the introduction of public funding for local government would raise a number of issues that need in-depth consideration, including eligibility criteria, how to set funding levels and how to distribute funding given the diversity of local councils.
- 10.43** Of particular concern to the Committee is the potential for public funding of local government elections to lead to an escalation in the cost of election campaigns, and an increase in the number of candidates standing for office, including nuisance candidates. On

⁶⁰¹ Mr Barry, Evidence, 11 April 2008, p 15

⁶⁰² Mr Barry, Evidence, 11 April 2008, p 15

⁶⁰³ Cr Welham, Evidence, 4 April 2008, p 17

the other hand, the Committee recognises that it may be unfair to ban all but small individual donations, while not providing any alternative funding source. If public funding were introduced, the Committee would support a lower level of funding than for State government elections.

- 10.44** The Committee is of the view that councils should not be expected to foot the bill if public funding were introduced for local government elections. Local councils already face significant financial pressures, and it would be unreasonable to expect them to fund a new electoral funding scheme. This would, however, mean that public funding would have to be financed by the State Government and therefore NSW taxpayers. The Committee supports community consultation about an appropriate level of funding for local government elections.
- 10.45** In short, the Committee supports the introduction of public funding for local government elections, to deter corruption and undue influence, but acknowledges that this proposal raises many complex issues that must be addressed before any scheme could be introduced.

Recommendation 31

That the Premier investigate public funding for local government election campaigns to deter corruption and undue influence. Public funding could be financed by the State Government. A detailed and wide-ranging review should be undertaken, to develop a proposed design for the scheme. The review should involve extensive stakeholder consultation, and community consultation to ascertain what level of electoral funding would be supported by the public.

Political donations

- 10.46** The public outcry following the ICAC's revelations of impropriety at Wollongong Council demonstrates the level of community concern about developer donations at the local level. This area is in urgent need of reform, but there is no consensus among local councils about how donations should be regulated. This was illustrated by the personal submission from Councillor McCaffery, which described how this matter had been debated over several years at the annual Local Government and Shires Association conference. Councillor McCaffery concluded: 'The history of debating this issue within Local Government ... highlights how difficult it is to achieve consensus on regulating political donations and election funding.'⁶⁰⁴
- 10.47** This section considers the current level of donations and their impact on local government, as well as examining support for a ban on donations.

Current levels

- 10.48** The Committee has no information on the number of donations for local government elections, the total value or sources of donations. This is because records for the 2004 and previous elections are not available electronically. The EFA has only recently developed a database for electronic processing of disclosure returns, and thus far only State government

⁶⁰⁴ Submission 103, Cr Genia McCaffery, p 2

records have been entered into this database. The records are available in hard copy at the EFA's premises, but given the number of local government areas and the number of candidates standing for election, the task of reviewing these records is beyond the resources of the Committee, and has not been attempted by anyone.

- 10.49** This issue highlights the need for good, reliable electronic records. The Committee understands that the lack of electronic records for local government elections will be remedied for the September 2008 local government elections. Issues relating to the EFA's website and access to electronic records are discussed in the following chapter.

Impact on local government

- 10.50** The influence of developer donations is a contentious issue at local government level. A substantial number of inquiry participants were passionate in their opposition to developer donations, and their alleged negative impacts on their local areas.

- 10.51** The Independent Commission Against Corruption (ICAC) outlined the corruption risk posed by developer donations at local government level:

By accepting substantial electoral donations from developers councillors can place themselves in a position of repeatedly having to face conflicts of interest when making decisions on developments. The current regulatory arrangements regarding political donations also increase the likelihood that some inappropriate rezonings or development consents will be obtained.⁶⁰⁵

- 10.52** The vulnerability of local governments was described by Mr Norman Kelly, a member of the Democratic Audit of Australia:

Get down to the local government level and that is where developer donations are such a big thing because simply not only is that where that power resides in approving development but also the temptation I guess of attempting to influence government decisions is perhaps easier because it probably costs less to actually influence decisions at the local government level.⁶⁰⁶

- 10.53** Friends of Turrumurra, a community group of local residents and business people, told the Committee that political donations had been a negative influence on local government planning decisions in their area:

We believe that Ku-ring-gai is the exemplar of all that is wrong with the planning system in New South Wales, of how the chasing of developer donations leads political parties to lose sight of the interests of their electorate and the community as a whole.⁶⁰⁷

- 10.54** Friends of Turrumurra linked the ability to attract developer donations to career advancement for local councillors:

⁶⁰⁵ Submission 81, Independent Commission Against Corruption, p 2

⁶⁰⁶ Mr Norman Kelly, Democratic Audit of Australia, Evidence, 3 March 2008, p 42

⁶⁰⁷ Submission 178, Friends of Turrumurra Inc, p 2

At Local Government level, those with political ambition derive their motivation to support development from a desire to progress their career and position within their party, rather than for personal financial gain. By supporting development they attract donations to their party thus improving their chances to be selected to run for State or Federal seats.⁶⁰⁸

Banning donations

- 10.55** A number of local government representatives believed that the Premier's proposal to ban all donations should also apply to local government. When questioned on this issue, Councillor Bruce Miller, President of the Shires' Association, answered:

A ban on donations must apply to all levels of government – federal, state and local. The Premier recognised this in his announcement of 28 February, and the Prime Minister has also recognised that this is not an issue for state and local governments only.⁶⁰⁹

- 10.56** According to Lane Cove Council:

Banning developers from making political donations and spending on elections means the removal of these potential conflicts of interest in the development application process. The ban would go far in achieving a truly open consent process where Councils can make merits-based decisions without fear or favour.⁶¹⁰

- 10.57** Councillor Lambert told the Committee that Manly Council also supported a ban on donations: 'the preference of the majority of our council is to see an abolition of both corporate and individual donations and a move to improve public funding, perhaps modelled on the Canadian model, or at least to learn from the experiences in Canada.'⁶¹¹

- 10.58** In response to suggestions that only developer donations should be banned, Councillor Lambert pointed out that a range of industries were of concern, including the beverage and packaging industries and licenses premises, not just the property development industry.⁶¹² Similarly, Councillor McCaffery said: 'I think to just select developers is not really looking at the issue. The fundamental issue is public confidence in the process and I do not think it is fair to say it is developers.'⁶¹³

- 10.59** As with donations for State government elections, the Committee heard that small individual donations should continue to be permitted. For example, Mosman Municipal Council supported a ban on all donations except individual donations up to \$500.⁶¹⁴

⁶⁰⁸ Submission 178, p 6

⁶⁰⁹ Tabled document, Councillor Bruce Miller, Shires' Association of NSW, *Draft answers to the Committee's questions*, 31 March 2008, p 2

⁶¹⁰ Submission 76, Lane Cove Council, p 3

⁶¹¹ Cr Lambert, Evidence, 4 April 2008, p 2

⁶¹² Cr Lambert, Evidence, 4 April 2008, p 2

⁶¹³ Cr McCaffery, Evidence, 4 April 2008, p 6

⁶¹⁴ Submission 187, Mosman Municipal Council, p 1

Committee comment

- 10.60** Many inquiry participants believed that political donations from developers and others have had a negative impact on planning decisions at local government level. It is vital for the health of our system of government that these perceptions be addressed. The Committee considers that the best way to do this is a ban on all but small individual donations, as recommended earlier in this report. If this proposal is not adopted, the Committee considers that other measures should be put in place to safeguard the integrity of local government decisions, as discussed in the rest of this chapter.

Regulation of developer donations

- 10.61** If the Committee's proposal for a ban on all but small individual donations is not adopted, reforms would need to be put in place to regulate the influence of developer donations on the planning system. This section considers the merits of recommendations made by the ICAC, to limit the influence of political donations on the planning process. These recommendations were contained in the ICAC's September 2007 publication, *Corruption risks in NSW development approval processes*.
- 10.62** This section also places one of the Government's proposed reforms to the planning system in the context of the electoral funding debate, namely the introduction of independent planning assessment panels. The Committee considers whether this reform would be effective as a means to regulate developer donations.

Amend the Department of Local Government's Model Code

- 10.63** The first of the ICAC's recommendations relates to the Model Code of Conduct prescribed by the Department of Local Government for local councils. Local councils must conform with the Model Code in developing their own codes of conduct.
- 10.64** The Committee heard repeated criticism of the way in which the Model Code treats political donations. The Model Code requires that councillors declare non-pecuniary conflicts of interest, and suggests that political donations may be considered to be a non-pecuniary conflict of interest. The ICAC told the Committee that the Model Code details a range of options for managing a non-pecuniary conflict of interest, but that 'the decision on which option to choose is largely left to the person with the conflict of interest.'⁶¹⁵ The ICAC noted that:

It is anomalous that under the pecuniary interest provisions of the *Local Government Act 1993* councillors must absent themselves from a decision affecting a club of which they are the unpaid secretary, but can stay and vote on an application submitted by a major donor.⁶¹⁶

- 10.65** The submission from the ICAC concluded that:

⁶¹⁵ Submission 81, p 3

⁶¹⁶ Submission 81, p 4

The Commission believes that councillors should be provided with clear instructions on how to manage the conflicts of interest created by political donations. The lack of clarity in the Model Code is unacceptable given the corruption risks involved.⁶¹⁷

10.66 The ICAC therefore recommended that the Department of Local Government amend the Model Code to:

... instruct councillors to refrain from discussion and voting on matters affecting campaign donors (in the case of donations above a prescribed limit). If to do so would deprive the meeting of a quorum, councillors may declare the interest and vote, but consideration should be given to making the resulting decision subject to third-party appeal in the Land and Environment Court if approval depended on the vote of a councillor or councillors who had a conflict of interest.⁶¹⁸

10.67 Further, the ICAC recommended that failure to declare a political donation as a non-pecuniary interest be a matter for the Pecuniary Interest and Disciplinary Tribunal.⁶¹⁹

10.68 North Sydney Council is one of several that has acted to address this deficiency of the Model Code. Councillor McCaffery, Mayor of North Sydney, said: ‘When I discuss this with friends and members of my community and I tell them at the moment political donations over \$1,000 are not a pecuniary interest, they are amazed. They say, “You are kidding?”’⁶²⁰

10.69 Councillor McCaffery told the Committee that:

North Sydney has taken the Model Code of Conduct and made it stricter, which you are allowed to do ... What we have done is that we have taken the election donations declarations that are made to the Electoral Funding Commission and made those declared donations non-pecuniary but a conflict of interest.⁶²¹

⁶¹⁷ Submission 81, p 3

⁶¹⁸ Submission 81, p 5

⁶¹⁹ Submission 81, p 5

⁶²⁰ Cr McCaffery, Evidence, 10 March 2008, p 23

⁶²¹ Cr McCaffery, Evidence, 10 March 2008, p 21

- 10.70** In effect, North Sydney has amended its Code to deem that matters involving a campaign donor create a conflict of interest, and that councillors must declare an interest and not participate in debate or vote on that particular matter. Councillors are also required to include donations in their annual disclosure return to Council.⁶²² These provisions pertain to donations over \$1,000 not only from a person lodging a development application, but also to a person objecting to a development application.
- 10.71** Councillor McCaffery further recommended that donations to party headquarters should become a pecuniary interest for all members of that party, and therefore be declared as a conflict of interest by all councilors who are members of that party.⁶²³
- 10.72** The Local Government and Shires Association gave evidence that it has been encouraging its members to reflect this ICAC recommendation in their Codes of Conduct.⁶²⁴ In response to a question taken on notice during evidence, the Association surveyed the 152 councils in New South Wales, of which 49 councils responded. Based on these responses, the Association found that while most councils were aware of the ICAC's recommendations, 'most councils have not amended their code of conduct to reflect ICAC's recommendations.'⁶²⁵ A number of councils advised the Association that they were waiting for the Department of Local Government to finalise its review of the Model Code before making changes to their codes of conduct.
- 10.73** Mr Paul Anderson, General Manager of Lithgow City Council, explained that many councils had not amended their codes of conduct because they were concerned that this may make them inconsistent with the Model Code:

Not too many councils have actually gone too far with the Independent Commission Against Corruption's recommendations thus far. We are waiting on advice from the Department of Local Government as to how the Model Code of Conduct should be amended first. The legislation that we have at the moment says that our codes of conduct are not to be inconsistent with the Model Code of Conduct. Advice coming from the Department's officers at this stage say to change it to reflect the changes that the Independent Commission Against Corruption has recommended would be potentially considered as inconsistent and not actually supported until the department goes through a review of the Model Code of Conduct for a range of things including political donations.⁶²⁶

Donations to be declared when lodging development applications

- 10.74** The second of the ICAC's recommendations was to require applicants to declare donations when lodging development applications:

⁶²² Submission 135, p 2

⁶²³ Cr McCaffery, Evidence, 10 March 2008, p 24

⁶²⁴ Cr McCaffery, Evidence, 10 March 2008, p 22

⁶²⁵ Answers to questions on notice taken during evidence 31 March 2008, Cr Genia McCaffery, President, Local Government Association of NSW and Cr Bruce Miller, President, Shires Association of NSW, p 1

⁶²⁶ Mr Paul Anderson, General Manager, Lithgow City Council, Evidence, 4 April 2008, p 18

The Commission believes that if the Planning Minister is dealing with an application made by a political donor, higher levels of transparency and accountability are warranted. As a minimum, there should be disclosure if an applicant or their principal has made a political donation to the Minister or his party.⁶²⁷

10.75 As can be seen, the ICAC's recommendation concerned applications to the Minister for Planning. During the course of the Inquiry, this recommendation was taken up by inquiry participants and expanded to cover all persons submitting development applications, including at local government level.

10.76 Mr Aaron Gadiel, Chief Executive of the Urban Taskforce Australia, highlighted a problem with the recommendation that applicants be required to disclose political donations, namely that there are a number of persons involved in a development, who could formally submit the development application. Mr Gadiel said:

The applicant is sometimes a property developer, but not necessarily all property developers involved in a development would be formal applicants. The development applicant is often not a developer; often it is an architect, a planner or another consultant. Under the Government's proposal it is the applicant who is legally responsible for declaring the political donations. Architects or planners are unlikely to have direct personal knowledge of political donations made by those who hired them. An applicant would be ignorant of the political donations made by others who stand to profit from the development, such as a landholder or, if the landholder is a company or trust, shareholders or beneficiaries of the landholder.⁶²⁸

10.77 Further, Mr Gadiel objected to the suggestion that applicants but not objectors be required to declare political donations:

The Government and ICAC's proposal that development applicants must declare their political donations at the time they lodge a development application is fatally flawed. Businesses that make development applications will have to declare their donations, but those making objections to development applications will face no such requirement. This means that businesses and wealthy individuals opposed to a development will be able to make undisclosed donations and lobby against a development application.⁶²⁹

⁶²⁷ Submission 81, pp 6-7

⁶²⁸ Mr Aaron Gadiel, Chief Executive, Urban Taskforce Australia Evidence, 3 March 2008, pp 45-46

⁶²⁹ Mr Gadiel, Evidence, 3 March 2008, p 45

10.78 Mr Gadiel recommended that ‘any system of disclosure for development applications also needs to apply to objectors to developments.’⁶³⁰ Mr Gadiel pointed out that:

Companies that make objections are often very large businesses, with very large investments to protect, and they will, as applicants do, talk to decision makers... We cannot see how, if a development applicant’s donations need to be on the public record so everyone can see, the vested interests might be arguing against that development application being granted should not also be on the public record.⁶³¹

10.79 The Committee wrote to the Hon Jerrold Cripps QC, ICAC Commissioner, to ask for his response to Mr Gadiel’s evidence. Mr Cripps replied:

There seems to be no reason in principle why the requirement to declare donations should not apply to any interested party involved in development applications or rezoning proposals, including objectors, and the Commission would therefore support this proposed extension of its original recommendation.⁶³²

10.80 In relation the ICAC’s original recommendation that political donations be disclosed in applications to the Minister for Planning, the ICAC based this recommendation on the belief that disclosure is particularly important for portfolios such as Planning where there is a high degree of ministerial discretion in decision making.⁶³³

10.81 That ICAC considered that it would be unreasonable for the Minister for Planning to remove himself from making decisions on development applications submitted by political donors. The ICAC therefore recommended that the Minister ‘include, in the list of designated development, development in respect of which a declaration as to the making of a donation has been made.’⁶³⁴ This would ensure that there could be some independent assessment of the application, and in most cases, third party objectors would have a right of appeal.⁶³⁵

Independent planning assessment panels

10.82 As an alternative to tighter regulation of developer donations, inquiry participants suggested that the Committee instead look to strengthening the planning system, for example through the extensive reforms proposed by the Government in the Environmental Planning and Assessment Amendment Bill 2008 introduced to the Legislative Assembly on 15 May 2008.

⁶³⁰ Mr Gadiel, Evidence, 3 March 2008, p 45

⁶³¹ Mr Gadiel, Evidence, 3 March 2008, p 49

⁶³² Correspondence from the Hon Jerrold Cripps QC, Commissioner, ICAC, to Chair, 21 April 2008

⁶³³ Submission 81, p 6

⁶³⁴ Submission 81, p 8

⁶³⁵ Submission 81, p 7

10.83 The Committee notes that these proposed reforms are the subject of heated controversy in the community. This report does not assess the worth or otherwise of the reforms. The Committee only considers one of these proposed reforms that was raised in evidence to the Committee, for independent planning assessment panels, and how this relates to concerns about developer donations.

10.84 The submission from the Property Council of Australia said:

We have long argued for the introduction of a separation of powers in the planning system at state and local levels. Currently at the local level, councillors both set the planning rules and policies, and then also make decisions on development applications (where the decision has not been delegated to staff). This leaves councillors with conflicting roles ... The Property Council has championed the introduction of independent expert panels to be the consent authority where the decision is not delegated to staff.⁶³⁶

10.85 Further, Mr Ken Morrison, NSW Executive Director, Property Council of Australia, said: 'The politicians would be setting the rules or setting the policy, as occurs in almost every other area of government regulation, and then you have the independent experts making the decision.'⁶³⁷

10.86 Mr Gadiel of the Urban Taskforce also supported the introduction of planning panels, to remove the perception of undue influence on local council decisions:

If you take out of the hands of councillors the \$5 million-plus major development – generally these accusations have related to these sorts of projects – and you give them to independent, credible, professional technical experts, I think a large party of that whole issue disappears.⁶³⁸

10.87 The ICAC was of the view that for applications deemed to be of State significance, planning panels would be a useful means of addressing perceptions of undue influence and corruption:

The determination of a project by a PAC [Planning Assessment Commission] would greatly assist in managing perceptions of conflict of interest in cases where the applicant has made a donation to the Minister or his party.⁶³⁹

10.88 On the other hand, local government representatives were vehemently opposed to the introduction of independent planning panels. For example, Councillor McCaffery, Mayor of North Sydney Council, said:

My opinion and the opinion of local government is that it is laughable to say you are going to make the system more transparent and more accountable by appointing so-called independent panels because they will be populated by people who, when they are not on the panel, will be working for developers. That is the only other work you

⁶³⁶ Submission 162, Property Council of Australia, p 2

⁶³⁷ Mr Ken Morrison, New South Wales Executive Director, Property Council of Australia, Evidence, 10 March 2008, p 16

⁶³⁸ Mr Gadiel, Evidence, 3 March 2008, p 49

⁶³⁹ Submission 81, p 7

can get if you are an architect or a planner. You will never get enough money to make a living working on a panel. That is why we very strongly believe that the elected people are the best people to be accountable to the communities because they come up for election every four years.⁶⁴⁰

Committee comment

- 10.89** The changes considered in the preceding section have been examined as an alternative to substantive reform of the electoral funding system. If all but small individual donations were banned, as recommended by the Committee, there would be no need to introduce most of these changes. The Committee's conclusions on most of these changes should apply only if the Committee's recommendation to ban all but small individual donations is not adopted.
- 10.90** The Committee supports an amendment to the Department of Local Government's Model Code to require councillors to refrain from voting on matters involving political donors who donate substantial amounts to their campaigns. The Committee considers that \$1,000 would be an appropriate donation threshold to bring this provision into force. The Premier's announcement that he will introduce clearer guidelines for councillors is discussed at the end of this chapter.

Recommendation 32

That the Department of Local Government implement the ICAC's recommendation, to amend the Model Code of Conduct to:

- include clear instructions to councillors on the circumstances in which political donations will give rise to non-pecuniary conflicts of interest and how to manage such conflicts
- require councillors to refrain from discussion and voting on matters involving campaign donors. If to do so would deprive the meeting of a quorum, councillors may declare the interest and vote, but consideration should be given to making the resulting decision subject to third-party appeal in the Land and Environment Court if approval depended on the vote of a councillor or councillors who had a conflict of interest.

The Committee recommends that these requirements apply to donors who have donated over \$1,000.

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- 10.91** As recommended by the ICAC, the Committee considers that if a councillor does not declare a political donation as a non-pecuniary interest, the matter should be considered by the Pecuniary Interest and Disciplinary Tribunal.

⁶⁴⁰ Cr McCaffery, Evidence, 10 March 2008, p 27

Recommendation 33

That the Minister for Local Government implement the ICAC's recommendation, to introduce amendments to the *Local Government Act 1993* to provide that a failure to declare a non-pecuniary interest relating to a political donation is a matter falling within the jurisdiction of the Pecuniary Interest and Disciplinary Tribunal.

- 10.92** The Committee is of the view that applicants should be required to declare political donations when lodging development applications. Donors submitting objections to development applications should also be required to declare donations. That this provision be applied equally is a matter of fairness, as acknowledged by the ICAC. These requirements should apply to substantial donations over \$1,000, the same threshold at which councillors must refrain from voting on matters involving donors, and must apply to applications to local councils and to a Minister.
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Recommendation 34

That the Premier require applicants to declare political donations over \$1,000 when lodging development applications. Persons lodging objections to development applications should also be required to declare political donations over \$1,000.

- 10.93** In relation to applications to the Minister for Planning involving campaign donors, the ICAC found that it would be impracticable for the Minister to remove himself from such decisions, and recommended that there be some independent assessment of the application, as well as that objectors be given further appeal rights. The Committee agrees with this recommendation.
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Recommendation 35

That the Premier implement the ICAC's recommendation, that the Minister for Planning include in the list of designated developments, development in respect of which a declaration as to the making of a donation has been made.

- 10.94** The ICAC made its recommendations in relation to corruption-proofing the planning system in September 2007. The Committee is concerned about the delay in implementing these recommendations. As the State's anti-corruption watchdog, the Committee believes that the State government should have heeded the Commission's warnings about corruption risks to the planning process. The Committee calls on the government to be more responsive in future to recommendations made by the ICAC.
- 10.95** The Committee is unable to assess the merits of the reforms proposed by the Minister for Planning relating to independent planning assessment panels, due to the limited evidence received. The Committee notes that it is necessary to consider the impact of these reforms on the electoral funding system.
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Spending

10.96 This section considers the current levels of spending for local government elections, as well as support for introducing spending caps. Evidence concerning the merits of spending caps was addressed in Chapter 8.

