

**REPORT OF PROCEEDINGS BEFORE**

**CORRECTED**

**SELECT COMMITTEE ON THE PROVISIONS OF THE  
ELECTION FUNDING, EXPENDITURE AND DISCLOSURES  
AMENDMENT BILL 2011**

**INQUIRY INTO THE PROVISIONS OF THE ELECTION FUNDING,  
EXPENDITURE AND DISCLOSURES AMENDMENT BILL 2011**

---

**At Sydney on Friday 20 January 2012**

---

**The Committee met at 9.45 a.m.**

---

**PRESENT**

Dr J. Kaye (Chair)

The Hon. R. Borsak  
The Hon. A. R. Fazio  
The Hon. J. A. Gardiner  
The Hon. T. J. B. Khan  
The Hon. N. Maclaren-Jones  
The Hon. Dr P. R. Phelps  
The Hon. P. T. Primrose  
The Hon. S. J. R. Whan

**CHAIR:** Welcome to the second hearing of the Select Committee on the Provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011. On behalf of everybody present I acknowledge the Gadigal people of the Eora nation who are the traditional custodians of this land. On your behalf I pay our respects to the elders, past and present, of the Gadigal people, and extend the respect to other Aboriginal people present here today.

The inquiry terms of reference require the Committee to inquire into and report on the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011, including the potential impact of the bill for community and not-for-profit organisations, peak organisations and political parties. We will also examine the risks of a successful constitutional challenge if the bill were to be enacted. Today we will be hearing from representatives from a range of stakeholders, including the Premier and representatives from the New South Wales Nurses Association and the New South Wales Teachers Federation.

Before we commence I will make some comments about certain aspects of the hearing. Committee hearings are not intended to provide a forum for people to make adverse reflections about specific individuals. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. Therefore I request that witnesses avoid the mention of individuals unless it is essential to address the terms of reference. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines covering the broadcast of proceedings are available from the table by the door.

In accordance with the guidelines, a member of the Committee and witnesses may be filmed or recorded. However, people in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of the Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I also advise that under the standing orders of the Legislative Council, any document presented to the Committee that has not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other persons. Finally, and most importantly, I remind everyone to turn off their mobile phones for the duration of the hearing.

**BARRY ROBERT O'FARRELL**, Premier of New South Wales, before the Committee:

**CHAIR:** Thank you for attending today and for your submission. You are certainly adding to the inquiry. I welcome you as our first witness today. As you are aware, if you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. As you are aware, we usually allow witnesses to make a brief opening statement. You can take it that we have all read your submission—and we thank you for that submission and for your participation in this inquiry—so there is not much point in repeating that submission but if you would like to make brief opening remarks we would be happy to hear them. We would ask you to keep to less than five minutes because I know that Government members in particular are enthusiastic about asking you some very probing questions.

**Mr BARRY O'FARRELL:** Thank you, Mr Chairman. I am not sure if I can call you Mr Kaye after your earlier regulations about not referring to specific members. I appreciate the opportunity to be here. I have to say that I come with a heavy heart because clearly this Committee is simply a device to try to delay necessary reforms to the State's electoral funding laws. The fact is that those of us who sat through the last two to three parliaments witnessed not only an obscene amount of political fundraising by the Labor Party in office but, more disturbingly, a corrosion across the community of public confidence not just in government and the government of the day but in public administration across New South Wales. And that was in no small part due to the emergence of a decisions-for-donations culture under the former Government.

In the Parliament from 2003 until 2007 more than \$24 million was reaped in political donations by the Labor Party—\$115,000 a week on average, each week, for four years. They then set a new record, spending almost \$17 million to win office in 2007. I, along with many members of this place during those times, found that obscene and unacceptable. I, along with most members of the community, do not think you should be able to buy elections. It should be about issues, about policies and about the path forward. What this reform seeks to do, what this simple bill seeks to do, is to address that concern—a concern that was clearly evident by your own statements prior to the last election, a concern that existed across New South Wales, not just in places that came into disrepute like Wollongong, because of the activity of the Labor Party in relation to donations.