Current levels

10.97 As with the level of donations for local government elections, the Committee cannot examine spending levels because there are no electronic records of past spending on local government election campaigns. While the Committee has no quantitative evidence, the Committee heard from Councillor McCaffery that local government election campaigns are becoming more expensive, particularly as a result of changes at the last election: ‘What has happened with the changes in the way elections are run in local government since the last election is that you have more groups and we seem to be getting more and more expensive campaigns.’⁶⁴¹

10.98 Councillor McCaffery explained that candidates were now effectively being forced to run in groups, in order to be represented above the line and thus stand a better chance of being elected.⁶⁴² Councillor McCaffery argued that this system worked against independent candidates.

10.99 Inquiry participants said that there is significant diversity in spending levels between local councils, and it is not limited to differences between councils inside Sydney and councils elsewhere in New South Wales. For example, donations may be a significant factor for big coastal councils with lots of development, as opposed to smaller inland councils. Councillor Bruce Miller, President of the Shires’ Association of New South Wales, which represents the 78 councils in regional and rural New South Wales, said:

Most country councils are comprised completely of independents ... who in many cases fund their own campaigns entirely from their own pockets. It is not unusual for some country council elections to be unopposed and for campaign costs to be minimal. A past candidate for election to his local council told me recently that this entire campaign cost him \$80.⁶⁴³

10.100 The local government representatives appearing before the Committee put forward a variety of figures on the cost of their own campaigns. For example, Councillor McCaffery’s campaigns in North Sydney cost approximately \$20,000,⁶⁴⁴ Councillor Miller spent \$1,000 in Cowra,⁶⁴⁵ Councillor Castle spent under \$3,000 in Lithgow,⁶⁴⁶ Councillor Welham said that in

⁶⁴¹ Cr McCaffery, Evidence, 10 March 2008, p 21

⁶⁴² Cr McCaffery, Evidence, 4 April 2008, p 9

⁶⁴³ Tabled document, Councillor Bruce Miller, Shires’ Association of NSW, *Draft answers to the Committee’s questions*, 31 March 2008, p 2

⁶⁴⁴ Cr McCaffery, Evidence, 4 April 2008, p 4

⁶⁴⁵ Cr Miller, Evidence, 31 March 2008, p 59

⁶⁴⁶ Cr Castle, Evidence, 4 April 2008, p 15

Wyong a campaign costs approximately \$20,000,⁶⁴⁷ and in Port Macquarie former Mayor Robert Drew's team spent \$47,000.⁶⁴⁸

Spending caps

10.101 As with State elections, if public funding were to be introduced for local government elections, spending caps would need to be considered as means to regulate election spending. A number of inquiry participants supported the introduction of spending caps for local government elections, including Councillor Castle, Mayor of Lithgow City Council:

That would certainly make it a much more even playing field. It does not take much to look in our area to see that a couple of candidates in nearby areas who have significant personal wealth can dominate the media for a significant amount of time and usually that person then gets elected regardless of their ability ...⁶⁴⁹

10.102 The Residents' Action Network claimed that in Port Macquarie in the last local government elections, one team had spent \$80,000 on their campaign, and that:

The RAN group and other Independent candidates could not possibly equal this spending and so the outcome was inevitable. RAN contends that there should be a spending cap on the amount candidates/groups/parties can spend and receive.⁶⁵⁰

10.103 The former Mayor of Port Macquarie, Mr Robert Drew, supported spending caps and argued that there needed to be different caps between councils in different areas:

Regional councils cover large areas and candidates have to cover many kilometres. The metropolitan areas are very much tighter and there might not be the need for as much expenditure. I am sure the metropolitan people would say something different.⁶⁵¹

10.104 Councillor McCaffery said that in her opinion spending caps were needed due to the increasing spending on local government election campaigns,⁶⁵² and also talked of the problems of formulating spending caps:

Also, of course, North Sydney is a geographically small area. It has a very large population; it is very densely populated. When I look at someone like Leo Kelly out at Blacktown, you are looking at a very large area with a huge population, three times the size of mine.

I think we need to put a bit of thought into how we work the caps. We have a tiered system for remuneration in local government: there are small councils, middle size and

⁶⁴⁷ Cr Welham, Evidence, 4 April 2008, p 15

⁶⁴⁸ Mr Robert Drew, Evidence, 4 April 2008, p 52

⁶⁴⁹ Cr Castle, Evidence, 4 April 2008, p 14

⁶⁵⁰ Submission 77, p 2

⁶⁵¹ Mr Drew, Evidence, 4 April 2008, p 53

⁶⁵² Cr McCaffery, Evidence, 10 March 2008, p 21

larger councils. Maybe we need a similar tiered capping, that reflects the size of the area you are trying to physically leaflet, doorknock, and so on.⁶⁵³

10.105 In response to a question taken on notice, the Local Government and Shires Association provided a copy of s239 of the *Local Government Act 1993*, which prescribes different categories of councils depending on size and activity.⁶⁵⁴ The categories include the following:

- S1 – 1 council, Sydney
- S2 – 3 councils, Newcastle, Parramatta, Wollongong
- 1A – 2 councils, Blacktown, Penrith
- 1 – 16 councils, eg North Sydney, Wyong, Bankstown
- 2 – 21 councils, eg Lane Cove, Manly, Mosman, Marrickville, Burwood, Leichhardt
- 3 – 32 councils, eg Shoalhaven, Ballina, Maitland
- 4 – 77 councils, eg Cowra, Lithgow, Gundagai.

10.106 There was some discussion about whether spending caps for local government elections should be the same as those for State election campaigns. According to Councillor Greg Watson, Mayor of Shoalhaven City Council:

... in the case of a council of our size you should be able to spend about the same amount that a member for the Legislative Assembly would spend. So, I am saying in our case we have got twice the number of electors but you should be able to spend at least the same amount of money ...⁶⁵⁵

10.107 The Greens NSW provided some of the few firm recommendations on setting spending caps for local government elections. The Greens supported a cap of \$10,000 per local government area or ward, or if it is greater, a cap of 50c multiplied by the number of voters. The State-wide cap would be \$500,000 per party. The Greens recommended a cap of \$5,000 for third parties in the 4 months leading up to an election.⁶⁵⁶

Committee comment

10.108 The Committee is concerned about the anecdotal evidence that spending on local government election campaigns is escalating. As with State government elections, the Committee is of the view that spending levels should be reined in, and that spending caps are an appropriate means to achieve this end.

⁶⁵³ Cr McCaffery, Evidence, 4 April 2008, p 4

⁶⁵⁴ Answers to questions on notice taken during evidence 10 March 2008, Cr Genia McCaffery, President, Local Government Association of NSW, and Cr Bruce Miller, President, Shires Association of NSW, p 2

⁶⁵⁵ Cr Watson, Evidence, 4 April 2008, p 22

⁶⁵⁶ Submission 121, p 7

- 10.109** It would be extremely challenging to set spending caps for local government elections. The complexities include the apparent differences in spending costs between council areas, and the fact that some candidates are standing for election as mayor while others are standing for a election to a particular ward. Given this diversity, the Committee supports differential spending caps for local government elections, to be set after public consultation. The legal and constitutional issues arising from such caps will need to be investigated.

Recommendation 36

That the Premier for local government elections investigate differential spending caps tailored to apply to different council areas and to mayoral elections. The spending caps should be set after public consultation.

Disclosure

- 10.110** As noted in previous chapters, the current disclosure scheme is complex. Its application to local government elections presents particular challenges, given the number of candidates and the number running as independents. However, it was especially important to inquiry participants that there be pre-election disclosure of donations.

Current disclosure requirements

- 10.111** The disclosure scheme for parties, groups and candidates standing for State government elections also applies to local government, regardless of the fact that parties, groups and candidates are not eligible for public funding. Parties, groups and candidates are required to disclose donations above the applicable thresholds (which are the same as for State elections), as well as all campaign spending. There are multiple disclosure periods for parties, groups and candidates. The disclosure periods are similar to those for State government elections but with certain differences, as explained in Chapter 5.
- 10.112** The EFA underscored the difficulties of applying the disclosure scheme to local government:

I think you can see the challenge we will face after the Local Government elections in September in getting 130 of these small entities and the 5,000 candidates to comply, let alone the myriad donors who will be behind those candidates – who will be donating money to those candidates ...

The difficulty again for us is that these disclosure periods go back four years. So with the little registered single-issue political party for Local Government that has to report to us on all its fundraising and donations back four years, I think you can imagine what the quality of some of that information is going to be.⁶⁵⁷

⁶⁵⁷ Mr Barry, Evidence, 3 March 2008, p 16

- 10.113** Councillor McCaffery emphasised the importance of achieving a transparent scheme, particularly if public funding was not introduced. According to Councillor McCaffery: ‘Though I support public funding, I am really not confident that we are going to get public funding. That is why I think we really do need to concentrate on the disclosure issue ...’⁶⁵⁸
- 10.114** There was support for consistent disclosure requirements for State and local government elections from the ICAC.⁶⁵⁹ Bankstown City Council agreed: ‘Council considers measures to improve disclosure of political donations, where introduced, should be consistent at Federal, State and Local levels of Government.’⁶⁶⁰
- 10.115** There were some suggestions that the complexity of the current disclosure requirements might deter candidates, in particular from small rural areas, from standing for election. When questioned on whether disclosure requirements had a deterrent effect, Councillor Miller said:
- No, I do not, I do not think it is a problem at all. The only problem with disclosure is it is too late and I actually believe disclosure should be made prior to the ballot rather than six or 12 months afterwards.⁶⁶¹

Pre-election disclosure of donations

- 10.116** Of particular importance to inquiry participants was the issue of pre-election disclosure for local government elections. Mr Jamie Harrison from Port Macquarie said: ‘... I do believe when someone walks into a polling booth, in particular in local government, they want to know where each candidate’s campaign funding has come from. This was highlighted recently in relation to Tweed Heads and Western Australia.’⁶⁶²
- 10.117** Similarly, Mrs Dawn Fardell told the Committee that ‘it may not worry too many people in the city areas but certainly where I come from in rural areas people like to know who is who.’⁶⁶³
- 10.118** The submission from Burwood Council said that as one of the smallest councils in New South Wales, the Council was concerned that post-election disclosure made the Council vulnerable to ‘unscrupulous tactics’ such as for ‘a vested interested group to ‘secretly’ bank-roll an unscrupulous candidate (or group of candidates).’⁶⁶⁴ Burwood Council therefore called for timely and accessible disclosure of donations.
- 10.119** The ICAC also advocated pre-election disclosure. According to the ICAC, ‘there is a strong argument for informing electors in advance of local government elections about the source of

⁶⁵⁸ Cr McCaffery, Evidence, 4 April 2008, p 5

⁶⁵⁹ Submission 81, p 6

⁶⁶⁰ Submission 173, Bankstown City Council, p 2

⁶⁶¹ Cr Miller, Evidence, 31 March 2008, p 59

⁶⁶² Mr Jamie Harrison, Public Forum, 4 April 2008, p 14

⁶⁶³ Mrs Dawn Fardell MP, Member for Dubbo, Evidence, 31 March 2008, p 31

⁶⁶⁴ Submission 3, Burwood Council, p 1

financial support to particular candidates.⁶⁶⁵ The ICAC suggested that political donations to candidates in local government elections be governed in a similar way to political donations in Western Australia, including donations during the election campaign to be disclosed within three days, and donations in the six months prior to nomination day to be disclosed within three days of nomination day.⁶⁶⁶

- 10.120** The Daly report into Tweed Shire Council recommended that all candidates for local government elections be required to disclose donations five days before an election, and that donations be banned for 12 months following an election.⁶⁶⁷

Optimum frequency of disclosure

- 10.121** The Committee heard limited evidence on the optimum frequency of disclosure for local government elections, with much the same views being expressed as for State elections. Councillor Lambert of Manly Council told the Committee that all donations ‘should be immediately and publicly declared ... they need to be available very soon after a donation is made.’⁶⁶⁸ Likewise, North Sydney Council said that donations should be disclosed as soon as possible after they were made, as ‘early disclosure will increase the transparency of the election process.’⁶⁶⁹

- 10.122** Marrickville Council emphasised the importance of making disclosure returns accessible, and called for ‘prompt and transparent disclosure of all donations on a public website maintained by the Election Funding Authority.’⁶⁷⁰ Marrickville Council supported annual disclosure for the first three years of an election cycle, with quarterly disclosure of donations over \$1,500 in an election year.⁶⁷¹ In the election period, donations over \$1,500 to parties and over \$200 to candidates should be immediately disclosed on the EFA’s website.⁶⁷²

Committee comment

- 10.123** While noting concerns about the complexity of the current disclosure scheme, and the difficulty of applying the scheme to local government, the Committee is of the view that full and transparent disclosure of donations and spending is vital to the integrity of not just the electoral funding scheme, but the political process.

⁶⁶⁵ Submission 81, p 4

⁶⁶⁶ Submission 81, p 4

⁶⁶⁷ Daly, M, *Tweed Shire Council Public Inquiry: Second Report*, August 2005, p 950

⁶⁶⁸ Cr Lambert, Evidence, 4 April 2008, p 6

⁶⁶⁹ Submission 135, p 4

⁶⁷⁰ Submission 147, Marrickville Council, p 1

⁶⁷¹ Submission 147, p 1

⁶⁷² Submission 147, p 2

10.124 The Committee agrees with inquiry participants that pre-election disclosure of donations must be introduced for local government elections, so that electors can make an informed decision at the ballot box. The Committee considers that the frequency of disclosure for local government elections should be the same as for State government elections, to bring about as much uniformity as possible between the two tiers of government.

Interim reforms

10.125 A number of the interim reforms proposed by the Premier in the April 2008 submission from the Department of Premier and Cabinet relate specifically to local government, and attempt to ‘promote integrity in the NSW planning and approval process.’⁶⁷³ This section considers the pros and cons of these proposals. In conclusion, the Committee examines whether it is feasible to introduce these changes before the September 2008 elections.

Clearer guidelines for voting on matters involving donors

10.126 The Premier’s submission informed the Committee that his reforms will include ‘new guidelines for councils to help address situations where there might be a perceived conflict of interest arising from donations, to be developed and implemented in consultation with the ICAC.’⁶⁷⁴

10.127 The submission from the Department of Premier and Cabinet explained that:

... the Model Code will be amended to include clear instructions for councillors on the circumstances in which political donations will give rise to non-pecuniary conflicts of interest, and how such conflicts should be managed.⁶⁷⁵

10.128 The Committee considered the issues associated with this proposal earlier in the chapter.

Recording individual councillors’ voting histories

10.129 The Premier announced that all councils would be required to record the voting history of individual councillors on development matters. These records will be made public.

10.130 The rationale behind this recommendation was to ‘reinforce public confidence in Local Government decisions, discourage factional or block voting, and ensure that rate payers know how their representatives are performing on key issues.’⁶⁷⁶

10.131 The Committee did not receive evidence on this proposal.

⁶⁷³ Submission 182, p 4

⁶⁷⁴ Submission 182, Department of Premier and Cabinet, p 5

⁶⁷⁵ Submission 182, p 6

⁶⁷⁶ Submission 182, p 6

Donations to be declared when lodging development applications

10.132 Another of the Premier's proposals is to require that information about political donations accompany all development applications. This proposal includes development applications to local councils as well as those being considered by the Minister for Planning.

10.133 The submission from the Department of Premier and Cabinet explained that:

This information will include the amount and recipient of political donations made by the applicant and the property developer (where that developer is not also the applicant) in a designated period before the development application is lodged.⁶⁷⁷

10.134 The Committee considered the issues associated with this proposal earlier in the chapter.

Should interim reforms be implemented by September 2008?

10.135 During the course of the Inquiry, the Premier made a commitment to introduce reforms before the September 2008 local government elections.⁶⁷⁸ While a number of inquiry participants commended the Premier's announcement, others noted the desirability of reform but argued that it was too close to the elections to implement significant changes.

10.136 The Greens NSW were strong supporters of introducing the Premier's reforms before the local government elections in September 2008.⁶⁷⁹

10.137 Councillor McCaffery gave her personal opinion that some reforms should be introduced by September, but noted that it was a 'fairly short period of time.'⁶⁸⁰ When Councillor McCaffery gave evidence to the Committee on 10 March 2008, she advised that the Premier had not contacted the Association about his proposed changes.

10.138 Councillor Miller, President of the Shires Association, questioned the wisdom of implementing hasty reforms:

I would have concerns about it if it were going to be a knee-jerk reaction to a couple of issues, such as the Wollongong issue at the moment. It has to be properly thought through so that whatever comes will be able to be implemented at other tiers of government elections as well. The local government elections are on 13 September, a very short time frame. If we were confident that whatever was put in place is going to apply to other elections in the future that is fine. If it is just going to be a stopgap solution and other levels of government think that the whole thing might go away after that, I would have major concerns about that.⁶⁸¹

⁶⁷⁷ Submission 182, p 5

⁶⁷⁸ *NSWPD (Legislative Assembly)*, 6 March 2008, p 6058

⁶⁷⁹ Dr Norman Thompson, Director, Greens Political Donations Research Project Evidence, 31 March 2008, p 43

⁶⁸⁰ Cr McCaffery, Evidence, 10 March 2008, p 22

⁶⁸¹ Cr Miller, Evidence, 31 March 2008, pp 60-61

- 10.139** When giving evidence on 31 March 2008, Councillor Miller advised that the Association had not been consulted about the Premier's proposed reforms.⁶⁸²
- 10.140** Ms Banks of the Public Interest Advocacy Centre said that it would be a 'big ask' to implement significant reforms by the local government elections in September, and cautioned that 'it requires more thinking and it requires thought about what has happened in other places...'⁶⁸³
- 10.141** On 11 April 2008, Mr Barry told the Committee that he was meeting with officers from the Department of Premier and Cabinet in the next week to talk about what changes could be implemented for the September 2008 elections. Mr Barry told the Committee that the Electoral Commission's candidate information sessions were scheduled for May,⁶⁸⁴ and that 150 candidates were already campaigning.⁶⁸⁵ Mr Barry said: 'I think modest changes can be given effect to before the current round of local government elections.'⁶⁸⁶
- 10.142** Perhaps the most challenging reform to introduce prior to the September elections, is the Premier's proposal to ban candidates from having personal campaign accounts. This was the most contentious reform proposed by the Premier. Opposition to this reform was considered in Chapter 7. The concerns discussed in Chapter 7 are particularly relevant to local government elections, because the great majority of candidates are independents.
- 10.143** When questioned on whether the EFA would be able to administer the campaign accounts of independent candidates for the September 2008 local government elections, Mr Barry responded: 'That part would not be able to be administered for these coming elections. It is too close.'⁶⁸⁷ Mr Follett clarified: 'I would not say impossible but I think very difficult.'⁶⁸⁸
- 10.144** Mr Barry advised the Committee that in his opinion:

I think what is very important is that ... we have enough time to be able to go out there and explain to people what their obligations are. I do think in most cases people want to do the right thing but they are just not aware of what the right thing is.⁶⁸⁹

⁶⁸² Cr Miler, Evidence, 31 March 2008, p 61

⁶⁸³ Ms Banks, Evidence, 10 March 2008, p 9

⁶⁸⁴ Mr Barry, Evidence, 11 April 2008, p 8

⁶⁸⁵ Mr Barry, Evidence, 11 April 2008, p 10

⁶⁸⁶ Mr Barry, Evidence, 11 April 2008, p 8

⁶⁸⁷ Mr Barry, Evidence, 11 April 2008, p 9

⁶⁸⁸ Mr Follett, Evidence, 11 April 2008, p 9

⁶⁸⁹ Mr Barry, Evidence, 11 April 2008, p 14

Committee comment

- 10.145** The Premier proposed clearer guidelines for councillors on voting on matters involving political donors. This reform has been modelled on the ICAC's recommendation, which the Committee supported earlier in this chapter.
- 10.146** In relation to the proposal that local councils must record and make public the voting history of individual councillors on development matters, the Committee is of the view that this will increase transparency and accountability, and is a positive step.
- 10.147** The Premier also proposed that political donations be declared when lodging development applications, as was recommended by the ICAC. The Premier's proposal will require the applicant to declare not only any political donations that they have made, but also any political donations made by the 'property developer,' if the developer is not also the official applicant. This proposal attempts to address the difficulty identified in evidence to the Committee, that it may not be the property developer who lodges a development application. The Committee supports this extension of the recommendation, but again notes the difficulties in formulating an adequate definition of a property developer, as outlined in Chapter 7. This reinforces the desirability of banning all but small individual donations.
- 10.148** The Committee is of the view that the Premier's proposal should be extended further, to require persons submitting objections to development proposals to also declare political donations. This suggestion was discussed earlier in the chapter, and has been supported by the ICAC. This issue is addressed in Recommendation 34.

Recommendation 37

That the Premier implement his proposal to record and make public individual councillors' voting histories.

Recommendation 38

That the Premier, as an extension of Recommendation 34, implement his proposal to require the property developer (where the developer is not also the applicant) to declare the amount and recipient of political donations made by them.

- 10.149** While the Committee would like reforms to be implemented before the September 2008 local government elections, the Committee considers that it would only be feasible to implement modest reforms, given the extremely tight timeframe. The Committee in particular considers that it would be too difficult to implement the proposal to ban candidates from having personal campaign accounts.

- 10.150** The Committee believes that the reform that would be of the most benefit would be to require pre-election disclosure of donations. However, the Committee believes this to be an administrative impossibility for the September 2008 elections, given the resources that would be required by the EFA to achieve this. It would also be necessary to ban donations for a certain, extended period before the election in order to achieve disclosure. It would not be fair on candidates to introduce such measures at this late stage.
- 10.151** The Committee notes that it will be possible to implement a more vigorous regime to monitor and investigate possible breaches of the electoral funding scheme, because the systems and resources needed to do this would not need to be in place until some time after the election. The Committee recommends that the EFA make candidates aware in advance of the election, that there will be far greater scrutiny of candidates' disclosure returns.

Recommendation 39

That the Election Funding Authority advise candidates for the 2008 local government elections that a vigorous regime of scrutiny will be put in place after the election, to monitor declarations of political donations and campaign spending.

Chapter 11 Election Funding Authority and Election Funding Act 1981

The *Election Funding Act* (the Act) was introduced in 1981 and led to the establishment of the Election Funding Authority (EFA) to administer the election funding scheme. The Act as a whole has not been reviewed since then. Similarly, the structure of the EFA has remained unchanged. The election funding scheme is now operating in a very different environment, and the Act and the Authority need to be reformed to meet the challenges of this changed environment. It is of prime importance that there be an oversight body with the resources and powers needed to police the provisions of the scheme, and compel compliance.

This chapter discusses calls for the Act to be updated and modernised. It then examines various issues concerning the operation of the EFA, including the policing of the electoral funding scheme, the EFA's use of Internet technologies, and the EFA's role in reviewing election finance law in New South Wales. Lastly, the chapter considers the future of the EFA.

Review of the Election Funding Act 1981

11.1 Things have changed since the *Election Funding Act* (the Act) was introduced in 1981. Many inquiry participants lamented that the Act has never been thoroughly reviewed, and called for the Act to be overhauled to reflect the realities of life in the twenty first century. Mr Colin Barry, Chairperson of the EFA said: '... 1981 is a long time ago and consequently a lot of these concepts were fairly new and they have not really been modernised or brought into how things work in the modern day.'⁶⁹⁰

11.2 A particular overarching deficiency was identified by Mr Barry:

The other point that I would strongly request that you look at, is the whole scheme of the Act. Is it clear? If it is not clear to you, it is not going to be clear to the public. My belief is that legislation should be clear ... It ought to have a clear purpose, clear objectives, clear functions and duties on the part of the Authority ...⁶⁹¹

11.3 Further, Mr Barry told the Committee that the Act is silent on the EFA's staffing structure:

The Election Funding Act does not really contemplate there being any other staff other than the fact that the Electoral Commission provides the staff to it. It would be good if there were a clear purpose, objectives, functions and responsibilities of people who are going to be in the future key players in giving effect to the legislation.⁶⁹²

11.4 There is also an inconsistency regarding the way in which parties, groups, candidates and donors treat GST, which could be remedied by changes to the Act. According to the EFA:

⁶⁹⁰ Mr Colin Barry, Chairperson, Election Funding Authority of New South Wales, Evidence, 3 March 2008, p 12

⁶⁹¹ Mr Barry, Evidence, 11 April 2008, p 13

⁶⁹² Mr Barry, Evidence, 11 April 2008, p 13

The Act also needs to be clarified in relation to how GST amounts are to be treated as the approach taken currently by parties, groups, candidates and donors is inconsistent.⁶⁹³

11.5 The EFA pointed out that the registration requirements under the *Parliament Electorates and Elections Act 1912* could be updated, to ensure that registered political parties are automatically registered for the purposes of the *Election Funding Act 1981*.⁶⁹⁴ In addition, the EFA suggested that reimbursement be automatically made to the registered agent, rather than a candidate being obliged to fill out a form authorising this to occur.⁶⁹⁵

11.6 Mr Barry told the Committee that because the Act predated registered political parties, the Act had introduced party agents to ‘establish a clear person of accountability.’⁶⁹⁶ Then with the registration of political parties came the introduction of registered officers. Mr Barry said:

It seems to me what would be better is for the registered officer of the party to fulfil all the functions in the Act that are currently assigned to a party agent. It just takes one more layer of complexity out of the two pieces of legislation.⁶⁹⁷

Committee comment

11.7 The Committee considers that the current push for electoral reform provides an opportune moment to review all aspects of the Act, and where better to start than by clarifying the Act’s purpose and objectives? Without a clear purpose and objectives, it is very difficult to evaluate the effectiveness of the election funding scheme, and whether it is doing what it was designed to do. The functions and responsibilities of the body overseeing the Act should also be considered. These issues are addressed again later in this chapter. The review of the Act should also consider the other matters raised by the EFA, namely the treatment of GST and consideration of the role of registered officers.

Recommendation 40

That the Premier review the *Election Funding Act 1981* to clarify:

- the purpose and objectives of the Act
- the role and structure of the Election Funding Authority
- how GST amounts are to be treated.

Consideration should be given to whether registered officers should be assigned the role of party agents.

⁶⁹³ Submission 106, Election Funding Authority of New South Wales, p 2

⁶⁹⁴ Submission 106, p 2

⁶⁹⁵ Submission 106, p 3

⁶⁹⁶ Mr Barry, Evidence, 11 April 2008, p 13

⁶⁹⁷ Mr Barry, Evidence, 11 April 2008, p 13

- 11.8** The registration requirements under the *Parliament Electorates and Elections Act 1912* should also be reviewed, to ensure that registered parties are automatically registered for the purposes of the *Election Funding Act 1981*, and that public funding is automatically reimbursed to the registered agent.

Recommendation 41

That the Premier review the *Parliament Electorates and Elections Act 1912* to ensure that:

- registered parties are automatically registered for the purposes of the *Election Funding Act 1981*
 - public funding is automatically reimbursed to the registered agent.
-

EFA's role in policing the electoral funding scheme

- 11.9** A number of inquiry participants were dissatisfied with the EFA's role in monitoring and enforcing compliance with the electoral funding scheme. Evidence to the Committee demonstrated that these criticisms were based on a misunderstanding of EFA's role and powers. This section considers such criticisms, and ways in which these criticisms could be addressed.

Compliance

- 11.10** The Committee heard that following the 2007 State Election, the EFA identified 948 compliance matters, the great majority (916) involving donors who failed to disclose their donations to the EFA, even after the EFA wrote to them reminding them of their legal obligation to do so.⁶⁹⁸ The EFA referred these compliance matters to the Crown Solicitor for possible prosecution. The Committee notes media reports that some of this non-compliance could be attributed to donors failing to understand that although they have disclosed donations to the Australian Electoral Commission (AEC), they are still required by law to disclose these donations to the EFA.⁶⁹⁹
- 11.11** The Greens NSW said that their research on the Federal scheme indicates that non-disclosure is common: 'In some years it appears that about 50 per cent of donors fail to lodge a disclosure form with the AEC [Australian Electoral Commission] ... It would encourage companies to meet their obligations if there was a more streamlined process for disclosing donations.'⁷⁰⁰

⁶⁹⁸ Tabled document, EFA, *PowerPoint Presentation*, 3 March 2008, p 10; Mr Trevor Follett, Secretary, Election Funding Authority of New South Wales, Evidence, 3 March 2008, p 3

⁶⁹⁹ Keane B, 'News Ltd sheepish in NSW political donation confusion,' *Crikey.com*, 5 May 2008 <www.crikey.com.au/Politics/20080505-News-Ltd-sheepish-in-NSW-political-donation-confusion-.html> (accessed 5 June 2008); Jopson D, Tadros E, Moore M, '800 face charges for donations,' *Sydney Morning Herald*, 3 May 2008 <www.smh.com.au/articles/2008/05/02/1209235155728.html> (accessed 5 June 2008)

⁷⁰⁰ Submission 121, The Greens, p 4

11.12 Mr Follett explained that in the EFA's view, the high incidence of donor non-compliance was because 'we do not believe that it is widely understood in the community what the responsibilities are.'⁷⁰¹

11.13 Mr Barry argued that it was also desirable for candidates to be more proactive in seeking out information, but he also recognised that the EFA should take a more active role in education:

I think candidates need to be put on notice that if you are going to be a candidate at the State and local government elections, then you do have obligations. The obligation is on you as the candidate to inform yourself of your responsibilities. The other part of this education role is that up until now the Election Funding Authority does not have any money and does not have any funds for that sort of activity.⁷⁰²

11.14 Mr Barry told the Committee that before the 2008 local government elections:

... the NSW Electoral Commission for the first time is going to be conducting some 26 candidate information sessions around the State ... I think it will be very telling to see the support for those because at the end of the day, if people do not come along and listen, all we can do is produce material and we can put it in their hands, but we cannot make them read it.⁷⁰³

EFA's monitoring and enforcement powers

11.15 The EFA does not have the power to undertake its own investigations into suspected breaches of the Act. Mr Barry told the Committee that the EFA refers suspected breaches to either the Crown Solicitor or the Police:

We can deal only with what we get from the party, candidate and donor returns. We have no evidence of anything that has transpired outside that environment. We would need evidence ... The Authority does not undertake its own investigations; we would refer those matters to the police to investigate. If there were prima facie evidence of a breach of the Act, we would refer it to the Crown Solicitor for possible prosecution.⁷⁰⁴

11.16 Mr Barry told the Committee that until recently, the only compliance matters referred to the Crown Solicitor were cases in which declarations had not been submitted, that is, matters that are simple to prosecute. Mr Barry said that in his four years as Chairperson of the EFA, only two matters had been identified as being material in nature and requiring further investigation.⁷⁰⁵ When questioned, Mr Barry agreed that this left a large gap in information collection between the EFA, which is responsible for identifying whether a prima facie case exists, and the Crown Solicitor, to whom the EFA will only refer matters if it has good grounds for believing that a breach has occurred.

⁷⁰¹ Mr Follett, Evidence, 3 March 2008, p 3

⁷⁰² Mr Barry, Evidence, 11 April 2008, p 7

⁷⁰³ Mr Barry, Evidence, 11 April 2008, p 8

⁷⁰⁴ Mr Barry, Evidence, 3 March 2008, p 7

⁷⁰⁵ Mr Barry, Evidence, 11 April 2008, p 3

- 11.17** In May 2008, the EFA instigated legal action against 800 donors who failed to declare almost \$8 million in donations made to candidates and political parties prior to the 2007 State election. These prosecutions highlight both the lack of understanding concerning the obligations to disclose political donations, and the importance of strengthening and clarifying the existing reporting system.⁷⁰⁶
- 11.18** The 2006-2007 Annual Report of the EFA notes that a total of 47 proceedings were commenced against candidates, groups and official agents in the reporting period. Of these cases, one case was annulled, seven cases resulted in guilty verdicts and 38 cases were withdrawn.⁷⁰⁷ The overwhelming majority of these offences arose at the local government level due to the timing of the reporting period. It is likely that the next annual reporting period will reflect a greater number of non-compliance issues at the state government level due to the 2007 State election.
- 11.19** Mr Barry explained that the EFA detects possible non-compliance by cross-matching the data received from donors and recipients. Mr Barry advised the Committee that this has only been possible in the last year, and that the EFA is trying to come to terms with its role in ensuring compliance:
- In the past the Authority never had a database. It is only in the last 12 months that we have been able to see the missing donations for donor declarations. The first challenge for the Authority was: What obligation does the Authority have to take these matters further? We have sought legal advice from the Crown Solicitor ... We will be referring those matters to the Crown Solicitor for him to take the next step.⁷⁰⁸
- 11.20** Mr Barry advised in response to a question taken on notice, that the EFA ‘does not cross-match data on declarations with data from other government agencies.’⁷⁰⁹
- 11.21** The Committee notes that the EFA’s powers to demand information from third parties were increased through *Election Funding Amendment Act 2006*. The amendment gave the EFA the power to require a third party to identify someone who the EFA reasonably suspects has incurred electoral expenditure but has failed to disclose it.⁷¹⁰
- 11.22** Inquiry participants suggested that the EFA’s monitoring and enforcement powers be strengthened. For example, Dr Norman Thompson, Director of The Greens Political Donations Research Project, recommended that the EFA cross check its data against that of the Australian Electoral Commission to identify any discrepancies.⁷¹¹

⁷⁰⁶ Jopson D, Tadros E and Moore, M, ‘800 face charges for donations’, *The Sydney Morning Herald*, 3-4 May 2008, p 1

⁷⁰⁷ Election Funding Authority of New South Wales, *Annual Report 2006-2007*, pp 13-15

⁷⁰⁸ Mr Barry, Evidence, 3 March 2008, p 9

⁷⁰⁹ Answers to indicative pre-hearing questions not answered during evidence 3 March 2008, Mr Colin Barry, Chairperson of the Election Funding Authority of New South Wales, Question 26, p 3

⁷¹⁰ *NSW PD (Legislative Assembly)*, 17 October 2006, pp 2753-2754

⁷¹¹ Submission 125, Dr Norman Thompson, p 8

- 11.23** Dr Joo-Cheong Tham, Senior Lecturer in Law at Melbourne University, recommended that the EFA be given investigative powers similar to those of the Australian Electoral Commission. Dr Tham gave evidence that:

In essence, my recommendations are based on section 316 of the Commonwealth Electoral Act. That particular provision authorises officers of the Australian Electoral Commission to compel the production of information and evidence if he or she reasonably suspects that such information is relevant to determining whether disclosure obligations have been complied with.⁷¹²

Criticism of EFA's powers and resources

- 11.24** Several inquiry participants criticised the EFA's monitoring and enforcement powers. Dr Tham, when asked to comment on the EFA's staffing resources, gave his opinion that the current level of staffing was inadequate to administer the electoral funding scheme.⁷¹³ Dr Tham went on to argue that the staff resources of the EFA should be increased, and an investigations unit established within the EFA, because 'in the absence of resources devoted to investigation, what you basically have emerging is a self-regulatory regime.'⁷¹⁴

- 11.25** The submission from the Residents' Action Network (RAN), a community organisation in the Port Macquarie-Hastings local government area, criticised the EFA's inability to enforce disclosure of in-kind donations (namely a flexible account that could be paid off after the election) by a group of candidates during the 2004 local government election. According to RAN:

The failure of the EFA to deal with the complaints made about the 2004 election in relation to disclosure of the source of donations ... illustrates the problems confronting it under the present legislative regime ...

The EFA, or some other body with powers of investigation, should be provided with investigative powers and be adequately resources to follow through on any complaints regarding abuse of whatever electoral funding system is decided upon by the Government. What must be achieved is transparency and accountability in the system.⁷¹⁵

- 11.26** Mr Richard Bryce, also of Port Macquarie, said: 'The current level of resourcing of the Authority is inadequate and prevents the Authority from undertaking the essential work of protecting the State from electoral fraud and abuse.'⁷¹⁶

- 11.27** Similar sentiments came from Mr Jamie Harrison:

⁷¹² Dr Joo-Cheong Tham, Senior Lecturer, Law Faculty, University of Melbourne, Evidence, 31 March 2008, p 12

⁷¹³ Dr Tham, Evidence, 31 March 2008, p 13

⁷¹⁴ Dr Tham, Evidence, 31 March 2008, p 13

⁷¹⁵ Submission 77, Residents' Action Network, p 4

⁷¹⁶ Mr Richard Bryce, Public Forum, 4 April 2008, p 10

... I think if anything comes out of this it should be that the Election Funding Authority be provided with more funding and more powers to provide better scrutiny so that people, at least in my electorate, can walk into a polling booth and know who is paying for whose campaign.⁷¹⁷

- 11.28** Councillor Warren Welham, Mayor of Wyong Shire Council, also raised concerns about the EFA's inability to investigate suspected breaches of electoral finance law:

We have had a number of matters in Wyong shire, a high-growth area with a lot of development occurring. For example, the general manager has put through a 100-page submission to ICAC. Because it has such a narrow definition of what corruption is within its Act, it does not fall within its guidelines. The Department of Local Government says it is not a matter for it, that it is a matter for the Electoral Commission, and its response is it does not have the resources or powers to proceed with the matter. I certainly would like the Committee to look at those organisations, how they interrelate with each other and what sort of powers are available, particularly to the Electoral Commission, for investigation of a lot of these matters of disclosures and donations.⁷¹⁸

- 11.29** Likewise, Bankstown City Council told the Committee:

Council would like to emphasise the need for the NSW Election Funding Authority to have the necessary resources to carry out this role effectively. It is important that the NSW government provides the necessary administrative resources to the Authority so that they can investigate significant irregularities in electoral expenditure and funding declarations.⁷¹⁹

- 11.30** A contrasting view on the EFA's monitoring and enforcement powers came from Shoalhaven City Council: 'In respect to the Election Funding Authority, the delegation concluded that it appears to be operating satisfactorily in respect to the probity of electoral funding.'⁷²⁰

Comparisons between EFA and the Australian Electoral Commission

- 11.31** Comparisons were made between the EFA's monitoring and enforcement powers and those of the Australian Electoral Commission. Mr Barry told the Committee that the Australian Electoral Commission has a funding and disclosure unit which is responsible for conducting compliance reviews of political parties.⁷²¹ In response to a question taken on notice, Mr Barry explained that compliance reviews are similar to audits:

Compliance reviews examine the quality of political party and associated entity returns using financial and other data from political parties and associated entities.

The AEC uses a risk assessment to determine which political parties and associated entities will be subject to a compliance review. The risk assessment enables the AEC

⁷¹⁷ Mr Jamie Harrison, Public Forum, 4 April 2008, pp 14-15

⁷¹⁸ Cr Warren Welham, Mayor, Wyong Shire Council, Evidence, 4 April 2008, p 13

⁷¹⁹ Submission 173, Bankstown City Council, p 2

⁷²⁰ Submission 111, Shoalhaven City Council, p 1

⁷²¹ Mr Barry, Evidence, 11 April 2008, p 2

to develop a compliance review program for each calendar year. The AEC conducts about 50 compliance reviews a year.⁷²²

- 11.32** The Australian Electoral Commission undertakes ‘specific investigations into possible contraventions of the disclosure requirements,’ using their power to require a person to produce documents or give evidence, where there are reasonable grounds for suspecting that there has been a contravention of the disclosure requirements.⁷²³ The EFA advised that ‘the number and range of such investigations varies a great deal. Most are resolved quickly through informal contact with the persons concerned, but some can involve extensive formal investigations.’⁷²⁴
- 11.33** In relation to the outcomes of the Australian Electoral Commission’s investigations, the EFA advised that ‘by and large, the result of investigations under both subsection 316(2A) and 316(3) is either a new or amended return from the relevant political party, associated entity or donor.’⁷²⁵

Does the EFA need an investigations unit?

- 11.34** While evidence to the Committee suggested that an investigations unit be established within the EFA, the EFA did not support this proposal. Mr Barry opposed the establishment of an investigations unit within the EFA, because:

... by and largely my organisation is an electoral commission. We are an event manager. If you are going to get into things like desktop auditing, delving into the finances, investigating, then that is a different world of operation and I think that it requires specialist expertise ... all we really do is process returns, approved allocation of funds and check compliance on returns.⁷²⁶

- 11.35** Mr Barry noted that establishing an investigations unit within the EFA would require the provision of additional resources and the employment of expert staff:

I do not think we want to be duplicating existing resources in the State, and I would have thought that subject to any legal impediment, what would be more appropriate if the Authority is satisfied that a *prim facie* matter needs to be investigated, it would be better off going to either the New South Wales Police to investigate or, indeed, to the ICAC, both organisations who have expertise in investigation.⁷²⁷

- 11.36** If the EFA was to undertake a proactive investigatory role, Mr Barry said that the EFA would need to be re-structured and given additional resources:

⁷²² Answers to questions taken on notice during evidence 3 March 2008, Mr Colin Barry, Chairperson of the Election Funding Authority of New South Wales,, p 3

⁷²³ Answers to questions taken on notice during evidence 3 March 2008, Mr Barry, p 3

⁷²⁴ Answers to questions taken on notice during evidence 3 March 2008, Mr Barry, p 4

⁷²⁵ Answers to questions taken on notice during evidence 3 March 2008, Mr Barry, p 6

⁷²⁶ Mr Barry, Evidence, 3 March 2008, p 22

⁷²⁷ Mr Barry, Evidence, 11 April 2008, p 1

If it was the Government's and the Parliament's intention that we undertake that role in a similar way to what the Australian Electoral Commission does in order to fulfil its obligation, that is a completely different way of operation and that would require changes to the Act and would require reconsidering of the funding structure for the Authority.⁷²⁸

Penalties for breaching the electoral funding scheme

11.37 In response to a question taken on notice regarding the available enforcement mechanisms, the EFA advised:

Penalties apply for such things as: failing to lodge a declaration; making a false statement in a claim, declaration or application for registration; not providing information regarding failures to disclose;

The Local Court or Supreme Court is responsible for imposing penalties.⁷²⁹

11.38 It was suggested that tougher penalties for breaching the provisions of the electoral funding scheme may induce greater compliance. Councillor Genia McCaffery, President of the Local Government Association, supported stronger penalties for non-compliance: '... if you are not prepared to do something which I think is an integral part of the democratic process, maybe you should almost be in a position of forfeiting your role.'⁷³⁰

11.39 Similarly, Ms Anita Tang, Director, Health Strategies, Cancer Council of NSW, said:

Our main suggestion is that the penalties should be high enough to act as a deterrent to both the donor and the party. The issue of penalties comes back to enforcement and monitoring. There is no point setting a high penalty unless we know there is a reasonable perception on the part of those involved in the transactions that they will be caught if they breach the rules, otherwise it is abstract.⁷³¹

11.40 The need for tougher sanctions was supported by Save Our Suburbs: 'Effective sanctions for breaking electoral funding regulations should be established, including loss of office.'⁷³²

11.41 Dr Tham agreed that the penalty for significant non-compliance with disclosure obligations by a party should be de-registration.⁷³³ Dr Tham suggested that the EFA be given access to a range of penalties similar to those of the AEC under section 315 of the *Commonwealth Electoral Act 1918*, but with higher criminal and administrative penalties.⁷³⁴ These penalties include:

⁷²⁸ Mr Barry, Evidence, 3 March 2008, p 23

⁷²⁹ Answers to indicative pre-hearing questions not answered during evidence 3 March 2008, Mr Colin Barry, Chairperson of the Election Funding Authority of New South Wales, Question 28, p 3

⁷³⁰ Cr Genia McCaffery, Mayor of North Sydney and President of the Local Government Association of New South Wales, Evidence, 10 March 2008, p 25

⁷³¹ Ms Anita Tang, Director, Health Strategies, Cancer Council of New South Wales Evidence, 3 March 2008, p 27

⁷³² Submission 55, Save Our Suburbs, p 3

⁷³³ Submission 154, Dr Joo-Cheong Tham, p 43

⁷³⁴ Submission 154, p 43

- failure to lodge a required report – fine of \$5,000 for political parties and \$1,000 for others
- submitting an incomplete return – fine of \$1,000
- knowingly lodging a false or misleading return – fine of \$10,000 for political parties and \$5,000 for others.

Committee comment

- 11.42** There is a clear mismatch between public expectations of the EFA’s role and powers, and the Authority’s actual role and powers. Because the EFA is charged with administering the electoral funding scheme, the public assumes that it is responsible for investigating non-compliance by parties, groups or candidates. In actual fact, the EFA is an ‘event manager’,⁷³⁵ a clearing house for lodgement and publication of disclosure returns, and processing claims for payment for State elections.
- 11.43** If not the EFA, who, then, is policing the electoral funding scheme? The Committee agrees that at present, the system is largely a self-regulatory regime. The Committee believes that this must be remedied urgently. The ICAC is empowered to investigate corrupt conduct, but for a matter to fall within the definition of corrupt conduct a stringent set of conditions must be met, which is likely to rule out most breaches of electoral finance law.
- 11.44** The EFA must be given additional staff and other resources to monitor compliance with the electoral funding scheme, and identify *prima facie* breaches of the scheme. An example of one of the tasks to be performed by these staff would be testing the nominated value of in-kind donations, as discussed in Chapter 9. The Committee’s recommendation concerning the staff and other resources needed by the EFA is included in the final section of this chapter.
- 11.45** The EFA must also have the power to identify suspected breaches of the Act. Once a possible breach is identified it should be referred to another body for investigation. Possible breaches could be referred to the ICAC if they potentially fall within the definition of corrupt conduct. The Committee believes that in addition to the ICAC, there needs to be an alternative reference point to which breaches could be referred.
- 11.46** The Committee is loathe to recommend the establishment of an investigations unit within the EFA, given the compelling arguments put by Mr Barry concerning duplication of resources. The Committee supports examination of alternative reference points, for example a specialist unit within NSW Police, such as the unit now responsible for investigating white-collar crime.

Recommendation 42

That the Premier review the Election Funding Authority’s powers to identify suspected breaches of the electoral funding scheme. Suspected breaches should be referred to a designated reference point for investigation.

⁷³⁵ Mr Barry, Evidence, 3 March 2008, p 22

- 11.47** The Committee believes that greater resources for monitoring and investigation must be supported by tougher penalties for breaches of the electoral funding scheme. These penalties should include deregistration of political parties. The Committee considers that there should be a review of the penalties under the Act, with particular attention to penalties available under section 315 of the *Commonwealth Electoral Act*.
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Recommendation 43

That the Premier review the penalties for breaches of the electoral funding scheme to devise tougher penalties, using section 315 of the *Commonwealth Electoral Act 1918* for guidance, and having deregistration of political parties as the option of last resort for serious and repeated non-compliance.