The fact is that this piece of legislation seeks to address that concern. This legislation was foreshadowed by the Liberal-Nationals before the election campaign. There are other parties—and I will come back to this—that also before the last election campaign urged that donations be restricted to individuals. There are those of us who reacted badly when The Greens and the Labor Party united in 2010 to make some changes that were in the right direction in relation to electoral campaign financing and spending but allowed a free pass to certain affiliated organisations. This legislation seeks to fix that. This legislation does not discriminate; it applies to political parties equally. This legislation will ensure that, whether it is a union, a business or some other body, they will not be able to donate to political parties. Donations to political parties will be able to be made by individuals—individuals who in this country, in this State, are the only people who get a vote at an election time.

The simpler we make this legislation, the less likely it is to be rorted. But there must be legislation. There must be reform, because without this type of reform, without reducing the amount of money in New South Wales politics, you will not restore public confidence in public administration and you will not restore public confidence in government in New South Wales. Without that confidence, no government of any political persuasion can undertake what is its sacred duty to the people of this State.

**The Hon. STEVE WHAN:** How many fundraising events have you attended since you introduced this legislation to the Parliament?

**Mr BARRY O'FARRELL:** I cannot tell you that but I think it would be less than one hand. Like many parties, we abide by the electoral laws as they stand. Like many parties, we seek to be respectful of the electoral laws, and the Liberal-Nationals will continue to do so.

**The Hon. STEVE WHAN:** Do you not think it is hypocritical to be advocating a ban on all corporate donations to political parties while at the same time you continue to be the main attraction at these events?

**Mr BARRY O'FARRELL:** No. That presupposes that I have done more than a handful, which is not the case. I would like to say that I have done one but I may have done two. The fact is that we as a political party abide

by the law. The law currently allows political donations from entities other than individuals. If this legislation had been passed last year that would have stopped.

**The Hon. STEVE WHAN:** In submissions to this Committee a number of interest groups, including the Sydney Alliance, the AMA, the last drinks campaign, the Police Association and others, have indicated that your legislation will prevent them from running issues-based campaigns because it prevents them from raising funds from affiliated bodies. Is it your intention to stop that type of campaign?

**Mr BARRY O'FARRELL:** No. I think that is a complete misunderstanding of the legislation. The fact is that the Government's bill does not prevent third-party campaigners or other peak groups from accepting corporate donations that are used to run genuine issues-based campaigns unconnected to a State or local government election. Such donations are not political donations under section 85 of the existing Act and therefore are not subject to the prohibition on political donations from corporations. One of the best campaigns run by a union in this State, in the time that I have been in Parliament, was run by the Teachers Federation in the lead-up to the 2003 election campaign. I think Marie O'Halloran was the president of the federation at that stage. It ran for 18 months or more. It was an inquiry headed by Professor Tony Vinson. It produced a landmark study into public education, seeking to influence political parties across the board on issues like smaller class sizes and professional development for teachers. That was not a political campaign. That was a genuine issues-based campaign that did not seek to advocate or target a vote for a particular political party. Nothing in this legislation will prevent third-party campaigners or other peak bodies from accepting corporate donations that are used to run genuine issues-based campaigns.

**The Hon. STEVE WHAN:** A campaign like the Better Services campaign would be considered to be a political campaign and would be affected by your legislation. Is that not the case?

**Mr BARRY O'FARRELL:** Electoral expenditure is expenditure for or in connection with promoting or opposing directly or indirectly a party or the election of a candidate or candidates for the purpose of influencing directly or indirectly voting at an election. So, for example, in the last election campaign the RSPCA, of which I was a patron before and after the election as Opposition leader and now as Premier, ran a campaign in relation to trying to end puppy farming. Nothing about this legislation would prevent that campaign being run again.

**The Hon. STEVE WHAN:** What about a campaign like the Better Services campaign or the campaign conducted by the Teachers Federation to ask candidates to sign up to the pledge on TAFE?