EFA's website and online lodgement of disclosure returns

- 11.48** While the EFA is responsible for ensuring public access to disclosure returns for donations and expenditure, the EFA is not required to make these available online. Interested persons are required to visit the EFA offices and view the hard copy returns in the presence of an officer of the EFA.
- 11.49** Local government election returns will be published online for the first time this year. Detailed disclosure returns for State elections were only made available online following the last election in 2007. This limits public access and threatens the transparency of the electoral funding scheme. This section considers criticisms of the EFA's use of Internet technology, and the resources needed to make greater use of this technology.

EFA's website

- 11.50** The EFA website was criticised for being difficult to use. In addition, there was dissatisfaction concerning the time taken to post disclosure returns on the Internet following the last State election in March 2007. According to Ms Robin Banks, Chief Executive Officer of the Public Interest Advocacy Centre:

If I treat myself as a punter, I would say that I found it very difficult to find information. I think an effective website is a website that makes information easily locatable and searchable. It is not. A significant number of the documents on the website are in PDF format. So if you do a search on the website, unless the document has the word in its name it will not search into the documents and it will not necessarily find all of the possible responses.⁷³⁶

- 11.51** Ms Jo Holder, a speaker at the Committee's public forum, said: "The NSW EFA should be given increased funds to computerise these returns and monitor them. It is near impossible to

⁷³⁶ Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre Evidence, 10 March 2008, p 8

hunt down local returns and I commend everybody who has so obviously spent many, many days trying to hunt them down in their submissions.⁷³⁷

11.52 Further criticism came from Dr Norman Thompson, Director of The Greens Political Donations Research Project:

The Election Funding Authority website is even worse [than the AEC website]. It is not something that the EFA is required to do: they are required to give us the information but they are not required to have a website... So there is a great deal that is not on the website from the EFA and it is very, very difficult to search.⁷³⁸

11.53 The submission from the Public Interest Advocacy Centre compared the EFA's website to the *Democracy 4 Sale* website run by The Greens NSW:

Ease of comprehension is also a very important aspect of transparency. The NSW Greens have set up a website to provide clear information regarding donations to political parties, including the sectors and interests donors have come from. This website is used by media and the wider community and provides important information to inform public debate. It is unfortunate that it has been left to a political party to provide this information, as it should be an essential aspect of the public reporting of political finances.⁷³⁹

⁷³⁷ Ms Jo Holder, Public Forum, 4 April 2008, p 21

⁷³⁸ Dr Norman Thompson, Director, Greens Political Donations Research Project, Evidence, 31 March 2008, p 36

⁷³⁹ Submission 145, Public Interest Advocacy Centre, p 14

11.54 Dr Thompson recommended that:

The EFA web site should be set up so that a person can type the name of a company, union, other organisation or individual into a search function and access all donations made by that entity to all parties and candidates.⁷⁴⁰

11.55 The Greens NSW further recommended that ‘donor companies should be categorised into industry categories to help the public better understand the influence that industry sectors are exerting on the political process.’⁷⁴¹**Length of time taken to publish 2007 election funding reports****11.56** The EFA was criticised for the length of time after the 2007 State election before election funding reports were posted online. The EFA advised the Committee that this was the first time that they had published detailed election funding reports on the Internet.⁷⁴²**11.57** The State election was held in March 2007, but the election funding reports were not posted online until February 2008. Many inquiry participants expressed concern about this delay. In response to a question taken on notice, the EFA advised that they had ‘received a number of enquiries about when the election funding reports would be published on the website,’ and that they had ‘received some feedback that the election funding reports are not easy to analyse as they are pdf.’⁷⁴³**11.58** Part of the delay in making the election funding reports available online was because parties, groups, candidates and donors have almost five months to submit their declarations to the EFA.⁷⁴⁴ Another factor was the time needed to process the paper returns and enter the data provided by parties, groups, candidates and donors onto the EFA’s database. If there was a move to more regular disclosure, accompanied by a requirement for web lodgement (as was discussed in Chapter 9), this would lead to the information being made available to the public in a much more timely manner.**Resources needed for online lodgement****11.59** Mr Trevor Follett, Secretary of the EFA, gave evidence about the EFA’s capacity to move to online lodgement of disclosure returns. Mr Follett advised the Committee that in order to develop the EFA’s current website, the EFA had ‘built a back office database. We have the engine that could be behind a web front end.’⁷⁴⁵ Mr Follett said that the EFA could build on

⁷⁴⁰ Submission 125, p 7

⁷⁴¹ Submission 121, p 5

⁷⁴² Answers to indicative pre-hearing questions not answered during evidence 3 March 2008, Mr Barry, Question 14, p 1

⁷⁴³ Answers to indicative pre-hearing questions not answered during evidence 3 March 2008, Mr Barry, Question 20, p 2

⁷⁴⁴ Mr Follett, Evidence, 3 March 2008, p 5

⁷⁴⁵ Mr Follett, Evidence, 3 March 2008, p 6

this database to allow web lodgement of information, but has yet to acquire any information technology system that would allow web lodgement.

- 11.60** In response to a question on whether the EFA currently had an appropriate level of staffing, Mr Colin Barry, Chairperson of the EFA, said that the current staffing was adequate, but added the following caveat if online lodgement was introduced:

If we are moving forward into a web-based system where parties, candidates and donors can log on and do things in a web-based environment, then it is different. I do not think we will be looking for an increase in staff so much; it would be more a capital budget.⁷⁴⁶

Committee comment

- 11.61** The Committee supports a greater use of the Internet and other modern technologies by the EFA. This is an important element of public access, and would maximise the transparency of the election funding scheme. The Committee considers this to be one of the unfortunate by-products of failing to update the Act.
- 11.62** The Committee is disappointed in the EFA's website. Not only is it difficult to use and provides limited information, but disclosure returns are not made available in a timely manner. The Committee believes that online disclosure would be invaluable in ensuring timely access to disclosure returns, as discussed in Chapter 9. The Committee recommends that in order to move to online lodgement of declarations and greater utilisation of Internet technologies, the EFA must be given increased capital resources to acquire the appropriate information technology, and the staff resources needed to establish and administer a new information technology system. This recommendation is included in the final section of this chapter.

Ongoing review of the election funding scheme

- 11.63** The obvious loopholes in the electoral funding and disclosure scheme, and the pressing need to update and modernise the *Election Funding Act 1981*, raises the question of why the electoral funding and disclosure scheme has not been reviewed before. Evidence to the Committee suggests that in part, this situation has arisen because the EFA is not responsible for reviewing the electoral funding and disclosure scheme.

EFA's role in reviewing effectiveness of the scheme

- 11.64** Mr Barry told the Committee that the EFA does not take an activist role in advising the Government on areas of electoral law that are in need of reform:

The Authority has not in the past made recommendations of its own initiative to the Government other than prior to the amendments that were made to the Parliamentary Electorates and Elections Act 2006.⁷⁴⁷

⁷⁴⁶ Mr Barry, Evidence, 3 March 2008, p 21

⁷⁴⁷ Mr Barry, Evidence, 3 March 2008, p 4

11.65 In response to a question taken on notice, Mr Barry said:

The Chairperson of the Authority would provide advice to the Minister if asked for any comment on any proposed reforms. The Authority constantly seeks to improve the administration of the way the Authority goes about its business. For example, it has recently introduced a website.⁷⁴⁸

11.66 Ms Lee Rhiannon MLC of The Greens NSW, stressed the importance of regularly reviewing the effectiveness of the electoral funding scheme. Ms Rhiannon said that in failing to review and update the 1981 Act, ‘we have not looked after democracy.’⁷⁴⁹

11.67 This view was shared by Mr Peter Draper, Member for Tamworth, who suggested that there needs to be a body ‘which is very much focused on the issues, which are raising transparency, increasing accountability and actually taking an interest in the process – because I do not think that the current system does.’⁷⁵⁰

11.68 The Committee acknowledges the work of the Parliament’s Joint Standing Committee on Electoral Matters, which is empowered to inquire into and report on matters relating to the administration of the *Parliamentary Elections Act 1912* and the *Election Funding Act 1981*. That Committee has tended to focus on matters relating to the administration of elections, rather than examining systemic reforms to the electoral funding scheme. For example, the Joint Standing Committee’s May 2008 report entitled *Administration of the 2007 NSW election and related matters* made a number of recommendations in relation to the conduct of the election, many of which related to access and equity issues.

11.69 According to Dr Joo-Cheong Tham, the Act should be amended to make the EFA responsible for reviewing the public funding and disclosure scheme:

Currently section 107 of the Election Funding Act requires the EFA to provide annual reports to Parliament, but it does not expressly require it to actually review the effectiveness of the disclosure regime under that particular Act and the advantage of making that explicit or requiring annual review of the effectiveness of disclosure obligations is that it is a good way to actually ensure that Parliament is readily informed as to whether the disclosure scheme is achieving its purpose.⁷⁵¹

11.70 As discussed earlier in this chapter, Mr Barry noted that for the EFA to take a role in reviewing the scheme, the objectives of the Act would need to be clarified:

... the legislation does not really set out in great detail what its purpose is. It does not set out what the objectives of the Act are. That makes it very difficult for the EFA to report on anything, other than to be a factual report.⁷⁵²

⁷⁴⁸ Answers to indicative pre-hearing questions not answered during evidence 3 March 2008, Mr Barry, Question 1, p 1

⁷⁴⁹ Ms Lee Rhiannon MLC, Evidence, 31 March 2008, p 40

⁷⁵⁰ Mr Peter Draper MP, Member for Tamworth, Evidence, 31 March 2008, p 70

⁷⁵¹ Dr Tham, Evidence, 31 March 2008, p 14

⁷⁵² Mr Barry, Evidence, 11 April 2008, p 11

- 11.71** Emeritus Professor Colin Hughes agreed that there needed to be greater clarity to the Act, especially in regard to the responsibilities of the EFA. In addition, Professor Hughes called for the scheme to be overseen by a statutory parliamentary committee:

An essential ingredient of this protection [from partisan interference] is a comprehensive definition of any such body's responsibilities and how these are to be carried out, set out in statute to ensure certainty and restrict tinkering, and a highly desirable ingredient is the existence of a statutory select committee of the legislature charged with inquiring into the field as a protected forum in which concerns may be aired and assessed.⁷⁵³

- 11.72** Alternatively, a new body could be established to develop electoral law. This argument was put by Ms Banks of the Public Interest Advocacy Centre:

We think that having a non-parliamentary body that is independent and a standing body could certainly assist in looking at where electoral law needs reform, reviewing the ways in which reviews have taken place in other countries in a much more comprehensive way than is possible within the purely parliamentary process, and then making recommendations.⁷⁵⁴

- 11.73** The submission from the Public Interest Advocacy Centre further explained that such a body needed to be established because 'the record shows that indeed partisan interests too often have resulted in changes to, or neglect of, electoral law, which in turn causes damage to our democracy.'⁷⁵⁵

- 11.74** Professor Marian Sawer, Leader of the Democratic Audit, also supported the establishment of a new body to monitor electoral reform, but argued that this body should be made up of members of executive governments across Australia:

We also think in the long term that it is important to have a ministerial council dealing with electoral reform; that at the moment we have ministerial councils it seems like in every other area of public policy but not in this area of electoral administration. We think there would be virtue in a ministerial council being established to supplement the very valuable work, of course, done by the Electoral Council of Australia, the officials' body.⁷⁵⁶

EFA's advice on Premier's interim reforms

- 11.75** In February the Premier announced a range of proposed changes to the electoral funding and disclosure scheme. When he gave evidence on 3 March 2008, Mr Barry told the Committee that he was not consulted before the Premier's announcement and 'nor do I expect it.'⁷⁵⁷ Mr Barry was consulted after the announcement, about how to implement the changes.

⁷⁵³ Submission 42, Emeritus Professor Colin Hughes, p 1

⁷⁵⁴ Ms Banks, Evidence, 10 March 2008, p 2

⁷⁵⁵ Submission 145, p 16

⁷⁵⁶ Professor Marian Sawer, Leader, Democratic Audit of Australia, Evidence, 3 March 2008, p 43

⁷⁵⁷ Mr Barry, Evidence, 3 March 2008, p 20

- 11.76** On 11 April Mr Barry told the Committee that the EFA was not directly consulted on the contents of the submission by the Department of Premier and Cabinet, which gave more detail concerning the Premier's proposed changes. Mr Barry said: 'I have been consulted by officers in the Department of Premier and Cabinet on a range of things to do with election funding and disclosure. I was not specifically consulted on this document.'⁷⁵⁸

Committee comment

- 11.77** The Committee considers that electoral reform has been neglected in New South Wales, because no body has oversight responsibility for the electoral finance regime. The EFA's role is limited to reviewing and improving the scheme's administration. In the Committee's view, the role played by the EFA in regard to the reforms announced by the Premier, is illustrative of the EFA's role in reviewing the election funding scheme: it does not have one.
- 11.78** Reform of electoral finance regimes must remain firmly on the political agenda, not just within New South Wales but across Australia. The Committee welcomes the Federal review being undertaken by Senator the Hon John Faulkner, Special Minister of State, in conjunction with Ministers from each of the states and territories. The Committee considers that the role being performed by this group should be formalised. The Committee does not support calls for the establishment of a new national body or ministerial council to oversee electoral funding reform, because of the cost involved. The Committee believes that electoral reform should be added to the Council of Australian Governments (COAG) agenda. As COAG is the peak intergovernmental forum in Australia, it is the appropriate forum to consider this most important issue for all levels of government.

Recommendation 44

That the Premier raise with Minister Faulkner, as part of the Federal Government's Green Paper review of electoral funding, the need to add electoral reform to the agenda for meetings of the Council of Australian Governments.

- 11.79** Within New South Wales, the EFA should report annually to Parliament on the effectiveness of the scheme. To this end, the legislation should be amended to clarify the objectives of the Act and the duties of the EFA, as was discussed in the previous section. The EFA should report annually on whether these objectives have been met, and these duties performed. The EFA should also identify any areas in need of reform.

Recommendation 45

That the Premier require the Election Funding Authority to report annually to Parliament on the effectiveness of the electoral and political party funding and disclosure scheme. The report should identify areas needing reform.

⁷⁵⁸ Mr Barry, Evidence, 11 April 2008, p 4

- 11.80** The Committee notes the central role played by NSW Parliamentary committees in driving reform to the electoral funding scheme, beginning with the committee report that led to the establishment of the scheme in 1981. The Committee believes that a parliamentary committee should be charged with overseeing systemic reforms to the electoral funding scheme.
- 11.81** The Committee notes the work of the Parliament's Joint Standing Committee on Electoral Matters, which is empowered to inquire into and report on matters relating to the administration of the *Parliamentary Elections Act 1912* and the *Election Funding Act 1981*. That Committee has tended to focus on matters relating to the administration of elections, rather than examining systemic reforms to the electoral funding scheme. For example, the Committee's May 2008 report entitled *Administration of the 2007 NSW election and related matters* made a number of recommendations in relation to the conduct of the election, many of which related to access and equity issues.
- 11.82** The Committee is of the view that the Joint Standing Committee on Electoral Matters is the appropriate committee to be charged with oversight of the implementation of the electoral funding reforms, but that the Committee should be strengthened by being reconstituted as a statutory committee.

Recommendation 46

That the Joint Standing Committee on Electoral Matters be reconstituted as a statutory committee, and be charged with a function of oversight of the implementation of the electoral funding and disclosure reforms as part of its brief.

Future of the Election Funding Authority

- 11.83** This report has recommended a range of reforms to the electoral funding and disclosure scheme. Many of these would result in an increased workload for the EFA, creating different staffing and resource needs. The section considers whether there should be changes to the EFA's staffing and structure, including evidence that the EFA be abolished and its functions allocated to another agency.

Staffing and resources

- 11.84** As noted in Chapter 5, the EFA cannot employ staff but is assisted on a full time basis by two clerical officers and on a part-time basis by a Secretary, who are employed by the NSW Electoral Commission. The EFA employs casual staff to assist with data entry as needed.
- 11.85** The Public Interest Advocacy Centre called for the EFA's staffing be increased: 'There have been concerns raised about the adequacy of the resources of both the NSW and federal electoral authorities to properly ensure compliance with the electoral law.'⁷⁵⁹

⁷⁵⁹ Submission 145, p 15

- 11.86** According to The Greens NSW, ‘... the NSW EFA requires more permanent staff to oversee more thorough disclosure procedures for state and local government elections, and to help build the corporate knowledge of the organisation.’⁷⁶⁰
- 11.87** When questioned on whether the EFA had an appropriate level of resourcing, Mr Barry responded: ‘I think so, bearing in mind that there is a need for temporary staff to give effect to these provisions at the time of the State election and local government election.’⁷⁶¹
- 11.88** However, the EFA may need to take on increasing number of functions and responsibilities, beginning with increased monitoring and enforcement of the current scheme, thus requiring additional staff. It was suggested that in considering the number of additional staff that might be required by the EFA to police the electoral funding and disclosure scheme, the Committee could look to the investigations unit of the Australian Electoral Commission for a staffing model.
- 11.89** Mr Barry advised that the Australian Electoral Commission’s funding and disclosure unit at present has 12 staff and oversaw 1,500 candidates for the last Federal election.⁷⁶² This compares to figures for New South Wales of 870 candidates for State elections and 5,000 for local government elections. The budget for the unit was \$1.93 million for 2007-2008, out of a total budget of \$232.1 million.⁷⁶³ There are no direct figures available for the EFA’s budget as their funding is drawn from within the Electoral Commission’s budget allocation. However the Committee notes that the Electoral Commission’s budget for the same 2007-2008 period was \$29.6 million.⁷⁶⁴ Mr Barry explained that the AEC had recently commented that if it was to be given stronger investigatory powers, it would have a resource issues, and would need more staff, and these staff would need investigations expertise that the AEC’s staff may not currently have.⁷⁶⁵
- 11.90** Mr Barry argued that because the main function of the AEC’s funding and disclosure unit is to conduct compliance reviews, it therefore could not be used as an indication of the EFA’s staffing or resource requirements if the EFA was to undertake a more pro-active policing role.
- 11.91** The changes proposed in this report would result in a dramatic change in the EFA’s workload. The changes in the EFA’s workload would need to be accompanied by a change in the type of staff employed by the EFA. For example, the EFA would not need to employ large numbers of casual staff to process paper disclosure returns, but may instead need staff with skills in monitoring compliance of the electoral funding scheme. When questioned on whether the EFA would be able implement one of the changes suggested by the Premier, namely a ban all donations, Mr Barry responded:

⁷⁶⁰ Submission 121, p 10

⁷⁶¹ Mr Barry, Evidence, 3 March 2008, p 21

⁷⁶² Mr Barry, Evidence, 11 April 2008, p 2

⁷⁶³ Answers to questions taken on notice during evidence 3 March 2008, Mr Barry, Chairperson of the Election Funding Authority of New South Wales, p 5

⁷⁶⁴ Budget Papers no. 3 2007-08, *Premier, and Minister for Citizenship – Narrative*, p 12

⁷⁶⁵ Mr Barry, Evidence, 11 April 2008, p 2

The short answer to that is, with the resources that the Funding Authority currently has, it would not be able to enforce that, so the Funding Authority would need to be reviewed and it would need a completely different structure.⁷⁶⁶

Structure

11.92 The EFA is a three-person decision making body, chaired by the NSW Electoral Commissioner. One of the other members is appointed by the Government on the nomination of the Premier, and other on the nomination of the Leader of the Opposition.

11.93 The submission from the Democratic Audit criticised the requirement to make partisan appointments to the EFA. Mr Norman Kelly, member of the Democratic Audit, questioned why such appointments were necessary:

If you look around Australia in the appointment of commissioners to electoral commissions, most jurisdictions have a requirement that prohibits political appointment... So, it seems anomalous, and I am not aware of any other election management bodies in Australia that have partisan appointments.⁷⁶⁷

11.94 In a similar vein, The Greens NSW said: ‘The method of determining the composition of the NSW EFA creates an unethical set of circumstances. Party political appointments to the NSW EFA should end.’⁷⁶⁸

11.95 Mr Kelly made clear, however, that he had no reason to believe that the members of the EFA were acting with anything other than the ‘utmost integrity.’⁷⁶⁹ Mr Kelly explained that he supported ending partisan appointments to remove any possible perception of bias on the part of the EFA.

11.96 A similar view was held by Dr Simon Longstaff, Executive Director, St James Ethics Centre:

I think I would prefer to see a situation in which all three people were independent and not based on recommendations made by either the Premier or the Leader of the Opposition, simply because they may have an interest in promoting the interests of political parties...⁷⁷⁰

11.97 While there were many criticisms of the public funding and disclosure scheme, witnesses were universal in their praise for the EFA’s staff, who are obliged to work within the provisions of the scheme. Dr Thompson of The Greens Political Donations Research Project said:

The staff members are among the most dedicated, cooperative and helpful of any public servants I’ve dealt with in my political life. Without their help much of the

⁷⁶⁶ Mr Barry, Evidence, 11 April 2008, p 1

⁷⁶⁷ Mr Norman Kelly, Democratic Audit of Australia, Evidence, 3 March 2008, p 35

⁷⁶⁸ Submission 121, p 10

⁷⁶⁹ Mr Kelly, Evidence, 3 March 2008, pp 35-36

⁷⁷⁰ Dr Simon Longstaff, Executive Director, St James Ethics Centre, Evidence, 31 March 2008, p 18

work I've done over the last six years would have been much more difficult, and in some cases impossible.⁷⁷¹

- 11.98** This view was supported by Mr Martin Laverty of the Liberal Party of Australia (NSW Division): '... our dealings with the staff and personnel at the EFA have always been most professional and as a group of people they do the best they can within a difficult situation.'⁷⁷²

Alternatives to EFA

- 11.99** Some inquiry participants suggested that the EFA's functions could be assigned to another body, either new or existing. For example, Mr Barry suggested that '... in my view whilst it is under the Chair of the Electoral Commissioner, to some extent it could equally be under the chair of the Auditor General because all we really do is process returns, approve allocation of funds and check compliance on returns.'⁷⁷³

- 11.100** Alternatively, the Democratic Audit suggested that the functions of the EFA could be taken over by the Electoral Commission:

It is a task that should be able to be dealt with by the Electoral Commission. That is how it is done in other jurisdictions. I think it is good that you have that corporate knowledge of electoral administration in one agency ... I have not been able to find any argument to keep it separate.⁷⁷⁴

- 11.101** Mr Barry strongly opposed the functions of the EFA going to the Electoral Commission:

I said earlier that I support a national solution to funding and disclosure because I think that in this day and age the staff that is required to police the disclosure part is a different type of staff to what an electoral commission would necessarily have. There is a lot of emphasis on accounting and a lot of emphasis on investigation that, quite frankly, electoral commissions of their own right do not necessarily have. It would enable expert staff to be employed purely for that purpose of running the disclosure and funding regime.