**Mr BARRY O'FARRELL:** The point is that as long as it is not directed at political expenditure, as long as it is not covered by the definition of "electoral expenditure" it is fine. So I say again—

**The Hon. STEVE WHAN:** Those campaigns are covered by it at the moment.

**Mr BARRY O'FARRELL:** I say again: it does not prevent third-party campaigners or other peak groups—

**The Hon. STEVE WHAN:** Your legislation has not changed the definition of those third-party campaigns and those campaigns are covered.

**Mr BARRY O'FARRELL:** The fact is—

**The Hon. STEVE WHAN:** Do you acknowledge that?

**Mr BARRY O'FARRELL:** No. The fact is that the bill does not prevent third-party campaigners or other peak groups from accepting corporate donations that are used to run genuine issues-based campaigns unconnected—

**The Hon. STEVE WHAN:** What are you going to do to define that so they can be safe?

**Mr BARRY O'FARRELL:** Can I answer a question?

**The Hon. AMANDA FAZIO:** You can answer the question you are asked.

**Mr BARRY O'FARRELL:** I am happy to answer the question but at least give me a chance.

**CHAIR:** Please answer the question.

**Mr BARRY O'FARRELL:** I say again: The Government's bill does not prevent third-party campaigners or other peak groups from accepting corporate donations that are used to run genuine issues-based campaigns unconnected to a State or local government election. Such donations are not political donations under the existing Act at section 85 and therefore are not subject to the prohibition on political donations from corporations. Furthermore—

**The Hon. STEVE WHAN:** How do you explain the fact—

**Mr BARRY O'FARRELL:** Furthermore, donation caps only apply to third-party campaigners who incur electoral expenditure, and electoral expenditure, as I said, relates to opposing directly or indirectly a party or the election of a candidate or candidates for the purpose of influencing directly or indirectly a vote at an election.

**The Hon. STEVE WHAN:** How do you explain the fact that a series of reputable community-based peak bodies disagree fundamentally with your statement and believe you have it wrong?

**Mr BARRY O'FARRELL:** It is called a free society. You should enjoy that.

**The Hon. STEVE WHAN:** What if you are wrong? Will you amend the legislation?

**Mr BARRY O'FARRELL:** We went to the election with this commitment, as did at least one other party sitting at the table. We believe this legislation fulfils the commitment we put to the election—a commitment that was overwhelmingly endorsed by people across the State who wanted to see an end to the decisions-for-donations culture and the enormous amount of money washing around politics under your Government.

**The Hon. STEVE WHAN:** Does the issue of a definition not mean that it would be much more sensible for the Electoral Commission and the Election Funding Authority to be able to do a full review of the way that these things work before this legislation is considered?

**Mr BARRY O'FARRELL:** That question does not surprise me, coming from a political party that waited until five minutes to midnight, as it was leaving office, to make any attempt to—

**The Hon. STEVE WHAN:** We do not need your political bluster. We just want an answer to the question.

**Mr BARRY O'FARRELL:** You are doing very well in the upper House, despite the fact that your leader did not want you there. Despite the fact that Labor waited—

**The Hon. STEVE WHAN:** Some of your members did not want to call you to this Committee except for one.

**Mr BARRY O'FARRELL:** I am always happy to come to parliamentary committees because it is the heart of democracy. I am yet to be troubled by coming to a Committee and I am sure the chairman will protect me from trouble. But the point is that the hypocrisy of that question is that Labor waited until five minutes to midnight to do anything about electoral donations and campaign finance. Now, when there is an opportunity to do what the Liberal-Nationals said they would do at the election campaign, what the people urged us to do when we get to office, what is their answer? Their answer is to delay. What is the purpose of that delay? It is precisely what he tried to ascribe the motives to me at the first question: to continue to raise money from their affiliates and other organisations.

**The Hon. STEVE WHAN:** Do you agree with the statement that our approach is to respect the different traditions of our parties and allow affiliation fees to be retained for non-campaign purposes?

**Mr BARRY O'FARRELL:** We make it clear—and our legislation is very clear—that we do not think affiliation fees should be allowed. There is good reason for that.

**The Hon. STEVE WHAN:** Do you disagree with that statement?

**Mr BARRY O'FARRELL:** I would like to answer the question. It is a bit like question time: you get to ask the question and apparently I get to answer the question. If we allow a loophole for affiliation fees what will happen? Parties will start to develop other affiliates—corporate affiliates or other affiliates—that will drive a truck through loopholes in the legislation. Keep the legislation as simple as possible and you will do what the—

**The Hon. STEVE WHAN:** I take it you do not agree with that statement?

**Mr BARRY O'FARRELL:** Keep the legislation as simple—

**The Hon. STEVE WHAN:** Mr O'Farrell you endorsed that statement as Leader of the Opposition in the Liberal Party submission to the last election funding inquiry.

**Mr BARRY O'FARRELL:** I am aware of that Mr Whan.

**The Hon. STEVE WHAN:** What has changed since then?

**Mr BARRY O'FARRELL:** Nothing has changed, Mr Whan.

**The Hon. STEVE WHAN:** Except that you are now in power and you now feel you can smash opposition, is that right?

**Mr BARRY O'FARRELL:** No, I do not think that you understand—

**The Hon. STEVE WHAN:** I understand very well—

**Mr BARRY O'FARRELL:** We do not have five minutes to find out what you understand.

**The Hon. STEVE WHAN:** Back to the personal insults—typical O'Farrell.

**Mr BARRY O'FARRELL:** It is not a personal insult. Mr Whan you need to understand that we went to the election campaign, as did The Greens, arguing that donations should be restricted to individuals. Why? Because the only people that get a vote in an election, whether in the electorate of Monaro or somewhere else, are citizens on the electoral roll. They are the people with the greatest stake. They are the people who over the past 16 years were disgusted with the sort of money raising activities engaged in by all political parties.

**The Hon. STEVE WHAN:** Mr O'Farrell, your party raised \$30 million.

**Mr BARRY O'FARRELL:** By all political parties, but excessively by the Australian Labor Party, particularly in the 2003-07 period. Let us understand that this legislation reflects community concern. What is the reaction of the Labor Party almost a year after the election in which it was thrown out of office? It is to stand in the way of legislation that will clean up politics in New South Wales and stand in the way of reforms—

**The Hon. STEVE WHAN:** You would acknowledge that you took on that position before the election and another one now?

**Mr BARRY O'FARRELL:** Absolutely consistent—

**The Hon. STEVE WHAN:** Your position and your Liberal Party submission were quite different to your current submission. Is that right?

**Mr BARRY O'FARRELL:** No.

**The Hon. STEVE WHAN:** It is there in black and white.

**Mr BARRY O'FARRELL:** Let us talk about changed positions before and after the election campaign. I remember a debate that occurred in the upper House in 2010 on Labor's changed legislation. In the middle of a contribution made by the Chair of this Committee he said:

Mr O'Farrell has said he would prefer it if only voters were allowed to make donations to political parties. There should be no donations from unions or corporations. That is terrific. Bring it on. We will all work with the Coalition to get that through.

So if you want to talk about who has changed their tune before and after the election campaign, regrettably Mr Chairman, I have to look at you and regrettably members of your own party in Parliament are now looking at you on the issue.

**The Hon. STEVE WHAN:** Your reflections on the Chair are noted, I am sure. I read out point 5.7 in your own submission to the last Committee. Since you are not willing to address the fact that you have changed your position, I will hand over to my colleague for another question.

**The Hon. PETER PRIMROSE:** What is the status of the church under your proposed bill?

**Mr BARRY O'FARRELL:** I think you should ask a lawyer about that. Providing they are not engaging in electoral expenditure, which is clearly expenditure that is designed to influence a vote, or oppose a candidate or party, they would, like any other third party interest group, be able to engage in genuine issues-based campaigns.

**The Hon. PETER PRIMROSE:** Are you able to tell the Committee what is the status of the church under your proposed legislation?

**Mr BARRY O'FARRELL:** I am happy to get you that advice, Mr Primrose.

**The Hon. PETER PRIMROSE:** The legislation that you proposed, Mr Premier, has already gone through the lower House. You moved it. So I am asking you, given that it is as you have stated—you are trying to keep it simple so there are no disagreements or no likelihood of challenges, I presume—can you tell us now what is the status of the church?