I do not think that it would be appropriate for the funding and disclosure legislation to be assigned to the NSW Electoral Commission. For one thing, whilst the NSW Electoral Commission is a body corporate it has one member only and that is the Electoral Commissioner. I do not think it would be in the public interest to have one person effectively dealing with all of this.⁷⁷⁵

⁷⁷¹ Submission 125a, Dr Norman Thompson, p 5

⁷⁷² Mr Martin Laverty, Interim State Director, Liberal Party of Australia (New South Wales Division) Evidence, 31 March 2008, p 54

⁷⁷³ Mr Barry, Evidence, 3 March 2008, p 22

⁷⁷⁴ Mr Kelly, Evidence, 3 March 2008, p 41

⁷⁷⁵ Mr Barry, Evidence, 3 March 2008, p 10

11.102 In relation to the interim reforms proposed by the Premier, Mr Barry told the Committee that the EFA would be able to administer these reforms, with some changes to the EFA's staffing and structure:

I think the EFA can do it. We need to be very mindful of the fact that there is a lot of knowledge and expertise within the EFA at the moment. The legislation needs a little bit more clarity as to the role of the EFA, and the EFA would need additional resources to be able to give effect to it.⁷⁷⁶

Committee comment

11.103 The Committee's recommendations would result in substantial changes to the EFA's workload. The EFA would no longer be responsible simply for processing and publishing disclosure returns, and paying claims for funding, but would take an active role in policing the electoral funding scheme. The EFA would also be required to make greater use of the available information technology. It is clear that these changes to the EFA's workload must be supported by increased staff and funding.

Recommendation 47

That the Premier allocate additional resources to the Election Funding Authority including:

- expert staff to monitor compliance with the electoral funding scheme and identify *prima facie* breaches of the scheme
- capital resources to acquire the information technology needed to improve the Authority's webpage and facilitate online lodgement of disclosure returns
- expert staff to establish and administer the Authority's information technology systems.

11.104 The EFA would also need a different structure. The Committee is of the view that partisan appointments to the EFA should cease, to remove any perception of bias in the operation of the EFA. The Committee underscores that there is no evidence of impropriety on the part of the EFA, but that partisan appointments give rise to this perception.

11.105 Instead of reforming the structure of the EFA, the EFA could be abolished, and its functions taken over by another body. The Committee did not receive sufficient evidence on this point to determine whether this is desirable. The Committee's key consideration is not who administers the scheme, but rather, whether it is done effectively. The Committee believes that, as part of the ongoing review of the electoral funding scheme, consideration be given to who is the most appropriate body to administer the scheme.

⁷⁷⁶ Mr Barry, Evidence, 11 April 2008, p 5

Chapter 12 Proposed model

- 12.1** New South Wales was the first Australian jurisdiction to introduce a comprehensive election finance scheme, through the *Election Funding Act 1981*. Premier Neville Wran commended this pioneering piece of legislation to the Legislative Assembly with these words:

This is an extremely important piece of legislation. It recognises the central role of political parties in the parliamentary system, protects the rights of minorities and new parties and reduces the gross disparity between the financial resources available to different parties. It removes the risk of parties selling political favours and declares to the world that the great political parties of New South Wales are not up for sale. It is a measure for a better democracy, a clean democracy.⁷⁷⁷

- 12.2** The Committee's proposed model is designed to address the failings of the current NSW electoral funding scheme, which prevented it from achieving these original aims: to deter corruption and undue influence, and to level the playing field by providing financial resources to eligible parties and candidates. These are worthy aims, and the Committee believes them to be as valid now as they were when enunciated by Premier Wran in 1981. The Committee believes these aims to be of equal weight, and its proposed model therefore addresses both.
- 12.3** This chapter outlines the Committee's proposed model for the regulation of electoral finance in New South Wales, drawing on the recommendations made in previous chapters. The proposed model introduces several radical reforms. The Committee believes that these reforms must be implemented, if we are to demonstrate that we are serious about electoral reform, and if the public is to get the electoral funding system that it wants and deserves. The Committee calls on the Premier to liaise with the Federal Government, to progress national consistency in electoral funding schemes.
- 12.4** However, while there has been much talk about the need for wide-ranging reform, the Committee realises that all these fine words may evaporate when it comes to action. This chapter therefore outlines a second-preference model of reforms building on the current electoral funding scheme. The Committee considers that these reforms, while not ideal, would go some way to addressing the weaknesses of the electoral funding scheme.

⁷⁷⁷ NSWPD (*Legislative Assembly*), 15 April 1981, p 5944

Key provisions of the proposed model

12.5 The Committee has recommended both supply and demand-side restrictions, on political donations and election spending. Political donations from corporations and other organisations would be banned. Small individual donations would be permitted, up to a limit of \$1,000. Election spending by parties, groups and candidates would be capped, as well as spending by third parties.

- Political donations from corporations and other organisations banned, political donations from individuals capped at \$1,000 – Recommendation 7
- Caps on election spending by parties, groups and candidates – Recommendation 18
- Caps on election spending by third parties – Recommendation 19

12.6 The ban on all but small individual donations would result in lost income for parties, groups and candidates. The Committee considers that spending caps would go some way to making up for the income lost, because parties, groups and candidates would no longer be able to spend large sums of money on their election campaigns, and therefore would need to raise less funds. In addition, parties, groups and candidates would be supported by an increased share of public funding, to be provided through the following measures:

- For State government elections, the level of public funding would be increased. The Committee has proposed consultation about the appropriate level of increase.
- For local government elections, there would be investigation of whether to introduce public funding, which could be financed by the State government. The Committee has recommended that a wide-ranging review be undertaken to determine the design of any new public funding scheme.
- For political parties represented in either the Legislative Assembly or Legislative Council, ongoing administration costs would be subsidised through a Party Administration Fund, which would replace the current Political Education Fund. The level of funding provided through this new Fund would be reviewed, to ensure that parties are adequately funded. In addition, certain sources of income, up to a reasonable amount, would be exempted from the ban on all but small individual donations and used to support ongoing party administration costs. Exemptions would apply to membership and affiliation fees, and proceeds from the sale of merchandise.

- Public funding increased for State government elections – Recommendation 6
- Public funding investigated for local government elections – Recommendation 31
- Party Administration Fund created to subsidise administration costs of parties represented in NSW Parliament – Recommendations 2 & 3
- Party administration costs subsidised by exempting certain sources of income from the ban on political donations – Recommendations 9, 10 & 12

12.7 The Committee believes that the current 4% threshold for eligibility for public funding should be retained, to deter frivolous candidates.

12.8 The Committee has recommended that the Political Education Fund be revamped. The NSW Electoral Commission would be allocated monies equal to the current value of the Fund, which would be used to improve the level of political literacy in New South Wales.

- Political Education Fund administered by the NSW Electoral Commission – Recommendation 4

12.9 The provisions of the disclosure scheme would also be overhauled. Political donations and spending would be disclosed every six months, with a disclosure threshold of \$500 for all donations. Online lodgement would be introduced and made compulsory, which would allow for real-time entry of donations and spending data. Individual donations would be linked to the NSW electoral roll, to improve donor identification. Disclosure returns would clearly identify donations made through fundraising events.

- Disclosure every six months of donations over \$500 and spending – Recommendations 25 & 27
- Compulsory online lodgement of disclosure returns – Recommendation 29
- Individual donations linked to NSW electoral roll – Recommendation 21
- Clear identification of donations made through fundraising events – Recommendation 23

12.10 In relation to the Election Funding Authority (EFA), the Committee recommended that there be a review of the EFA's powers to identify suspected breaches of the electoral funding scheme. The EFA would have a designated referral point to which they could refer suspected breaches for investigation. Tougher penalties would be introduced for breaches of the scheme. The EFA's website would be improved, to ensure that information is accessible and provided in a timely manner, and to enable online lodgement. To undertake its new functions, the EFA would be allocated increased funding and would need to employ more staff.

- Review of EFA's powers to identify suspected breaches, with suspected breaches to be investigated by a designated external body – Recommendation 42
- Tougher penalties for breaches of the scheme – Recommendation 43
- Increased funding and staff – Recommendation 47

12.11 The Committee considers it essential that the electoral funding and disclosure scheme be reviewed on a regular basis. The EFA would report annually to Parliament on the effectiveness of the scheme in meeting its objectives. In addition, the Joint Standing Committee on Electoral Matters would be strengthened by being reconstituted as a statutory committee, and entrusted with oversight responsibility for electoral funding reform. To progress national consistency, reform of electoral finance regimes would be added to the agenda for meetings of the Council of Australian Governments.

- EFA to report annually to NSW Parliament on the effectiveness of the electoral funding and disclosure scheme – Recommendation 45
- Joint Standing Committee on Electoral Matters reconstituted as a statutory committee with oversight responsibility for election funding reform – Recommendation 46
- Electoral funding reform added to the COAG agenda – Recommendation 44

Second preference reforms

12.12 The provisions outlined above constitute the Committee's proposed model for a reformed electoral funding scheme. The second-preference model outlined in this section would only be implemented if there is a lack of political will to implement the Committee's proposed model.

12.13 In the second-preference model, the provisions of the disclosure scheme would be reformed, as recommended in the Committee's proposed model. However, different disclosure thresholds would apply: the disclosure threshold for donations to political parties would be reduced to \$1,000, and the same thresholds would continue to apply for donations to candidates (\$200) and to third parties (\$1,000).

12.14 The reforms regarding the establishment of a Party Administration Fund and a revamped Political Education Fund would also still be implemented in the second-preference model.

12.15 Reforms are particularly needed to corruption-proof the planning system, and address perceptions that property developers have undue influence on the decisions made by elected representatives. Reform would be achieved by implementing the ICAC's recommendations in regard to the planning system.

- Provide clear instructions to councillors on the circumstances in which political donations give rise to non-pecuniary conflicts of interest. Councillors would be required to refrain from discussion and voting on matters involving campaign donors, for political donations over \$1,000 – Recommendation 32
- Make failure to declare a non-pecuniary interest relating to a political donation a matter falling within the jurisdiction of the Pecuniary Interest and Disciplinary Tribunal – Recommendation 33
- Include in the list of designated developments, development applications to the Minister for Planning, in respect of which a declaration as to the making of a donation has been made – Recommendation 35

12.16 To strengthen these recommendations, all persons lodging development applications would be required to declare political donations over \$1,000, as would persons lodging objections to development applications. Property developers would also declare political donations for applications in which the developer is not also the applicant. In addition, individual councillors' voting histories should be recorded and made public.

- Persons lodging and objecting to development applicants to declare political donations over \$1,000, as well as property developers – Recommendations 34 & 38
- Individual councillors' voting histories recorded and published – Recommendation 37

Conclusion

12.17 This report continues the proud tradition of parliamentary committees being at the forefront of electoral funding reform in New South Wales, by recommending a radical re-writing of the NSW electoral funding scheme. If the Committee's proposed model is implemented, the electoral funding scheme as we know it will be no longer, and a new, more robust scheme will rise in its place. The Committee considers that this new scheme will achieve what the current scheme could not, namely, the fulfillment of the original aims of the *Election Funding Act 1981*: to prevent corruption and undue influence, and level the playing field for more equal electoral competition.

12.18 The Committee calls on the Premier to implement its proposed model, to demonstrate his commitment to restoring public faith in the electoral finance regime in New South Wales. Implementation of the Committee's proposed model would well and truly declare to a sceptical public, that the great political parties of New South Wales are not up for sale.

Appendix 1 Submissions

No	Author
1	Ms Sue Baker
2	Mr Tjoan Lie
3	Mr Pat Romano (Burwood Council)
4	Mr James McCredie
5	Mr Greg Bloomfield (Fair GO)
6	Mr Andrew Geddis (University of Otago)
7	Ms Ann Barry
8	Mrs Margo Irons
9	Ms Margaret Booth
10	Mr Peter Waite OAM JP
11	Ms Nancy Pallin
12	Dr Jean Lennane
13	Mr Arthur Bruce Grime
14	Name suppressed at request of author
15	Ms Keren Cox-Witton
16	Mr Ian Scandrett
17	Mr Michael James
18	Ms Di Cook
19	Ms Belinda Stewart
20	Dr Ruth Bright
21	Mr Derek Recsei
22	Mr Phillip Langley
23	Ms Elaine Dabbs
24	Mr R.H. Stone
25	Ms Stacey Holland
26	Mr Graeme Cordiner
27	Mr and Mrs N Willetts
28	Mr F.W.D. Rost
29	Mr George Paul
30	Mr Simon Maxwell
31	Mr Phillip Marsh
32	Mr John Hocking

No	Author
33	Ms Wendy Skelsey
34	Mr and Mrs D Poyzer
35	Mr Douglas Stone
36	Mr Gordon Hocking
37	Mr John Tourrier
38	Mr Robert Hochmann
39	Mr and Mrs J Roberts
40	Mr David Phillips (Festival of Light Australia)
41	Mr Roger Pottie
42	Mr Colin Hughes
43	Ms Kathi Wyldeck
44	Ms Shirley Drake
45	Mr John Flett
46	Mr Mark Mealey
47	Ms H.M. Haenke
48	Mr Fergus Fricke
49	Mr Michael Davies
50	Ms Pauline Williams
51	Mr Michael Gillian
52	Mr Neil Denett
53	Mr Peter Stahel (Inner Sydney Greens)
54	Ms Cherie Studwell
55	Mr Tony Recsei (Save Our Suburbs)
56	Mr Paul Shepanski
57	Ms Jeanette Miller
58	Mr Robert Pallin
59	Mrs Margaret Lund
60	Cr Carolyn Allen (Leichhardt Municipal Council)
61	Mrs Janette Langley
62	Mr Syd Smith
63	Mr Jeremy Lowther
64	Mr Peter Chorley
65	Mr and Mrs Mike and Maree Ryan
66	Mr Roger Heather
67	Mr and Mrs Allan and Dorothy Butt

No	Author
68	Dr Eleanor Dawson
69	Mrs Penny Marshall
70	Cr Julie Bourke
71	Ms Margo Saunders
72	Mr and Mrs John and Helen Herron
73	Ms Karen Bedford
74	Confidential
75	Ms Jacqueline Norton
76	Ms Crystal Cudilla (Lane Cove Council)
77	Ms Sandy McClimont (Residents' Action Network)
78	Mr Geoff Wall
79	Mr Joseph Adams (Australian Business Party)
80	Ms Michelle Wellard (Eurobodalla Greens)
81	The Hon Jerrold Cripps QC (Independent Commission Against Corruption)
82	Mr Brad Pederson (Democracy Watch)
83	Ms Sue Edwards (Terrigal Area Residents Association "TARA" Inc)
84	Mr John Wiggin
85	Cr Richard Bates (Shoalhaven Greens)
86	Mr Paul Anderson (Lithgow City Council)
87	Mrs Barbara Grant-Curtis
88	Mr Viv Hudson (Manly Council)
89	Mr Robert Borsak (The Shooters Party)
90	Dr Christina Naylor
91	Ms Jean Katie Posen
92	Ms Lesley Furneaux-Cook (Burwood Community Voice)
93	Ms Selina Chaine
94	Ms Giselle Mawer
95	Mr Mark Ellis (Central Coast Branch – Australian Conservation Foundation)
96	Mr Mark Ellis
97	Ms Kim Wagstaff
98	Mr Mark Corrigan – confidential by resolution of the Committee
99	Mr Phil Lamb (Christian Democratic Party – NSW Branch)
100	Ms Jill Walker
101	Mr Aaron Gadiel (Urban Taskforce Australia)
102	Ms Diane Lawrence (Warringah Council)

No	Author
103	Cr Genia McCaffery
104	Ms Helen Wilson
105	Mr Julian Sheen (Oatley Flora and Fauna Conservation Society Inc)
106	Mr Colin Barry (Election Funding Authority of NSW)
107	Mr Karl Bitar (Australian Labor Party – NSW Branch)
107a	Mr Karl Bitar (Australian Labor Party – NSW Branch)
108	Mr Hammy Goonan (Australian Centre for Democracy and Justice)
109	Ms Naida Wills
110	Mr Bernard Smith (Port Macquarie-Hastings Council)
111	Mr Greg Roberts (Shoalhaven City Council)
112	Ms Yvonne Jayawardena
113	Ms Mary Frances Hawkins
114	Mr Richard Bryce
115	Name suppressed at request of author
116	Mr and Mrs M.R. and K.J. Wyatt
117	Mr and Mrs Mark and Valda McMullen
118	Ms Cheryl Sutherland
119	Ms Vicki Bolling
120	Ms Christine Ferguson (The National Party of Australia – NSW)
121	Ms Lee Rhiannon MLC (The Greens NSW)
122	Confidential
123	Mr Graham Lewis
124	Mr Hugh Knox
125	Dr Norman Thompson (Greens Political Donations Research Project)
125a	Dr Norman Thompson (Greens Political Donations Research Project)
126	Mr John Hatton
127	Mr Eric Jones
128	Mr Ian Hehir (Friends of Warringah)
129	Mr Chris Maltby (Waverley Greens)
130	Mr Barry Laing
131	Mr Lloyd Frederick Reynolds
132	Ms Anne Jones (Action on Smoking and Health Australia)
133	Ms Trudy Wiedeman
133a	Ms Trudy Wiedeman
134	Mr Jamie Harrison

No	Author
135	Ms Penny Holloway (North Sydney Council)
136	Mr Michael Cole
137	Mrs Susan Cole
138	Mr Laurence Ganter
139	Mrs Dawn Fardell MP
140	Mr Barry O'Farrell MP (Liberal Party of Australia – NSW Division)
141	Mr Andrew Penman (The Cancer Council – NSW)
142	Ms Adrienne James
143	Mrs Lucy Costas
144	Dr David Serisier
145	Ms Kerrie Tucker (Public Interest Advocacy Centre)
146	Mr Brian Gray and Mr Barry Benson
147	Ms Candy Nay (Marrickville Council)
148	Dr Raoul Walsh
148a	Dr Raoul Walsh
149	Ms Ronda Rankins
150	Mrs Dorothy Holdom
151	Ms Margaret Hogge (Non-Smokers' Movement of Australia Inc)
152	Dr Anthony Harris
153	Ms Clover Moore MP
153a	Ms Clover Moore MP
154	Dr Joo-Cheong Tham (University of Melbourne)
155	Confidential
156	Ms De Brierley Newton
157	Dr Phil Larkin (Democratic Audit of Australia)
158	Confidential
159	Ms Barbara McGarity (Women Into Politics Inc)
160	Mrs Jill Pain
161	Dr Michael F Harris
162	Mr Ken Morrison (Property Council of Australia)
163	Mr and Mrs W.R. and H.M. Hindmarsh
164	Mr Oscar Cahill
165	Mr Mike Baird MP
166	Mr James Ryan
167	Ms Christine Berlioz

No	Author
168	Mr Shane Leong
169	Mr Edward Paul Tello Melendez
170	Mr Christopher Leong
171	Mr Peter Wright
172	Ms Janet Harwood
173	Mr Wayne Carter (Bankstown City Council)
174	Ms Jo Holder
175	Dr Stephen Harrison
176	Mrs Barbara Fitzgibbon
177	Mr Craig Bennett (Wyong Shire Council)
178	Mr Alan Parr (Friends of Turramurra, Inc)
179	Dr David Singer
180	Confidential
181	Ms Alice Beauchamp
182	Ms Leigh Sanderson (Department of Premier and Cabinet)
183	Mr Bruce Toms (Progressive Labor Party)
184	Ms Frances Burnham
185	Mr Hugh Williamson
186	Cr David Redmond (Sutherland Shire Council)
187	Cr Denise Wilton (Mosman Municipal Council)
188	Mr Greg Piper MP
189	Cr Michael Cantali

Appendix 2 Witnesses

The Committee held five public hearings and a public forum at Parliament House. A list of witnesses is provided below and transcripts of the hearings are on the Committee's website at www.parliament.nsw.gov.au.

Date	Name	Position and Organisation
Monday 3 March 2008	Mr Colin Barry	Chairperson, Election Funding Authority of New South Wales
	Mr Trevor Follett	Secretary, Election Funding Authority of New South Wales
	Ms Anita Tang	Director, Health Strategies, the Cancer Council of New South Wales
	Professor Marian Sawyer	Leader, Democratic Audit of Australia
	Mr Norm Kelly	Member, Democratic Audit of Australia
	Mr Aaron Gadiel	Chief Executive, Urban Taskforce Australia
	Ms Anne Jones	Chief Executive Officer, Action on Smoking and Health Australia
Monday 10 March 2008	Ms Robin Banks	Chief Executive Officer, Public Interest Advocacy Centre
	Mr Ken Morrison	New South Wales Executive Director, Property Council of Australia
	Cr Genia McCaffery	Mayor of North Sydney Council and President of the Local Government Association of New South Wales
Monday 31 March 2008	Dr Joo-Cheong Tham	Senior Lecturer, Law Faculty, University of Melbourne
	Dr Simon Longstaff	Executive Director, St James Ethics Centre
	Mrs Dawn Fardell MP	Member for Dubbo
	Ms Lee Rhiannon MLC	The Greens NSW
	Dr Norman Thompson	Director, The Greens Political Donations Research Project
	Mr Barry O'Farrell MP	Leader of the NSW Opposition
	Mr Martin Laverty	Interim State Director, Liberal Party of Australia (New South Wales Division)
	Cr Bruce Miller	Mayor of Cowra and President of the Shires Association of New South Wales
	Mr Peter Draper MP	Member for Tamworth
	Mr Arie Baalbergen	Treasurer, Christian Democratic Party (NSW Branch)
Friday 4 April 2008	Cr Ian Longbottom	Mayor, Lane Cove Council
	Cr Judy Lambert	Representing the Mayor of Manly Council

Date	Name	Position and Organisation
	Cr Genia McCaffery	Mayor, North Sydney Council
	Ms Penny Holloway	General Manager, North Sydney Council
	Cr Warren Welham	Mayor, Wyong Shire Council
	Cr Neville Castle	Mayor, Lithgow City Council
	Mr Paul Anderson	General Manager, Lithgow City Council
	Cr Greg Watson	Mayor, Shoalhaven City Council
	Mr Greg Piper MP	Member for Lake Macquarie
	Ms Clover Moore MP	Member for Sydney
	Mr Paul Davey	Vice Chairman, National Party of Australia – New South Wales
	Mr Robert Drew	Former mayor of Port Macquarie-Hastings Council
	Mr Karl Bitar	General Secretary, Australian Labor Party (NSW Branch)
Friday 4 April 2008 – Public forum	Mr Tony Recsei	
	Mr Shane Leong	
	Mr Barry Laing	
	Youth A	
	Mr Richard Bryce	
	Ms Sandy McClimont	
	Mr Jamie Harrison	
	Ms Janet Harwood	
	Mr Brad Pederson	
	Mr Joe Nagy	
	Ms Jo Holder	
	Ms Trudy Wiedeman	
	Mr Geoff Wall	
	Mr Paul Shepanski	
	Ms Margaret Hogge	
	Dr Jean Lennane	
	Mr Graeme Cordiner	
	Mr Derek Recsei	
	Ms Yvonne Jayawardena	
Friday 11 April 2008	Mr Colin Barry	Chairperson, Election Funding Authority of New South Wales
	Mr Trevor Follett	Secretary, Election Funding Authority of New South Wales

Appendix 3 Tabled documents

Monday 3 March 2008

Public Hearing, Jubilee Room, Parliament House

1. Disclosure periods for the 2007 State Election and 2008 Local Government Election – *tendered by Mr Trevor Follett*
2. How disclosure periods are determined – *tendered by Mr Trevor Follett*
3. Election Funding Authority of New South Wales – Select Committee Presentation 3 March 2008
4. Article entitled ‘Trojan Horses: how the tobacco industry infiltrates the smokefree debate in Australia’ from the *Australian and New Zealand Journal of Public Health* 2002 vol. 26 no. 6 – *tendered by Ms Anita Tang*