**Mr BARRY O'FARRELL:** I would assume as a Catholic that you would regard the Catholic Church in New South Wales as a peak organisation. You would regard the head of the Catholic Church in New South Wales, Cardinal Pell, as the head of a peak organisation. Therefore, they would be able to engage in genuine issues-based campaigning like other peak bodies or third party interest groups. Providing their expenditure was not electoral expenditure they could engage in those genuine issues-based campaigns.

**The Hon. PETER PRIMROSE:** Is that your advice or is that your—

**The Hon. PETER PRIMROSE:** I have offered to get you the advice, Mr Primrose, which you do not want me to do.

**The Hon. PETER PRIMROSE:** I accept that you do not know.

**CHAIR:** Are you taking that question on notice?

**Mr BARRY O'FARRELL:** He does not want me to.

**The Hon. PETER PRIMROSE:** We would be grateful for your advice.

**Mr BARRY O'FARRELL:** In the issues that came before the debate in the lower House that was not an issue that was raised. What I have just given is my opinion. What I offered—

**The Hon. PETER PRIMROSE:** That is why we needed the inquiry.

**Mr BARRY O'FARRELL:** What we needed was an Opposition that asked that question in the lower House, with all due respect.

**The Hon. PETER PRIMROSE:** That is why we have this inquiry.

**Mr BARRY O'FARRELL:** You have an inquiry to try to delay the introduction of reforms that will clean your politics in New South Wales.

**The Hon. PETER PRIMROSE:** But you do not even know what will be the impact of your own legislation.

**CHAIR:** I interrupt for the sake of the format of the Committee. Have you taken that question on notice?

**Mr BARRY O'FARRELL:** I offered, but he rejected it.

**The Hon. PETER PRIMROSE:** I would be grateful if you do not know—

**The Hon. AMANDA FAZIO:** He did not reject it.

**Mr BARRY O'FARRELL:** He did actually.

**The Hon. PETER PRIMROSE:** If you do not know would you please take the question on notice.

**Mr BARRY O'FARRELL:** I am happy to take the question on notice but I did give you an answer, I would remind you.

**The Hon. STEVE WHAN:** Are you unable to tell the Committee at this stage whether a congregation of a particular church in New South Wales would or would not be able to donate, for example, to the Christian Democrats?

**Mr BARRY O'FARRELL:** They would be covered. If it is electoral expenditure they would be treated like any other—

**The Hon. STEVE WHAN:** No, as a political donation?

**Mr BARRY O'FARRELL:** Absolutely.

**The Hon. STEVE WHAN:** Absolutely not or absolutely they would?

**Mr BARRY O'FARRELL:** The point is this legislation restricts political donations to individuals. If there are 100 members of a church, mosque, temple or some other friends' gathering who want individually to make a donation to a political party or to a candidate of their choice, of course, individual freedom would allow them to do that.

**The Hon. PETER PRIMROSE:** What about a broad church?

**Mr BARRY O'FARRELL:** There are many broad churches in this State. This legislation is very clear: if they do it as an entity other than as an individual it is not allowed as a political donation. Why? Because we are trying to reduce undue influence in the body politic in New South Wales.

**The Hon. STEVE WHAN:** As my time has elapsed, I have a number of other written questions. Would the Premier be willing to take those on notice?

**Mr BARRY O'FARRELL:** I have not seen them. Perhaps if I look at them afterwards I am happy to accept them on the basis of having seen them.

**The Hon. PETER PRIMROSE:** I place them on notice.

**CHAIR:** I want to begin by talking about the issue of third party campaigning. I note that it all turns on the definition of "electoral expenditure". When you read it out you kind of ran over the word "or". Do you accept that in section 87 (1) of the Act, the definition has two parts to it? It states:

... 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.