Monday 31 March 2008

Public Hearing, Jubilee Room, Parliament House

1. Lane Cove City Council – Code of Conduct – *tendered by Councillor Longbottom*
2. Answers to draft questions – Cr Bruce Miller, President, Shires Association – *tendered by Cr Bruce Miller*
3. Answers to draft questions – Local Government and Shires Association – *tendered by Cr Bruce Miller*
4. NSW Inquiry - Electoral Funding and Political Donations – *tendered by Dr Norman Thompson*

Friday 4 April 2008

Public Hearing, Jubilee Room, Parliament House

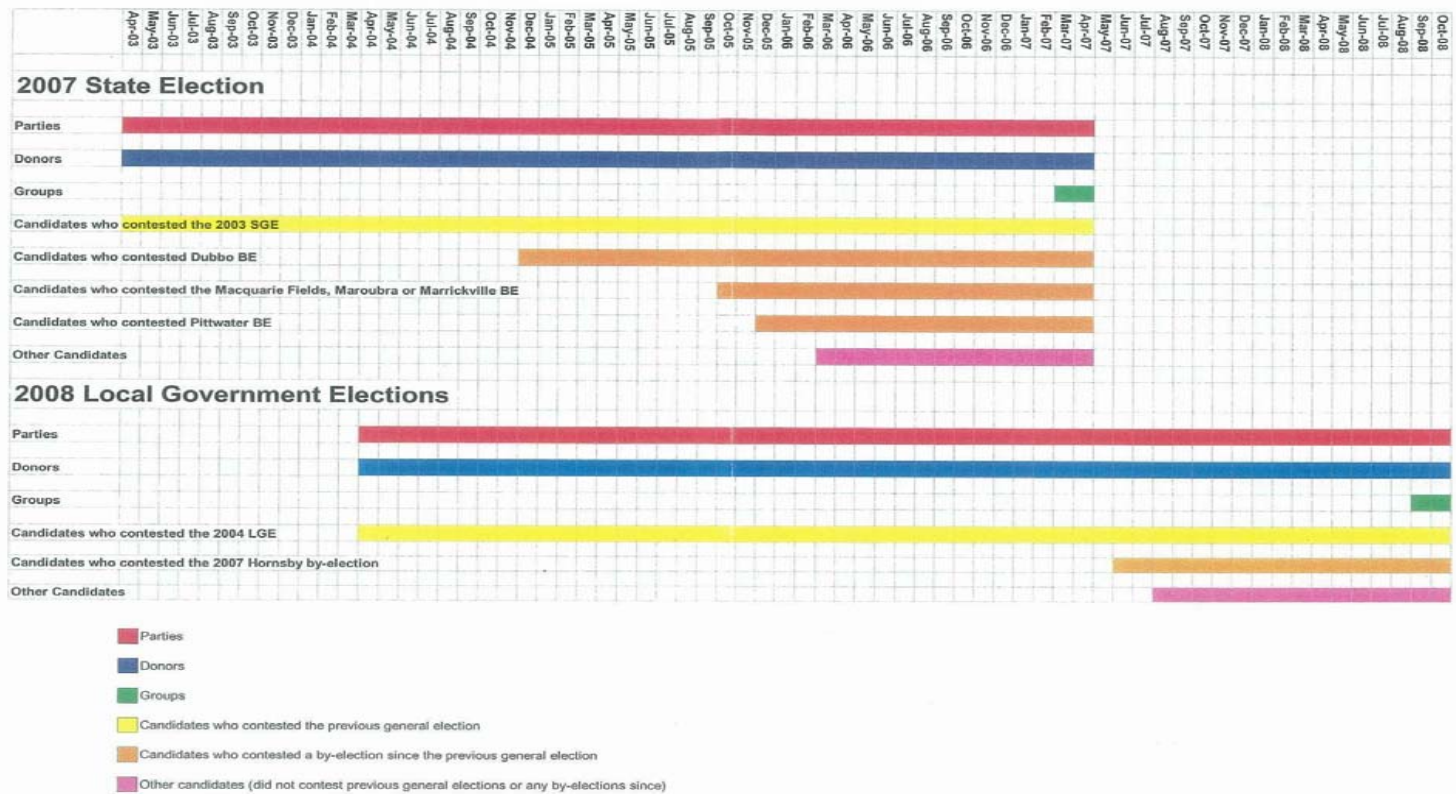
1. Submission to the Inquiry into Electoral and Political Party Funding – *tendered by Mr Greg Piper MP*
2. Correspondence from Mr Brian DeCelis, A/Secretary, Election Funding Authority dated 3 September 2004 providing declarations lodged by candidates for the 2004 local government elections – *tendered by Mr Jamie Harrison*

Friday 11 April 2008

Public Hearing, Room 814/815, Parliament House

1. Local Government Elections Bulletins – *tendered by Mr Colin Barry*
2. Agenda and Discussion Points – meeting between NSWEC and Councils regarding arrangements for the 27 September 2008 Local Government Elections – *tendered by Mr Colin Barry*

Appendix 4 Disclosure periods for the 2007 State Election and 2008 Local Government Elections



Appendix 5 Minutes

Minutes No. 1

Wednesday 17 October 2007

Parkes Room, Parliament House, Sydney, at 1.05 pm

1. The Clerk of the Parliaments opened meeting

In accordance with standing order 213(1), the Clerk of the Parliaments declared the meeting open at 1.05pm.

The Clerk tabled the resolution of the Legislative Council of Wednesday 27 June 2007 establishing the Committee.

The Clerk confirmed the membership of the Committee in accordance with the resolution of the Legislative Council of Wednesday 27 June 2007 and the minutes of the House of Thursday 28 June 2007 reporting the Government and Opposition members of the Committee and the minutes of the House of Wednesday 26 September 2007 reporting the cross-bench members of the Committee.

The Clerk advised the Committee that Ms Beverly Duffy would be the Director of the Committee secretariat.

2. Members present

Mr Robert Brown

Ms Amanda Fazio

Miss Jenny Gardiner

Mr Don Harwin

Revd Mr Fred Nile

Mr Mick Veitch

3. Election of Chair

In accordance with standing order 213(2) the Clerk called for nominations for Chair of the Committee.

Miss Gardiner moved: That Mr Harwin be elected Chair of the Committee.

Mr Brown moved: That Revd Nile be elected Chair of the Committee.

The Clerk informed the Committee that there being two nominations, a ballot would be held.

The Clerk announced the result of the ballot as follows:

Revd Nile – 4 votes

Mr Harwin – 2 votes

Revd Nile, having a majority of the members present and voting, was therefore declared elected Chair of the Committee.

Revd Nile took the Chair

4. Election of Deputy Chair

The Chairman called for nominations for Deputy Chair.

Mr Veitch moved: That Ms Fazio be elected Deputy Chair of the Committee.

Mr Brown moved: That Mr Harwin be elected Deputy Chair of the Committee.

The Chairman informed the Committee that there being two nominations, a ballot would be held.

The Chairman announced the result of the ballot as follows:

Ms Fazio – 2 votes

Mr Harwin – 4 votes

Mr Harwin, having a majority of the members present and voting was therefore declared elected Deputy Chair of the Committee.

5. Procedural motions

Resolved, on the motion of Ms Fazio: That unless the Committee decides otherwise, the following procedures apply for the life of the Committee:

Sound and television broadcasting of public proceedings

That the Committee authorises the sound and television broadcasting of its public proceedings, in accordance with the resolution of the Legislative Council.

Publishing transcripts of evidence

That the Secretariat be empowered to publish transcripts of evidence taken at public hearings, in accordance with section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of standing orders 223 and 224.

Media statements

That media statements on behalf of the Committee be made only by the Chairman.

Inviting witnesses

That arrangements for inviting witnesses be left in the hands of the Chairman and the Secretariat after consultation with the Committee.

6. Conduct of inquiry

Resolved, on the motion of Ms Fazio: That

- the secretariat prepare a discussion paper on political funding to guide the preparation of submissions to the inquiry
- the discussion paper be circulated at the same time as the call for submissions in early December
- the closing date for submissions be mid February 2008
- committee members should forward their suggestions regarding the scope and content of the discussion paper to the secretariat.

Resolved on the motion of Mr Harwin: That the secretariat circulate a draft list of inquiry stakeholders to committee members.

Resolved, on the motion of Mr Brown: That the Chairman request permission from the House to extend the Committee's reporting date from the first sitting day in March 2008, to the last sitting day in June 2008.

7. Adjournment

The committee adjourned at 1.35 pm until 1.05pm Wednesday 14 November 2007.

Beverly Duffy

Clerk to the Committee

Minutes No. 2

Wednesday, 14 November 2007

Room 1102, Parliament House, Sydney, at 1.15 pm

1. Members present

Revd Fred Nile, *Chairman*

Mr Don Harwin, *Deputy Chair*

Mr Robert Brown

Ms Amanda Fazio

Miss Jenny Gardiner

Mr Mick Veitch

2. Minutes

Resolved, on the motion of Mr Brown: That draft Minutes No. 1 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 30 October 2007 – From Mr Harwin to Committee Director outlining issues for consideration in the discussion paper
- 6 November 2007 – From Mr Brown to Chairman outlining issues for consideration for the inquiry.

4. Extension of reporting date

The Committee noted that the House agreed to extend the reporting date until the last sitting day of June 2008.

5. Discussion paper

The Committee considered the draft discussion paper.

Resolved, on the motion of Mr Harwin: That p1 paragraph 3 be amended after ‘Submissions should be provided by’ to omit ‘21 December 2007’ and insert ‘15 February 2008’.

Resolved, on the motion of Miss Gardiner: That paragraph 1.1 line 5 be amended after ‘candidates’ to insert ‘and/or, party membership fees and union affiliate fees’.

Resolved, on the motion of Miss Gardiner: That p3 first dot point be amended after ‘structure’ to insert ‘and procedures’.

Resolved, on the motion of Miss Gardiner: That p3 last dot point be amended after branches to insert ‘/affiliates’ and that this change be made wherever this has occurred in the discussion paper.

Resolved, on the motion of Miss Gardiner: That paragraph 1.9 line 10 be amended to omit ‘and’, and line 11 be amended after ‘events’ to insert ‘; and the establishment of the political education fund.’

Resolved, on the motion of Mr Harwin: That p12 Table 1 relating to Canada be amended in the last column prior to ‘limits calculated on...’ to insert ‘National and constituency’.

Resolved, on the motion of Ms Fazio: That the draft discussion paper (as amended) be adopted and published in accordance with standing order 226(4).

6. Call for submissions***Letter inviting submissions***

The Committee agreed to add additional stakeholders to the proposed list, as follows:

- Avant Card
- All parties currently registered for the 2008 local government elections
- NSW Business Chamber and other peak business organisations
- general managers of all local councils in NSW (to be sent a hard copy letter and an invitation to download the discussion paper from the Committee’s website)
- NSW Council of Churches
- main religious denominations
- St James Ethics Centre
- Sporting Shooters’ Association (NSW)
- Australian Fishing Tackle Association
- Boating Industry Association
- Australian Shareholders’ Association
- Property Council of NSW.

Resolved, on the motion of Mr Harwin: That the Committee write to all individuals or corporations who donated \$40,000 or more in the last publicly available reporting period, to invite them to make a submission to the Inquiry.

Resolved, on the motion of Ms Fazio: That a letter inviting a submission be sent to all those on the amended list of stakeholders.

Advertisement

Resolved, on the motion of Mr Harwin: That advertisements calling for submissions be placed in the *Sydney Morning Herald*, *Daily Telegraph* and *The Australian* in the week beginning 26 November 2007.

7. General Business

Resolved, on the motion of Mr Brown: That hearings be held in March 2008, and that the Chairman circulate a calendar for members to indicate their availability and nominate three potential hearing dates.

Resolved, on the motion of Mr Harwin: That a media release be issued as soon as practicable, advising that the Committee:

- has published a discussion paper
- is now calling for submissions
- will hold several hearings in March 2008.

8. Adjournment

The committee adjourned at 2.10 pm until 11am Thursday 21 February 2008.

Madeleine Foley

Clerk to the Committee

Minutes No. 3

Thursday, 21 February 2008

Room 1102, Parliament House, Sydney, at 11.03 am

1. Members present

Revd Fred Nile, *Chairman*

Mr Don Harwin, *Deputy Chair*

Mr Robert Brown

Ms Amanda Fazio

Miss Jenny Gardiner

Mr Mick Veitch

2. Minutes

Resolved, on the motion of Mr Brown: That draft Minutes No. 2 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 15 January 2008 – From John Price of the Australian Securities & Investments Commission advising that they will not be making a submission to the inquiry.
- 25 January 2008 – From James Brown of Wyong Shire Council requesting an extension of the submission deadline to 3 March 2008.
- 1 February 2008 – From Steve Hackett of Penrith City Council advising that the Council will not be making a submission to the inquiry.
- 1 February 2008 – From Ray Brownlee of Randwick City Council advising that the Council will not be making a submission to the inquiry.
- 1 February 2008 – From Kerry Willcock of Tabcorp advising that they will not be making a submission to the inquiry.
- 2 February 2008 – From Joyce Dalton requesting that the Inquiry investigate any links between developer donations and changes to the planning regulations.

- 3 February 2008 – From Alan Eaton noting the seriousness of allegations of unfair practices by the NSW Government.
- 11 February 2008 – From Dr Joo-Cheong Tham requesting a two-week extension to 29 February 2008 for making a submission to the inquiry, and indicating that he would like to be considered as a witness.
- 11 February 2008 – From Mark McRae requesting that the Inquiry investigate any links between developer donations and influence on political parties.
- 12 February 2008 – From Anthony Ball of ClubsNSW advising that they will not be making a submission to the inquiry.
- 19 February 2008 – From Dr Phil Larkin of the Democratic Audit of Australia, confirming that the Democratic Audit will be making a submission to the inquiry, and indicating that representatives would be available to appear at hearings.

4. **Sound and television broadcasting of public proceedings**

Resolved, on the motion of Mr Harwin: That, unless the Committee decides otherwise, the Committee authorises the sound and audio-visual broadcast, filming and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007.

5. **Proposal to extend additional invitations for submissions**

Miss Gardiner moved: That Mr Peter Barron and Mr David Tierney be invited to appear as witnesses.

Question put and negatived.

6. **Publication of submissions**

Resolved, on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submission no. 14, with the name suppressed at the request of the submission author.

Resolved, on the motion of Mr Brown: That the Committee keep confidential submissions no. 1 and 74 at the request of the submission authors.

Resolved, on the motion of Mr Veitch: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submissions no. 2 – 13, 15 – 73, 75 – 97, 99 – 137, and 139 – 145.

Resolved, on the motion of Ms Fazio: That the Committee defer consideration of the publication of submission no. 138 until a future meeting of the Committee.

The Secretariat distributed unamended copies of submission no. 98.

Resolved, on the motion of Ms Fazio: That submission no. 98 be kept confidential, and that a copy of the submission be provided to the Electoral Funding Authority on a confidential basis for discussion during an in camera hearing.

Resolved, on the motion of Ms Fazio: That the Committee write to the author of submission no. 98 advising that:

- the submission will be kept confidential, but that a copy will be provided to the Chairperson of the Electoral Funding Authority on a confidential basis for discussion during an in camera hearing
- the Committee is not the appropriate body to investigate allegations of corrupt conduct or maladministration, and that the author is advised to direct their allegations to the Independent Commission Against Corruption, if the author has not already done so.

All unamended copies of submission no. 98 were returned to the Secretariat.

7. **Selection of witnesses**

Resolved, on the motion of Mr Brown: That the following individuals be invited to appear as witnesses:

- Electoral Commissioner of NSW
- Representatives of the state executives/administrative leadership of the ALP, Liberals, Nationals, The Greens, Christian Democrats and Shooters

- Academics, including Emeritus Professor Colin Hughes; other options are representatives from the Democratic Audit of Australia, Professor Brian Costar, Dr Sally Young, Associate Professor Graeme Orr and Dr Joo-Cheong Tham (NB these witnesses are based interstate and may require payment of travel expenses)
- St James Ethics Centre
- Action on Smoking and Health
- Cancer Council of NSW
- Public Interest Advocacy Centre
- Religious groups
- Urban Taskforce Australia
- Australian Hotels Association
- Clubs NSW
- Unions NSW
- Tabcorp
- Local Government and Shires Association
- Local councils/councillors
- ICAC.

Resolved, on the motion of Mr Harwin: That Ms Lee Rhiannon be advised of the Committee's resolution that the organisational wing of each of the six parties represented in the NSW Parliament will be invited to nominate representatives to give evidence to the Committee.

Resolved, on the motion of Mr Harwin: That the Committee invite the independent members of the Legislative Assembly to give evidence, including the Speaker in his capacity as the Member for the Northern Tablelands.

Resolved, on the motion of Mr Brown: That the Committee invite Dr Joo-Cheong Tham to give evidence via video or teleconference.

Resolved, on the motion of Mr Harwin: That the Committee invite the Electoral Commissioner and Electoral Funding Authority (EFA) to give evidence at the initial hearing, and that the EFA also be invited to appear at the end of the hearing schedule to respond to any issues raised during the hearings. .

Resolved, on the motion of Ms Fazio: That representatives of the state executives/administrative leadership of the ALP, Liberals, Nationals, The Greens, Christian Democrats and Shooters be invited to appear at the end of the hearing schedule.

8. Public forum

Resolved, on the motion of Mr Brown: That a public forum be held at Parliament House on a date to be confirmed, preferably from 6 to 8pm.

9. Additional meeting dates

Resolved, on the motion of Mr Harwin: That an additional hearing be held on Friday 4 April 2008.

Resolved, on the motion of Mr Veitch: That the deliberative meeting to consider the final report be held on Monday 16 June 2008, from 9.30am to 5pm.

10. Adjournment

The committee adjourned at 11.57am until Monday 3 March 2008.

Madeleine Foley

Clerk to the Committee

Minutes No. 4

Monday, 3 March 2008

Jubilee Room, Parliament House, Sydney, at 9:06am

1. Members presentRevd Fred Nile, *Chairman*Mr Don Harwin, *Deputy Chair*

Mr Robert Brown

Ms Amanda Fazio (from 9.30am)

Miss Jenny Gardiner

Mr Mick Veitch

2. Minutes

Resolved, on the motion of Mr Veitch: That draft Minutes No. 3 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Sent

- 26 February 2008 – From the Secretariat to Mr Colin Barry, Chairperson of the Election Funding Authority (EFA), and Mr Trevor Follett, Secretary of the EFA, to appear as witnesses before the Committee on 3 March 2008.
- 26 February 2008 – From the Chairman to Mr Colin Barry, Chairperson of the EFA, inviting Mr Barry to appear as a witness before the Committee on 4 April 2008 and informing Mr Barry that a portion of the hearing will be held in camera to discuss a confidential submission that will be provided to Mr Barry on a confidential basis.
- 26 February 2008 – From the Chairman to the author of submission no. 98 advising that his submission will be kept confidential, but that a copy will be provided to the Chairperson of the EFA on a confidential basis for discussion during an in camera hearing. The author was further advised to direct the allegations to the Independent Commission Against Corruption, if he has not already done so.

4. Publication of submissions***Submissions published by Committee – subsequent request for confidentiality***Resolved, on the motion of Mr Veitch: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submission no. 115, with the name suppressed at the request of the submission author.***Submission kept confidential by Committee – subsequent request for publication***Resolved, on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submission no. 1.***Consideration of publication deferred by Committee***Resolved, on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submission no. 138 but keep confidential the attachments, some of which contain potential adverse mention.***New submissions***Resolved, on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submissions no. 147 – 154, 156 – 157 and 159 – 165.Resolved, on the motion of Mr Veitch: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submission no. 146, subject to the omission of certain information at the request of the submission author.

Resolved, on the motion of Ms Fazio: That submission no. 158 be kept confidential.

Resolved, on the motion of Mr Brown: That submission no. 155 be kept confidential, at the request of the submission author.

5. Selection of witnesses

Resolved, on the motion of Miss Gardiner: That the Committee invite Dr Simon Longstaff, Director of the St James Ethics Centre, to give evidence via teleconference.

6. Public forum

Resolved, on the motion of Miss Gardiner: That a public forum be held on Friday 4 April 2008 from 6 to 8pm, and that the Committee invite individual submission authors to address the Committee for up to five minutes each, and that the forum also be open to individuals who have not made submissions.

7. Questions on notice

Resolved, on the motion of Miss Gardiner: That for the duration of the Inquiry, witnesses be requested to return answers to questions taken on notice within 21 days of the date on which the questions are forwarded to the witness.

8. Consideration of correspondence

The Secretariat tabled correspondence from the author of submission no. 98, which has been kept confidential by the Committee, requesting approval to publish the submission beyond the confines of the Committee.

Resolved, on the motion of Mr Veitch: That the Committee defer consideration of the correspondence from the author of submission no. 98, dated 2 March 2008.

Ms Fazio joined the meeting.

9. Public hearing

Witnesses, the public and media were admitted

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Colin Barry, Chairperson, Election Funding Authority of NSW
- Mr Trevor Follett, Secretary, Election Funding Authority of NSW.

Mr Follet tabled the following documents:

- "How disclosure periods are determined – State Election 2007"
- "Disclosure periods for the 2007 State Election and 2008 Local Government Elections".

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Anita Tang, Director, Health Strategies, The Cancer Council (NSW).

Ms Tang tabled the following document:

- "Trojan Horses: how the tobacco industry infiltrates the smokefree debate in Australia"

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Norm Kelly, Democratic Audit of Australia
- Professor Marian Sawyer, Democratic Audit of Australia.

Professor Sawyer tabled the following document:

- Sally Young and Joo-Cheong Tham for the Democratic Audit of Australia – "Political Finance in Australia: a skewed and secret system" (report no 7)

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Aaron Gadiel, Chief Executive Officer, Urban Taskforce Australia.

Point of order: Mr Harwin took a point of order that the question was within the terms of reference for the inquiry.

The Chairman ruled that the question was out of order because it was not relevant to the role in which Mr Gadiel was appearing as a witness.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Anne Jones, Chief Executive Officer, Action on Smoking and Health Australia

he evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.20pm.

The public and the media withdrew.

10. **Deliberative meeting**

Resolved, on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 224, the Committee authorises the Clerk to the Committee to publish the documents tendered at today's hearing:

- "How disclosure periods are determined – State Election 2007"
- "Disclosure periods for the 2007 State Election and 2008 Local Government Elections".

Resolved, on the motion of Ms Fazio: That the Property Council of Australia be invited to appear as a witness.

Resolved, on the motion of Ms Fazio: That submission no. 122 be kept confidential from this point forward at the request of the submission author.

The Committee considered correspondence from Ms Susie Gemmell, staff member of Ms Lee Rhiannon MLC, requesting permission to film the public hearings of the Committee.

Resolved, on the motion of Mr Harwin: That the Committee write to Ms Rhiannon:

- advising of the current options available for obtaining recordings of Committee proceedings
- requesting further information on the proposed duration of filming and the intended use of the footage
- requesting a response from Ms Rhiannon before the next meeting of the Committee on 10 March 2008.

Resolved, on the motion of Mr Brown: That the Committee write to the following organisations to place on the record the Committee's invitation to them to appear as witnesses:

- Australian Hotels Association
- Tabcorp
- Unions NSW
- Clubs NSW.

11. **Adjournment**

The Committee adjourned at 4.40pm until Monday 10 March 2008.

Madeleine Foley

Clerk to the Committee

Minutes No. 5

Monday, 10 March 2008

Jubilee Room, Parliament House, Sydney, at 10:00 am

1. **Members present**

Revd Fred Nile, *Chairman*

Mr Don Harwin, *Deputy Chair*

Mr Robert Brown

Ms Amanda Fazio (from 10:35 am)
Miss Jenny Gardiner
Mr Mick Veitch

2. Public hearing

Witnesses, the public and media were admitted

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Robin Banks, Chief Executive Officer, Public Interest Advocacy Centre
- Ms Deirdre Moor, Manager, Policy and Programs, Public Interest Advocacy Centre.

Ms Fazio joined the meeting.

The evidence concluded and the witnesses withdrew.

The public hearing adjourned at 10.45am.

The public and the media withdrew.

3. Deliberative meeting – Minutes

Resolved, on the motion of Mr Brown: That draft Minutes No. 4 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 29 February 2008 – From Mr Alan Parr, President, Friends of Turramurra Inc, requesting an extension of the submission deadline until Tuesday 4 March 2008.
- 2 March 2008 – From Mr David Singer, outlining his concerns regarding land tax in NSW.

Sent

- 3 March 2008 – To Mr Colin Barry, Chairperson, Electoral Funding Authority of NSW, from the Clerk Assistant – Procedural Support forwarding confidential submission no. 98
- 4 March 2008 – Formal invitation from the Chairman to give evidence to the Committee, to:
 - Mr John Thorpe, NSW President, Australian Hotels Association NSW
 - Mr Mark Lennon, Assistant Secretary, Unions NSW
 - Mr John Story, Chairman, Tabcorp
 - Mr Peter Newell, Chairman, Clubs NSW
- 4 March 2008 – To Ms Lee Rhiannon MLC from the Chairman, regarding Ms Rhiannon's request for a staff member to film the Committee's public hearings.

5. Consideration of correspondence deferred by Committee

Resolved, on the motion of Mr Brown: That the Committee write to the author of submission no. 98, advising that his submission is to be kept confidential to the Committee, and outlining the implications of publishing his submission or the information contained in his submission.

6. Request to film Committee hearings

The Secretariat tabled correspondence from Ms Rhiannon dated 7 March 2008, advising that if it is possible to edit footage recorded by the Parliamentary Library and placed on a DVD, then Ms Rhiannon would be happy to adopt this option.

Resolved, on the motion of Mr Brown: That the Committee write to Ms Rhiannon advising that the Library will provide a recording of the Committee's proceedings.

7. Publication of submissions***New submissions – publication***

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submissions no.'s 125a, 148a, 166 – 171, 173 and 175 – 176.

New submissions – requests for confidentiality

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submissions no. 172 and no. 174, subject to the omission of certain information at the request of the submission authors.

8. Questions for political parties and independent members of the Legislative Assembly

Resolved, on the motion of Ms Fazio: That the Secretariat draft a generic set of indicative questions to be asked of each of the political parties, and independent members of the Legislative Assembly, appearing as witnesses.

9. Witnesses

Resolved, on the motion of Miss Gardiner: That the Committee write to the ICAC after the final public hearing to ask them to comment on:

- any proposals by witnesses, such as the Election Funding Authority, to reform the regulation of electoral and political party funding at the local government level
- the proposal by the Urban Taskforce that persons objecting to development applications or rezoning proposals to the Minister for Planning, as well as persons submitting such applications or proposals, be required to declare any political donations they have made to the Minister or his or her party.

Resolved, on the motion of Mr Brown: That the Committee write to the Minister for Local Government, the Premier and the Minister for Planning, to request an update on progress in implementing the recommendations made in the ICAC's September 2007 position paper *Corruption risks in NSW development approval processes*.

Resolved, on the motion of Mr Harwin: That the Mayors of the local councils who made a submission to the inquiry be invited to give evidence as part of a panel or panels, and that they be accompanied by their General Managers if they wish.

Resolved, on the motion of Miss Gardiner: That the former Mayor of Port Macquarie Hastings Shire Council be invited to give evidence.

Resolved, on the motion of Ms Fazio: That an additional hearing be held on Friday 11 April 2008 from 2 to 4pm to again hear evidence from the Election Funding Authority.

The Committee adjourned at 11:20 am.

10. Public hearing

The public hearing resumed at 11.45 am.

Witnesses, the public and media were admitted

The following witness was sworn and examined:

- Mr Ken Morrison, NSW Executive Director, Property Council of Australia

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Cr Genia McCaffery, President, Local Government Association

The evidence concluded and the witness withdrew.

The public hearing concluded at 1.05pm.

The public and the media withdrew.

11. Next meeting

The Committee adjourned at 1:05 pm until Monday 31 March 2008.

Madeleine Foley

Clerk to the Committee

Minutes No. 6

Monday, 31 March 2008

Room 1102, Parliament House, Sydney, at 8:30 am

1. Members present

Revd Fred Nile, *Chairman*

Mr Don Harwin, *Deputy Chair*

Mr Robert Brown

Ms Amanda Fazio

Miss Jenny Gardiner

Mr Mick Veitch

2. Public hearing – teleconference

The public and media were admitted

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was examined via teleconference:

- Dr Joo-Cheong Tham, Senior Lecturer, Melbourne Law School.

The evidence concluded and the teleconference ended.

The following witness was sworn and examined via teleconference:

- Dr Simon Longstaff, Executive Director, St James Ethics Centre

The evidence concluded and the teleconference ended.

The public and the media withdrew.

3. Deliberative meeting – Minutes

Resolved, on the motion of Mr Brown: That draft minutes no. 5 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 10 March 2008 – From Mr David Singer, in response to the Secretariat's advice that his letter would be treated as correspondence and would not be considered as a formal submission to the Inquiry, requesting that his letter be treated as a submission as he believes it relates to 1(d) of the Inquiry's terms of reference
- 10 March 2008 – From Mr Ricky Leong, minor requesting to speak at forum
- 10 March 2008 – From Mr Richard Bryce, asking how the Committee intends to support the participation of rural and regional attendees at the public forum
- 11 March 2008 – From Ms Joyce Dalton, regarding the discontinuation of large political donations
- 11 March 2008 – From Mr Greg Bloomfield, requesting that the Committee invite him to appear as a witness
- 12 March 2008 – From Mary O'Donoghue of Unions NSW, advising that Unions NSW will not be attending the Committee's hearings
- 17 March 2008 – From Ms Susie Gemmill to the Secretariat, requesting permission to take photographs of Ms Lee Rhiannon during her appearance before the inquiry
- 20 March 2008 – From Mr Trevor Follett, Secretary of the Election Funding Authority, to the Chairman, requesting an extension to 2 April 2008 to provide responses to questions on notice

- 28 March 2008 – From Mr Trevor Follett, Secretary of the Election Funding Authority, to the Secretariat, outlining contributions, expenditure and public funding figures for the 2007 State election.
- 30 March 2008 – From Mr Jamie Harrison, requesting that the Committee invite him to appear as a witness.

Sent (attached)

- 10 March 2008 – From the Secretariat to Mr Colin Barry, Chairperson of the Election Funding Authority inviting him to appear as a witness before the Committee on 11 April 2008.
- 11 March 2008 – From the Chairman to the Premier, the Minister for Local Government and the Minister for Planning, requesting an update on progress in implementing the recommendations made in the ICAC's September 2007 position paper *Corruption risks in NSW development approval processes*.
- 11 March 2008 – From the Chairman to Ms Lee Rhiannon MLC, advising that the Library will provide a recording of the Committee's proceedings.
- 11 March 2008 – From the Chairman to the author of submission no. 98, advising that his submission is to be kept confidential to the Committee, and outlining the implications of publishing his submission or the information contained in his submission.

5. Request to photograph proceedings

Resolved, on the motion of Ms Fazio: That Ms Susie Gemmell be authorised to take still photographs of the The Greens giving evidence during the Committee's public proceedings, on an undertaking by Ms Gemmell to abide by the terms and conditions of the Broadcast Resolution.

6. Publication of submissions

New submissions – publication

Resolved, on the motion of Miss Gardiner: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submissions no. 107a and no. 177 – 179.

New submission – request for confidentiality

Resolved, on the motion of Ms Fazio: That submission no. 180 be kept confidential, at the request of the submission author.

Confidential submission – request for name of author to be published

Resolved, on the motion of Ms Fazio: That the name of the author submission no. 98 not be published.

7. Witnesses

The Chairman updated the Committee on witnesses appearing at the Inquiry.

8. Public forum on Friday 4 April

The Secretariat updated the Committee on the arrangements for the public forum.

9. Publication of correspondence

Resolved, on the motion of Miss Gardiner: That under section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 224, the Committee authorises the Clerk of the Committee to publish correspondence received on 28 March 2008 from the Election Funding Authority of NSW.

10. Public hearing

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

Witnesses, the public and media were admitted

The following witness was examined:

- Mrs Dawn Fardell MP, Member for Dubbo.

The evidence concluded and the witness withdrew.

The following witnesses were examined:

- Ms Lee Rhiannon MLC, Donations spokesperson, The Greens
- Dr Norman Thompson, Director, Democracy 4sale Research Project (sworn).

Dr Thompson tabled the following document:

- “NSW Inquiry – Electoral Funding and Political Donations”.

The evidence concluded and the witnesses withdrew.

The following witnesses were examined:

- Mr Barry O’Farrell MP, Leader of the Opposition, Liberal Party of Australia (NSW Division)
- Mr Martin Lavery, Interim State Director, Liberal Party of Australia (NSW Division) (sworn).

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Cr Bruce Miller, President, Shires Association.

Cr Miller tabled the following documents:

- “Answers to draft questions – Cr Bruce Miller, President, Shires Association”
- “Answers to draft questions – Local Government and Shires Association”.

The evidence concluded and the witness withdrew.

The following witness was examined:

- Mr Peter Draper MP, Member for Tamworth.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Arie Baalbergen, Treasurer, Christian Democratic Party.

The evidence concluded and the witness withdrew.

The public hearing concluded at 5 pm.

The public and the media withdrew.

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 224, the Committee authorises the Clerk to the Committee to publish the documents tendered at today’s hearing:

- “Answers to draft questions – Cr Bruce Miller, President, Shires Association”
- “Answers to draft questions – Local Government and Shires Association”.

11. Next meeting

The Committee adjourned at 5 pm until Friday 4 April 2008.

Madeleine Foley

Clerk to the Committee

Minutes No. 7

Friday, 4 April 2008

Jubilee Room, Parliament House, Sydney, at 9:15 am

1. Members present

Revd Fred Nile, *Chairman*

Mr Don Harwin, *Deputy Chair*

Mr Robert Brown

Ms Amanda Fazio (*at 10:20am*)

Miss Jenny Gardiner
Mr Mick Veitch

2. Minutes

Resolved, on the motion of Mr Brown: That draft minutes no. 6 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Received

- 26 March 2008 – From Ms Anita Tang of the Cancer Council NSW, returning answers to questions on notice.
- 28 March 2008 – From Mr Peter Newell, Chairman of ClubsNSW, to the Chairman, confirming that ClubsNSW will not be giving evidence to the Committee
- 31 March 2008 – From Mr Kerry Wilcock, Executive General Manager, Corporate and Legal, Tabcorp, declining the invitation to give evidence before the Committee
- 31 March 2008 – From Ms Rachel Symonds, Office Manager for the Minister for Local Government, indicating that an update on progress in implementing the recommendations made in the ICAC's September 2007 position paper *Corruption risks in NSW development approval processes* will be provided as soon as possible
- 1 April 2008 – From Ms Robin Banks, Chief Executive Officer of the Public Interest Advocacy Centre, returning answers to questions on notice
- 2 April 2008 – From Ms Helen Robinson, Executive Assistant, NSW Electoral Commission, returning answers to questions on notice.

4. Publication of answers to questions on notice

Resolved, on the motion of Mr Veitch: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the answers to questions on notice from the Cancer Council NSW, the Public Interest Advocacy Centre and the Election Funding Authority.

5. Publication of submissions

New submissions – publication

Resolved, on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submissions no. 181 – 183.

6. Report outline

The Committee deferred consideration of the report until Ms Fazio was present. The Secretariat undertook to circulate a draft report outline later in the day.

7. Other business

Resolved, on the motion of Mr Brown: That the Committee note that Mr Harwin is meeting with a Committee witness, Dr Joo-Cheong Tham of the University of Melbourne, during Mr Harwin's study visit to the United Kingdom in April 2008.

8. Public hearing

Witnesses, the public and media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Cr Ian Longbottom, Mayor, Lane Cove Council
- Ms Penny Holloway, General Manager, North Sydney Council
- Cr Judy Lambert, Manly Council.

Cr Genia McCaffery, Mayor, North Sydney Council was examined on her former oath.

Ms Fazio joined the meeting.

Cr Longbottom tabled the following document:

- “Lane Cove Code of Conduct, 17 October 2005”.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

9. Consideration of request to give evidence in camera

Resolved, on the motion of Ms Fazio: That after the evidence from Lithgow City Council and Wyong Shire Council, the Committee proceed to take evidence from Cr Greg Watson, Mayor, Shoalhaven City Council *in camera*.

10. Public hearing

The public and media were readmitted.

The following witnesses were sworn and examined:

- Cr Neville Castle, Mayor, Lithgow City Council
- Mr Paul Anderson, General Manager, Lithgow City Council
- Cr Warren Welham, Mayor, Wyong Shire Council.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The Committee proceeded to take *in camera* evidence.

Persons present other than the Committee: Ms Rachel Simpson, committee clerk, Ms Madeleine Foley, committee clerk, Mr Steven Reynolds, committee clerk, Ms Elizabeth Galton, committee clerk and Hansard reporters

The following witness was sworn and examined:

- Cr Greg Watson, Mayor, Shoalhaven City Council.

The evidence concluded and the witness withdrew.

Resolved, on the motion of Mr Brown: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(2), the Committee authorise the publication of the *in camera* transcript of evidence of Cr Greg Watson on 4 April 2008, with the exclusion of the interchange between Cr Watson and committee members after ‘I have seen a person who would sell their soul for \$50’ until ‘So, when you get to a situation where some people can be tempted with \$5, \$10 or \$100.’

Resolved, on the motion of Ms Fazio: That the hearing resume in public.

The public and media were readmitted.

The following witness was examined:

- Mr Greg Piper MP, Member for Lake Macquarie.

Mr Piper tabled the following document:

- “Submission to the Inquiry into Electoral and Political Funding”.

The evidence concluded and the witness withdrew.

The following witness was examined:

- Ms Clover Moore MP, Member for Sydney.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

11. Report outline

The Committee deferred consideration of the draft report outline until the Committee's next meeting.

12. Public hearing

The public and media were readmitted.

The following witness was sworn and examined:

- Mr Paul Davey, Vice Chairman, The Nationals - NSW Secretariat.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Robert Drew, former Mayor, Port Macquarie-Hastings Shire Council.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Karl Bitar, General Secretary, Australian Labor Party (NSW Branch).

The evidence concluded and the witness withdrew.

The public hearing concluded at 5:00 pm.

The public and the media withdrew.

13. Public forum

The public forum commenced at 6:00 pm.

Speakers, the public and media were readmitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The Committee heard from the following speakers:

- Mr Tony Recsei
- Mr Shane Leong
- Mr Barry Laing
- Youth A – Year 12 student
- Mr Richard Bryce
- Ms Sandy McClimont
- Mr Jamie Harrison – tabled correspondence from Mr Brian DeCelis, A/Secretary, Election Funding Authority dated 3 September 2004 providing declarations lodged by candidates for the 2004 local government elections
- Ms Janet Harwood
- Mr Brad Pederson
- Mr Joe Nagy
- Ms Jo Holder
- Ms Trudy Wiedeman
- Mr Geoff Wall
- Mr Paul Shepanski
- Ms Margaret Hogge
- Dr Jean Lennane
- Mr Graeme Cordiner
- Mr Derek Recsei
- Ms Yvonne Jayawardena.

The forum concluded at 7:50 pm.

14. Next meeting

The Committee adjourned at 7:50 pm until Friday 11 April 2008.

Madeleine Foley

Clerk to the Committee

Minutes No. 8

Friday, 11 April 2008

Room 814/815, Parliament House, Sydney, at 2:00 pm

1. Members present

Revd Fred Nile, *Chairman*

Mr Don Harwin, *Deputy Chair*

Ms Amanda Fazio

Miss Jenny Gardiner

Mr Mick Veitch

2. Apologies

Mr Robert Brown

3. Hearing

The Secretariat distributed unamended copies of submission no. 98.

The Committee proceeded to take *in camera* evidence.

Persons present other than the Committee: Ms Rachel Simpson, Ms Madeleine Foley, Mr Steven Reynolds and Ms Cathryn Cummins, committee clerks, and Hansard reporters.

The following witnesses were examined on their former oath:

- Mr Colin Barry, Chairperson, Election Funding Authority of NSW
- Mr Trevor Follett, Secretary, Election Funding Authority of NSW.

Mr Barry tabled the following document:

- Email correspondence between the Election Funding Authority and the author of submission no. 98.

The evidence concluded and the witnesses withdrew.

The *in camera* hearing concluded at 2:30 pm.

All unamended copies of submission no. 98 were returned to the Secretariat.

4. Public Hearing

The public hearing commenced at 2:40 pm.

Witnesses, the public and media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The Committee continued to examine Mr Barry and Mr Follett.

Mr Barry tabled the following documents:

- "Local Government Elections Bulletin", no. 1-3, dated 25 October 2007
- "Agenda and discussion points – meeting between NSWEC and Councils regarding arrangements for the 27 September 2008 Local Government elections".

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4:00 pm.

The public and the media withdrew.

5. Minutes

Resolved, on the motion of Mr Veitch: That draft minutes no. 7 be confirmed.

6. Publication of submissions

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submissions no. 184 – 187.

7. Publication of tabled documents

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, and standing order 224, the Committee authorises the Clerk to the Committee to publish the documents tabled at the hearing on Friday 4 April 2008:

- Greg Piper – “Submission to the Inquiry into Electoral and Political Funding”
- Mr Jamie Harrison – Correspondence from Mr Brian DeCelis, A/Secretary, Election Funding Authority, dated 3 September 2004 providing declarations lodged by candidates for the 2004 local government elections

8. Publication of answers to questions on notice

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the answers to questions on notice from the Local Government and Shires Association of NSW.

9. Report

The Secretariat advised the Committee of the following timeline for preparation of the report:

- Members to advise the Secretariat of issues for consideration – 16 April
- Chairman’s draft report distributed to members – 10 June
- Deliberative meeting to consider Chairman’s draft report – 16 June
- Report tabled – 26 June.

10. Next meeting

The Committee adjourned at 4:10 pm until Monday 16 June 2008.

Madeleine Foley

Clerk to the Committee

Minutes No. 9

Wednesday, 21 May 2008

Room 1102, Parliament House, Sydney, at 2:00 pm

1. Members present

Revd Fred Nile, *Chairman*

Mr Don Harwin, *Deputy Chair*

Mr Robert Brown (from 2.05 pm)

Miss Jenny Gardiner

Mr Mick Veitch

2. Apologies

Ms Amanda Fazio

3. Minutes

Resolved, on the motion of Mr Veitch: That draft minutes no. 8 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 16 April 2008 – Email from Mr Colin Barry, Chairperson of the Election Funding Authority, clarifying a recommendation given in evidence on 4 April regarding registered officer/party agents
- 22 April 2008 – From the Local Government and Shires Association of NSW (LGSA) forwarding Answers to Questions on Notice regarding its survey of local council changes to code of conduct
- 2 May 2008 – From Ms Clover Moore MP, forwarding Answers to Questions on Notice and a supplementary submission
- 7 May 2008 – From the Hon Jerrold Cripps QC, Commissioner of the ICAC, outlining the ICAC's views on a proposal that any requirement that persons submitting development applications or rezoning proposals to the Minister must declare any political donations to the Minister or his or her party should also extend to objectors to developments

Sent

- 14 April 2008 – From the Chairman to the Hon Jerrold Cripps QC, Commissioner of the ICAC, requesting the ICAC's views on a proposal that any requirement that persons submitting development applications or rezoning proposals to the Minister must declare any political donations to the Minister or his or her party should also extend to objectors to developments.

Resolved, on the motion of Mr Harwin: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of correspondence from:

- Mr Colin Barry, Chairperson of the Election Funding Authority (16 April 2008)
- Hon Jerrold Cripps QC, Commissioner of the ICAC (7 May 2008)

5. Publication of answers to questions on notice

Resolved, on the motion of Miss Gardiner: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the answers to questions on notice from the LGSA and Ms Clover Moore MP.

6. Publication of submissions

Resolved, on the motion of Mr Veitch: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submissions no. 153a and no. 188.

7. Referral of the Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008 to the Committee

The Chairman tabled the resolution of the House of 15 May 2008 referring the Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008 to the Committee.

Resolved, on the motion of Mr Harwin: That the Committee consider the Bill using evidence received to date.

Mr Brown joined the meeting.

8. Consideration of response to comments made in debate on the Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008, by Ms Lee Rhiannon MLC in the House on Thursday, 8 May 2008

Resolved, on the motion of Mr Brown: That the Committee note the contribution of Ms Lee Rhiannon to the debate on the Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008 on 8 May 2008, and the point of order taken in the House which claimed the speech appeared to be based on unreported evidence to the Committee. Given that the President has ruled on this matter, the Committee will take no further action.

The Secretariat distributed copies of submission no. 98.

The Committee deliberated.

Resolved, on the motion of Mr Harwin: That:

- the Committee publish the name of the author of submission no. 98, Mr Mark Corrigan, as previously referred to in the House,
- the Chairman issue a media release, outlining the reasons why the Committee kept Mr Corrigan's submission confidential.
- the Chairman's correspondence to Mr Corrigan, dated 11 March 2008, be published
- the draft media release be circulated to the Committee for comment before it is released.

All copies of submission no. 98 were returned to the Secretariat.

9. Other business

Resolved, on the motion of Mr Brown: That members of the Committee may elect to receive the Chairman's draft report electronically.

The Secretariat undertook to liaise with members of the Committee concerning their preferred method of receiving the draft report.

10. Next meeting

The committee adjourned at 3.03pm until Monday 16 June 2008.