Are you aware of the interpretation placed on that by, for example, Dr Joo-Cheong Tham from the University of Melbourne Law School in which he said the broad definition will capture spending on communications undertaken as part of an issues-based campaign aimed at influencing the policies of parties and candidates during the capped election expenditure period even though such campaign may not explicitly advocate a vote for or against a particular party or candidate. Are you aware of that?



**Mr BARRY O'FARRELL:** I accept that is one person's opinion. I accept what I have said before which is that issues-based campaigns conducted by peak bodies or third party interest groups can occur and are only banned, in a sense, if it involves electoral expenditure which involves both those tests that you have talked about.

**CHAIR:** Either of those tests, not both of those tests. The word "or" means either, not both.

**Mr BARRY O'FARRELL:** I understand that, yes.

**CHAIR:** Have you read the evidence given to this Committee by Dr Anne Twomey?

**Mr BARRY O'FARRELL:** No.

**CHAIR:** Dr Twomey refers to section 96D, which is the part that influences campaigners, and states:

This would leave the third party campaigning field to big corporations unless lobby groups were able to raise sufficient funds from individual donations from people on the electoral roll which would be exceedingly difficult.

**Mr BARRY O'FARRELL:** I do not think that follows but again, like the Melbourne academic, Dr Twomey is entitled to her opinion as well.

**CHAIR:** Are you saying that two of the leading constitutional law experts on electoral matters who have looked closely at this legislation, at our invitation, are both wrong and you are right?

**Mr BARRY O'FARRELL:** What I learnt long ago, Dr Kaye, was that two lawyers will give you five opinions.

**CHAIR:** That is possibly true but we have four lawyers who have given us one opinion.

**The Hon. Dr PETER PHELPS:** That is not correct. I think Professor Orr was quite clear yesterday.

**CHAIR:** You will get your chance, Dr Phelps.

**The Hon. Dr PETER PHELPS:** You cannot verbal someone when they do not support your case.

**CHAIR:** I have protected your right to ask questions uninterrupted and you should respect my right to do so. Mr Premier, do you accept that it is a two-part test in section 87 (1)—you have to pass one or the other? Do you accept that there is a body of opinion in the community, including some of the nation's leading constitutional and election legal experts who say that this legislation would capture the issues-based campaigning of third parties? Do you accept that fact?

**Mr BARRY O'FARRELL:** I accept that there are different opinions but I also accept that before legislation was passed in 2010 there were also different opinions out there. In fact, the fact that there were negative opinions about taking any action in relation to campaign finance was used for more than a decade by the then Government to delay any legislation.

**CHAIR:** I agree with you on that, and The Greens would agree with you.

**The Hon. STEVE WHAN:** In fact, there were significant reforms over that period.

**CHAIR:** The issue, Mr Premier, is that this is not opinions on whether something is good or bad but it is opinions as to the effect of the legislation on third party campaigners.

**Mr BARRY O'FARRELL:** With all due respect, Dr Kaye, in the lead-up to the debate over the 2010 legislation for many years—certainly over the four-years preceding it and before that—equally strong debate and strong opinions were expressed by constitutional experts about whether even those reforms would stand up. The fact is that this Parliament, with one exception where you and I disagree, made some advances. The fact is a new Parliament now has a chance to make further reforms to show leadership across this nation to express the will of the Parliament in legislation to clean up politics in New South Wales. The fact is that The Greens, the Shooters and Fishers Party and the Australian Labor Party are opposing it.

**CHAIR:** You say that, Premier, but you do not know that to be true. We held this Committee because we wanted to look at specific issues in this legislation. You have to put your legislation to the upper House to know the reality of that statement.

**Mr BARRY O'FARRELL:** I am more hopeful after reading the *Sydney Morning Herald* today.

**CHAIR:** I refer to the substance of this Committee for one minute. Let us talk about the issue of aggregation of expenditure. Briefly, in the time left, I want you to consider two quick scenarios. Suppose we take a group of very wealthy individuals, each of whom has a position within the Liberal Party and, as they would be entitled under your legislation, they form a third party. They spend \$1.05 million advocating for the return of the O'Farrell Government. Under your legislation that would be absolutely fine. At the same time the Finance Sector Union decides it wants to spend \$1 million, for example, on alerting voters to the importance of gun control to their members. That would be illegal under your legislation. Do you think that that is incredibly discriminatory against unions?

**Mr BARRY O'FARRELL:** I think it is balderdash because if you take the first example where you allege that some group affiliated in some way with the Liberal Party would be able to spend \$1.05 million advocating a vote—

**CHAIR:** I did not say they were affiliated with the Liberal Party; I said they had connections to the Liberal Party.

**Mr BARRY O'FARRELL:** But it cannot be electoral expenditure.

**CHAIR:** Yes, it can.

**Mr BARRY O'FARRELL:** Electoral expenditure is precluded. We are banning political spending by peak organisations.

**CHAIR:** They are not a peak organisation.

**Mr BARRY O'FARRELL:** Or third party campaigners.

**CHAIR:** I have misunderstood you. Are you saying that you are banning all political expenditure—

**Mr BARRY O'FARRELL:** No, I am responding to the example you gave of a group that comes together to spend \$1.05 million. I am saying that peak bodies, third party interest groups can run a genuine issues-based campaign but the sort of campaign you describe, which was a campaign to return the O'Farrell Government, is clearly directly electoral expenditure and, therefore, would not be allowed under our legislation.

**The Hon. STEVE WHAN:** That is not right.

**CHAIR:** That is not correct.

**Mr BARRY O'FARRELL:** I am just responding to your example.

**CHAIR:** Could I ask you, Premier, to take that on notice. I think you may wish to change your opinion of the impacts of your legislation.

**Mr BARRY O'FARRELL:** I do not know whether it is my opinion or whether it is the example you gave.

**The Hon. ROBERT BORSAK:** Premier, thank you for coming today I, like some others here—not on the government side, of course—think there are some real problems in your definitions in relation to third-party electoral expenditure and also what registered third parties potentially do. Do you think the bill will set New South Wales up for a United States-style money culture of front groups and hate campaigns where big-money campaigns outside the party structure will become the rule?

**Mr BARRY O'FARRELL:** I do not see how that is possible. I go back to what I have been saying all the way through. What we seek to do is restrict donations to individuals up to that current limit of \$5,000 until such time as a committee or someone suggests that limit be reviewed. In the meantime, it does not, as has been argued by The Greens here and by the Labor Party, prevent third-party campaigners or other peak groups from accepting donations in order to run genuine issues-based campaigns. I do not believe it is a step in that direction; frankly, I believe it is a step away from that direction, because it seeks to put individuals back in charge of the electoral process, back in charge of politics and gives individuals the right to choose whether or not they are going to make a donation to a political party or candidate of their choice.

**The Hon. ROBERT BORSAK:** Prima face, that is the reason you are advocating for it—a small donation from a registered voter seems to be as democratic as it possibly can be—but the reality will be, as far as we are concerned, that probably the real voice of the voter will be drowned out in the whole process. As individuals they may make donations. There is a lot of opinion around this table that it is not an Australian tradition for many Australians, especially working-class Australians, to be in a position to have the spare cash to make donations. Do you we will end up in a situation where, because not-for-profit and community-based organisations—in this case I would also include unions—are being excluded from being more directly involved in the political process that the voice of the ordinary people will be drowned out inevitably?

**Mr BARRY O'FARRELL:** No; quite the reverse. As I have said before, nothing in this legislation prevents the RSPCA running its issues-based campaign to end puppy farming. The RSPCA is a membership-based organisation. There are other membership-based organisations who could still run genuine issues-based campaigns. What it seeks to do, though, is say that when it comes to the voting process, a voting process where rights are bestowed upon individuals, not entities, not unions, not businesses, that only individuals will be in a position to make a political donation. I am reminded by your question of a statement put out by the chairman of this Committee in January 2011, where he again said:

Greens' policy at both State and Federal levels calls for a ban on political donations from corporations and other organisations.

He concluded by saying:

In the lead-up to the March state election we are looking for similar generosity of spirit from many more Australians of far more modest means.

He went on to say:

Donations from \$50 to \$5000 will give us a well-funded grassroots and democratic campaign.