Madeleine Foley

Clerk to the Committee

Minutes No. 10

Monday, 16 June 2008

Room 1102, Parliament House, Sydney, at 9:00 am

1. Members present

Revd Fred Nile, *Chairman*

Mr Don Harwin, *Deputy Chair*

Mr Robert Brown

Ms Amanda Fazio

Miss Jenny Gardiner (from 9.10 am)

Mr Mick Veitch

2. Apologies

Nil

3. Minutes

Resolved, on the motion of Ms Fazio: That draft minutes no. 9 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 30 May 2008 – Email from Ms Felicity Wright, A/Senior Election Funding Officer, Election Funding Authority, to the Secretariat, providing information on aspects of the election funding scheme
- 5 June 2008 – Email from Ms Felicity Wright, A/Senior Election Funding Officer, Election Funding Authority, to the Secretariat, clarifying the operation of an aspect the election funding scheme
- 5 June 2008 – letter from Mr Steven Reynolds, Clerk Assistant-Committees, regarding a request for Mr Jude Devisi from the Solomon Islands Parliament to attend the deliberative meeting
- 13 June 2008 – letter from Mr Trevor Drowley, Acting Manager, Corporate and Administration Services, Wyong Shire Council, to the Secretariat, advising that the Council resolved to affirm its submission to the Inquiry and support the actions of the Mayor in appearing before the Committee.

Resolved, on the motion of Ms Fazio: That Mr Devisi be permitted to attend the deliberative meeting to consider the draft report as an officer of the Committee.

5. Publication of submissions

Resolved, on the motion of Mr Brown: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of submission nos. 133a and 189.

Miss Gardiner joined the meeting.

6. Consideration of Chairman's draft report

The Chairman tabled his draft report entitled 'Electoral and Political Party Funding in New South Wales', which, having been previously circulated, was taken as being read.

The Chairman tabled a number of amendments to the draft report.

Resolved, on the motion of Mr Brown: That after paragraph 1.19 a new heading and paragraph be inserted as follows:

'Government bills to amend the election funding scheme

On 5 June 2008 Attorney General John Hatzistergos gave notice that two bills would be introduced into the Legislative Council on 17 June: the Election Funding Amendment (Political Donations and Expenditure) Bill, and the Local Government and Planning Legislation Amendment (Political Donations) Bill.'

Resolved, on the motion of Mr Brown: That in Chapter 2, a new item be inserted in the chronology under 28 May 2008 as follows:

5 June 2008	Attorney General John Hatzistergos gives notice that two bills will be introduced into the Legislative Council on 17 June 2008: the Election Funding Amendment (Political Donations and Expenditure) Bill, and the Local Government and Planning Legislation Amendment (Political Donations) Bill.
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Resolved, on the motion of Mr Brown: That a new paragraph be inserted after paragraph 2.17 as follows:

'On 5 June 2008 Attorney General John Hatzistergos gave notice that two bills would be introduced into the Legislative Council on 17 June: the Election Funding Amendment (Political Donations and Expenditure) Bill, and the Local Government and Planning Legislation Amendment (Political Donations) Bill.'

Resolved, on the motion of Mr Brown: That paragraph 5.13 be amended to omit 'Legislation to give effect to these changes had not been introduced to Parliament at the time of publication, although'.

Resolved, on the motion of Mr Brown: That a new paragraph be inserted after paragraph 5.16 as follows

'On 5 June 2008 Attorney General John Hatzistergos gave notice that two bills would be introduced into the Legislative Council on 17 June: the Election Funding Amendment (Political Donations and Expenditure) Bill, and the Local Government and Planning Legislation Amendment (Political Donations) Bill.'

Resolved, on the motion of Mr Harwin: That the second sentence of paragraph 12.5 be amended to omit '\$200' and insert instead '\$500'.

Resolved, on the motion of Mr Harwin: That the first dot point in the text box following paragraph 12.5 be amended to omit '\$200' and insert instead '\$500'.

The Committee proceeded to consider the draft report in detail.

Chapter 1 read.

Resolved, on the motion of Mr Brown: That Chapter 1 be adopted.

Chapter 2 read.

Resolved, on the motion of Ms Fazio: That Table 2.1 be amended for the item for 22 March 2008, by omitting the words 'advocates a ban on private donations. The Secretary General' and inserting instead 'announces NSW will consider a ban on private donations. The General Secretary'.

Resolved, on the motion of Ms Fazio: That paragraph 2.17 be amended by omitting the words 'his support for' and inserting instead 'that New South Wales would consider'.

Resolved, on the motion of Ms Fazio: That Chapter 2, as amended, be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Veitch: That Chapter 3 be adopted.

Chapter 4 read.

Resolved, on the motion of Ms Fazio: That Chapter 4 be adopted.

Chapter 5 read.

Resolved, on the motion of Mr Veitch: That Chapter 5 be adopted.

Chapter 7 read.

Resolved, on the motion of Mr Harwin: That paragraph 7.2 be amended in the third line by omitting the word 'may' and inserting instead 'do', and in the last line by omitting 'may'.

Resolved, on the motion of Mr Harwin: That paragraph 7.3 be amended by omitting the word 'may' and inserting instead 'do', and by omitting 'are likely to', and that the following sentence be inserted at the end of the paragraph: 'The figures need to be cross-referenced with expenditure in the 2007 State election, as discussed in Chapter 8 and detailed in Table 8.2 to get a clearer picture, as the reporting period includes two Federal elections'.

Resolved, on the motion of Mr Harwin: That paragraph 7.63 be amended by omitting the sentence 'Warringah Council has resolved to support the aims and objectives of the Charter'.

Resolved, on the motion of Ms Fazio: That paragraph 7.21 be amended by omitting 'made' and inserting instead 'said New South Wales would consider'.

Resolved, on the motion of Ms Fazio: That paragraph 7.23 be amended by inserting 'consideration of' immediately after 'The Premier's call for'.

Resolved, on the motion of Ms Fazio: That paragraph 7.110 be amended by inserting as the last sentence 'However, the legal and constitutional validity of any such ban would need to be explored'.

Resolved, on the motion of Ms Fazio: That paragraph 7.113 be amended by inserting as the last sentence 'It must be recognised that any bans on donations must be considered in conjunction with increased public funding'.

Resolved, on the motion of Mr Brown: That Recommendation 10 be amended by inserting a new final sentence as follows: 'Further, the Premier should investigate all relevant legal and constitutional issues arising from such a ban, and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws.'

Resolved, on the motion of Ms Fazio: That paragraph 7.132 be amended by inserting as the last sentence 'The lack of national consistency in donation and disclosure laws could be exploited to conceal the source of donations included in intra-party transfers'.

Resolved, on the motion of Miss Gardiner: That recommendation 12 be amended by inserting 'party' immediately before 'membership fees,' by omitting the word 'union' before 'affiliation fees' and inserting 'including union affiliation fees.' immediately after 'affiliation fees.'

Resolved, on the motion of Mr Harwin: That paragraph 7.159 be amended by inserting 'State' immediately after 'cover', and by inserting as the last sentence 'The Committee notes that the Secretariats of the State branches, divisions or affiliates of registered political parties also have substantial responsibilities for campaigning in Federal elections which will also need to be taken into account'.

Resolved, on the motion of Mr Harwin: That recommendation 13 be amended by inserting 'State' immediately after 'cover'.

Resolved, on the motion of Ms Fazio: That Chapter 7, as amended, be adopted.

Chapter 8 read.

Resolved, on the motion of Ms Fazio: That the introduction be amended by inserting the words 'and the expansion of the range of media types and outlets such as pay television and the Internet.' immediately after 'political advertising'.

Resolved, on the motion of Ms Fazio: That paragraph 8.8 be amended by omitting 'creating the opportunities for donors to exert' and inserting instead 'giving rise to perceptions of'.

Resolved, on the motion of Ms Fazio: That recommendation 21 be amended by inserting as the last sentence 'Further, the Premier should investigate all relevant legal and constitutional issues arising from capping election spending for parties, groups and candidates, and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws'.

Resolved, on the motion of Mr Harwin: That paragraph 8.79 be amended by omitting 'as has happened in the United States with expenditure by Political Action Committees,'.

Resolved, on the motion of Mr Harwin: That paragraph 8.79 be amended by omitting 'Third party spending caps should not exceed the spending caps for those standing for election, namely parties, groups and candidates'.

Resolved, on the motion of Mr Harwin: That a new paragraph be inserted immediately after paragraph 8.79 as follows:

'However, the Committee notes that in the United Kingdom and New Zealand there are differential third party spending caps in place at a national and constituency level during campaign periods, depending upon whether the third parties have availed themselves of a higher limit by registering. In both jurisdictions, the national caps on registered third parties equate to approximately 5 percent of the overall national spending limits on major political parties. In Canada, there is a national cap of \$183,300 on third parties with the national party spending limit set at \$18.5 million (about 1 percent).'

Resolved, on the motion of Ms Fazio: That recommendation 22 be amended by inserting as the last sentence 'Further, the Premier should investigate all legal and constitutional issues arising from capping third party election spending and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws'.

Resolved, on the motion of Mr Harwin: That recommendation 22 be amended by omitting 'There should be two spending caps to apply to third party spending:

- in Legislative Assembly electorates – not to exceed the spending cap for candidates contesting the Legislative Assembly election
- State-wide – not to exceed the spending cap for parties and groups contesting the election.'

Resolved, on the motion of Mr Harwin: That recommendation 23 be amended by inserting as a new second dot point 'ban the use of funds raised for elections for the personal private gain of a candidate.'

Resolved, on the motion of Ms Fazio: That recommendation 23 be amended by omitting ‘election campaigns’ and inserting instead ‘campaigning’.

Resolved, on the motion of Mr Veitch: That Chapter 8, as amended, be adopted.

Chapter 6 read.

Resolved, on the motion of Ms Fazio: That the introduction be amended by inserting a new second paragraph as follows:

‘The recommendations contained in this report have been developed with an emphasis on:

- ensuring that there is a nationally consistent approach
- simplifying the system to enhance the level of compliance with disclosure laws by donors, parties and candidates
- banning all donations over \$1,000
- breaking the cycle of ever increasing campaign costs by capping expenditure.’

Resolved, on the motion of Mr Harwin: That recommendation 1 be omitted, and that all references to ‘nuisance candidates’ be amended to refer to ‘frivolous candidates’.

Resolved, on the motion of Mr Harwin: That paragraphs 6.41 to 6.44 and 6.45 be omitted and replaced with

- 6.41 ‘Eligibility requirements for public funding must not of themselves act as a deterrent to the diverse range of parties and candidates seeking elective office. On the other hand, it is legitimate for the Parliament to legislate to prevent electoral processes being brought into disrepute. For example, the Parliament Electorates and Elections Amendment Bill 1999 enacted changes to party registration requirements and group voting provisions in response to widespread concern about the ballot for election of members of the Legislative Council at the March 1999 general election.
- 6.42 The threshold for public funding is one of a suite of inter-connected measures, including party registration, candidate nomination and candidate deposit requirements that have been enacted to deal with frivolous candidates. Changes to one of these cannot be considered in isolation.
- 6.43 The Committee notes that lowering the eligibility threshold from 4% to 2% would have made no difference to the allocation of funding for the 2007 Legislative Council election, as the only party, group or candidate to receive between 2% and 4% was The Shooters Party, who were entitled to public funding by virtue of having a candidate elected. For the Legislative Assembly, however, lowering the threshold to 2% would have seen the funding allocated to some minor parties increase.
- 6.44 Given the minimal impact on eligibility for funding from lowering the threshold to 2%, the Committee doubts there would be any impact on the number and diversity of candidates lodging nominations. Abolishing the threshold would, however, remove one of a suite of measures in place to deter frivolous candidates.
- 6.45 The Committee heard that a sliding scale of public funding is another measure to support minor parties and independent candidates. This is a complex proposal and requires further investigation, particularly given the paucity of comparative models. Therefore the Committee’s preference is to retain the current eligibility threshold.
- 6.46 The Committee is sympathetic to the objective of synchronising registration requirements for political parties at both the Federal and state/territory levels. The Committee notes, however, that current registration requirements were enacted as part of a suite of measures in the 1999 amendments to electoral legislation and this needs to be taken into account in discussions with the Federal Government. Bearing this in mind, the Premier should raise party registration with Senator the Hon John Faulkner, Special Minister of State as part of the Federal Green Paper review.’

Resolved, on the motion of Ms Fazio: That paragraph 6.90 be amended by omitting ‘Parties and independent candidates, as well as other interested persons and organisations, would be able to apply for funding for specific projects, which would be awarded on merit.’

Resolved, on the motion of Ms Fazio: That recommendation 5 be amended by omitting

- 'provide funding for projects designed to increase political literacy
- award funding to applicants based on merit
- be open to applications from parties and independent MPs, as well as other interested persons and organisations,'

and that the words 'awarded funds' be omitted from the fifth dot point.

Resolved, on the motion of Mr Brown: That paragraph 6.75 be amended by inserting as the last sentence 'The above method of calculation would clearly not address the equity of the distribution of funds to parties that contest only Legislative Council seats.'

Ms Fazio moved: That paragraph 6.125 be amended by omitting the last sentence, and that recommendation 6 be omitted.

Question put.

The Committee divided.

Ayes: Mr Brown, Ms Fazio, Revd Nile, Mr Veitch

Noes: Miss Gardiner, Mr Harwin.

Question resolved in the affirmative.

Ms Fazio moved: That paragraphs 6.126 and 6.127, and recommendation 7, be omitted.

Question put.

The Committee divided.

Ayes: Ms Fazio, Mr Veitch

Noes: Mr Brown, Miss Gardiner, Mr Harwin, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Miss Gardiner: That paragraph 6.127 be amended by inserting immediately after 'Canada' the words 'where the Auditor General may be advised by a panel of experts or an Advertising Commissioner.'

Resolved, on the motion of Ms Fazio: That recommendation 8 be omitted, and that paragraph 6.127 be amended by omitting 'determining if' and inserting instead 'determining what'.

Resolved, on the motion of Miss Gardiner: That paragraph 6.131 be amended by omitting 'has been used to finance' and inserting instead 'may have been used to partly fund'.

Resolved, on the motion of Ms Fazio: That recommendation 9 be amended by deleting the words 'That the Premier initiate community consultation to determine a reasonable level of increase in electoral funding, which would be supported by the public' and inserting instead 'That the Premier consult to determine a reasonable increase in electoral and political party funding.'

Resolved, on the motion of Ms Fazio: That paragraph 6.147 be amended by omitting the word 'community'.

Resolved, on the motion of Mr Brown: That a new paragraph and table be inserted immediately after paragraph 6.143, outlining the level of public funding provided for elections in a Canadian jurisdiction, and that the table be circulated to the Committee for approval.

Resolved, on the motion of Mr Brown: That Chapter 6, as amended, be adopted.

Chapter 9 read.

Resolved on the motion of Mr Brown: That the following paragraph be inserted after paragraph 9.63 'While these measures are important for compliance purposes, there are some legitimate privacy concerns about online disclosure. This has been addressed in a number of overseas jurisdictions. In Canada, for example, the addresses of donors are not published on the Elections Canada website. While electoral roll and ABN details should be available for inspection, that does not mean that they need be placed on the EFA's website.'

Resolved, on the motion of Ms Fazio: That recommendation 26 be amended by omitting 'including the purchase of entry tickets (such as tickets to fundraising dinners, raffle tickets, auction items or other memorabilia' and by omitting 'In the case of a table bought by a company for a fundraising event, the names of the persons attending should be disclosed.'

Resolved, on the motion of Ms Fazio: That paragraph 9.66 be amended by omitting 'First' and omitting 'Second, in the case of a table bought by a company for a fundraising event, the names of the persons attending should be disclosed.'

Resolved, on the motion of Miss Gardiner: That paragraph 9.68 be amended by inserting the words 'auditors other than' immediately before 'Registered Company Auditors'.

Ms Fazio moved: That recommendation 28 be amended by omitting '\$500' and inserting instead '\$1,000'.

Question put.

The Committee divided.

Ayes: Ms Fazio, Mr Veitch

Noes: Mr Brown, Miss Gardiner, Mr Harwin, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Ms Fazio: That recommendation 29 be omitted.

Resolved, on the motion of Ms Fazio: That recommendation 30 be amended by omitting 'disclose their internal financial dealings, and of requiring political parties to lodge complying constitutions and publish their policies on donations as a requirement of registration' and inserting instead 'lodge their annual financial statements with the EFA'.

Resolved, on the motion of Ms Fazio: That paragraph 9.71 be amended by omitting 'disclose their internal financial dealings, and that as a requirement of registration, political parties be required to lodge complying constitutions and publish their donations policies' and inserting instead 'lodge their annual financial statements with the EFA'.

Resolved, on the motion of Mr Harwin: That paragraph 9.83 be amended by deleting 'pointed out' and inserting instead 'argued'.

Resolved, on the motion of Ms Fazio: That recommendation 31 be amended by omitting 'Political donations should also be disclosed two weeks before an election, and must therefore be banned from this point until the election'.

Resolved, on the motion of Mr Harwin: That paragraph 9.102 be omitted and the following paragraph inserted instead: 'There is considerable support for pre-election disclosure of donations in the current political climate. In the United Kingdom, where there are no donation caps, there is a requirement for weekly disclosure of all donations over £5,000 during campaign periods. However, the Committee has recommended a system of small individual donations capped at \$1,000 in Chapter 7. In Canada, where a similar regime of donation caps applies, disclosure returns are lodged quarterly with no special arrangements for the election period. The Committee believes the caps on donations and the restrictions on who can donate meet the community's concerns.'

Resolved, on the motion of Ms Fazio: That recommendation 32 be amended by omitting 'Pre-election donations declarations should be published within one week of being submitted (ie one week before an election).'

Resolved, on the motion of Ms Fazio: That paragraph 9.103 be amended by omitting 'In relation to pre-election donations returns, the Committee considers that they should be published within one week of being submitted'.

Resolved, on the motion of Mr Brown: That Chapter 9, as amended, be adopted.

Chapter 10 read.

Resolved, on the motion of Ms Fazio: That paragraph 10.9 be amended by omitting 'developers' and inserting instead 'donors'.

Resolved, on the motion of Ms Fazio: That recommendation 35 be amended by omitting 'introduce' and inserting instead 'investigate'.

Resolved, on the motion of Ms Fazio: That recommendation 35 be amended by omitting 'should' immediately after 'Public funding' and inserting instead 'could'.

Resolved, on the motion of Ms Fazio: That paragraph 10.109 be amended by omitting the last sentence and inserting instead 'The legal and constitutional issues arising from such caps will need to be investigated.'

Resolved, on the motion of Ms Fazio: That recommendation 40 be amended by omitting 'introduce' and inserting instead 'investigate', and by omitting 'by the Auditor General using the different categories of councils as guidance' and inserting instead 'after public consultation'.

Resolved, on the motion of Ms Fazio: That paragraph 10.109 be amended by omitting 'and recommends that consideration be given to linking spending caps to the different categories of councils. As with the State government elections, the Committee considers that the Auditor General should set the level of spending caps', inserting instead 'to be set after public consideration'.

Resolved, on the motion of Ms Fazio: That paragraph 10.148 be amended by inserting a new last sentence 'This issue is addressed in Recommendation 38'.

Resolved, on the motion of Ms Fazio: That paragraph 10.150 and recommendation 43 be omitted.

Resolved, on the motion of Ms Fazio: That paragraph 10.152 be amended in the last line by omitting 'investigation' and inserting instead 'scrutiny'.

Resolved, on the motion of Ms Fazio: That recommendation 44 be amended by omitting 'investigative regime' and inserting instead 'regime of scrutiny'.

Resolved, on the motion of Ms Fazio: That Chapter 10, as amended, be adopted.

Chapter 11 read.

Resolved, on the motion of Ms Fazio: That recommendation 47 be amended by omitting 'such as the white collar crime unit within NSW police'.

Resolved, on the motion of Mr Harwin: That recommendation 48 be amended by omitting 'the two dot points and inserting instead 'devise tougher penalties, using section 315 of the *Commonwealth Electoral Act 1918* for guidance, and having deregistration of political parties as the option of last resort for serious and repeated non-compliance.'

Resolved, on the motion of Ms Fazio: That recommendation 50 be amended by inserting 'and political party' immediately after 'electoral,' and by inserting 'and disclosure' immediately after funding.

Resolved, on the motion of Ms Fazio: That recommendation 51 be amended by deleting 'That the Legislative Council establish a Standing Committee on Electoral and Political Party Funding with a function of oversight of the implementation of the electoral funding reforms, or alternatively designate one of its existing Standing Committees to undertake this function' and inserting instead 'That the Joint Standing Committee on Electoral Matters be reconstituted as a statutory committee and be charged with the function of oversight of the implementation of the electoral funding disclosure reforms as part of its brief,' and that paragraphs 11.81 and 11.82 be amended to correspond with this new recommendation.

Resolved, on the motion of Mr Harwin: That recommendation 53 be omitted.

Resolved, on the motion of Ms Fazio: That Chapter 11, as amended, be adopted.

Resolved, on the motion of Ms Fazio: That Chapter 12 be amended to reflect the changes made to the Chairman's draft report.

Resolved, on the motion of Ms Fazio: That the report be tabled on Thursday 19 June 2008.

Resolved, on the motion of Mr Brown:

- That the draft report, as amended, be the report of the Committee.
- That the Committee present the report to the House, together with transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the inquiry, except for in camera evidence and documents kept confidential by resolution of the Committee.

Resolved, on the motion of Mr Harwin: That a press conference be held at lunch time on Thursday 19 June 2008.

The Secretariat undertook to advise Committee members of the arrangements for the press conference.

Resolved, on the motion of Ms Fazio: That dissenting statements be submitted to the Secretariat by 5pm Tuesday 17 June 2008.

7. Next meeting

The Committee adjourned at 1:55 pm *sine die*

Madeleine Foley

Clerk to the Committee

Appendix 6 Dissenting statement

BY THE HON AMANDA FAZIO MLC & THE HON MICHAEL VEITCH MLC

Recommendation 5

That the Premier entrust the Auditor General with oversight responsibility for government advertising, with the Auditor General's powers to be modelled on those of the Auditor General in Ontario, Canada.

This recommendation is not supported. The Auditor General cannot accept responsibility for oversight for government advertising without impugning his role. It is against all accepted audit practices for an auditor to oversight expenditure that they then are responsible for auditing. Twenty-three years ago the then Auditor-General sought legal advice on whether advertisements were an unlawful use of public funds. The advice was that government advertising would be unlawful if it could be shown that the predominant purpose was to improve the electoral prospects of the incumbent government, rather than the business objectives of the agency. This advice still stands and is consistent with recent case law. In fact, the High Court in its review of the federal WorkChoices campaign has judged that there is an implied right to freedom of speech in the constitution that supports the lawful expenditure of public funds on appropriate government advertising.

NSW Government policy states that campaign advertising should cease in the two months preceding a state election, except where the campaign: relates to community health and safety issues; provides appropriate public information; or has clear commercial considerations (such as transport providers and tourism promotion).

Further the Auditor General has recently found the NSW Government has introduced greater vigour into the process for approving government advertising*. The Auditor General stated:

“...the government has improved guidance for agencies and introduced a more robust framework for approving advertising campaigns.”

“Greater rigour has been introduced into the process by requiring campaigns to be peer reviewed and approved by Cabinet.”

Recommendation 25

That the Premier, as part of the ban on all but small individual donations, introduce a disclosure threshold of \$500 for all donations. Discussions should be initiated with the Federal Government to encourage them to introduce the same threshold.

The recommendation should have been amended to have a threshold of \$1,000 for all donations in order to ensure consistency with the Commonwealth. Having two different amounts will lead to confusion and people inadvertently breaching the Act.

*Auditor-General's Report - Performance Audit – Government Advertising - Department of Premier and Cabinet, Department of Commerce August 2007