So, not only do I disagree with your characterisation, so does the chairman of your Committee.

**CHAIR:** I do not think I said that.

**Mr BARRY O'FARRELL:** I am happy to table this document. It is a wonderful press release, but I would like to quote it a bit more before I finish today.

**CHAIR:** Yes, if you would table the document.

**The Hon. ROBERT BORSAK:** Following on from that, do you think it is the intent or do you think the reality of future election processes will be that less money will be spent?

**Mr BARRY O'FARRELL:** I would like to achieve an outcome where less money is spent. I have said before in the Assembly next door, that one of the damaging influences of too much money in politics is that people in marginal seats were able to get themselves elected by bombarding people through radio and television with slick advertisements, with mail through letterboxes, and they got away from doing what we all should do: expand some shoe leather, get out there and talk to ordinary citizens on street corners. So, one of the objectives of what we are intending to do in government over however long we are allowed to be there is to try to get the public to engage with the political process, because that is also one of the ways in which we restore confidence in government and public administration in the State.

**The Hon. ROBERT BORSAK:** Following on from your comments on third-party campaigners and their ability—and I do not think the majority of the Committee agree with your position in relation to what the definition of electoral funding is—

**Mr BARRY O'FARRELL:** I do not think that conclusion is a headline.

**The Hon. ROBERT BORSAK:** No, but what I was going to ask is, do you honestly believe then that with third-party campaigners really being the ones who are in a position to advocate in a real way with some real money that ultimately they are not part of the political process and they will not have any influence within political parties?

**Mr BARRY O'FARRELL:** Third-party interest groups and peak bodies, of course, are entitled to their views but we are talking about protecting the electoral system from undue influence, from the sorts of undue influence we saw over a decade and a half, an undue influence that, as I said, was very corrosive to public confidence in the electoral system. Under the attempted reforms in 2010, while the central spending cap for all political parties was set at \$9.3 million, under Labor's laws, supported by The Greens, affiliated unions were given a free pass that gave Labor \$23 million extra to spend across New South Wales. That is not a level playing field. These reforms are about cleaning up the political process. These reforms are about creating a level playing field. These reforms are about putting the individual voters back in charge of our electoral system, and that includes giving those individual voters the right to choose whether or not to make a donation.

I understand in particular why the union movement is so strongly opposed to this: Because the leadership of the union movement, whether collectively or individually, is very happy to spend their members' fees on election campaigns that suit the leadership's aspirations. Let me tell the Labor Party members of this Committee something they may not have worked out. Many unionists voted for the Liberal-Nationals parties at the last election campaign. Many unionists objected to the use of money by unions to support the Labor Party. This legislation puts the power in the hands of individuals as to how their money will be spent in relation to campaigns.

**The Hon. ROBERT BORSAK:** Based on that, why do you not go the whole hog and ban all party campaigning from anybody on any issue during a defined electoral period?

**Mr BARRY O'FARRELL:** Electoral expenditure under this by third-party interest groups is banned in the six-month period that is covered by it. What we are doing here is making a start on cleaning up politics in New South Wales.

**CHAIR:** Premier, could you repeat that last statement? You said electoral expenditure is banned in the six-month period?

**Mr BARRY O'FARRELL:** We are saying peak bodies can run genuine issues-based campaigns. What they cannot engage in is electoral expenditure, electoral expenditure that meets the either/or test in relation to the—

**CHAIR:** So, where was the six months in that?

**Mr BARRY O'FARRELL:** I do not know.

**CHAIR:** You said six months.

**The Hon. AMANDA FAZIO:** He is making it up as he goes along.

**Mr BARRY O'FARRELL:** No. If I misspoke, I apologise. What I was trying to address, with all due respect—I think I was thinking about another shot at you but I will leave it alone.

**The Hon. Dr PETER PHELPS:** Premier, there has been some attempt to portray this as a new initiative on your part. Is it not true that you have had a longstanding interest in electoral reforms of this nature?

**Mr BARRY O'FARRELL:** It is true, as I said at the start, having lived through the period up to 2007 in particular, having seen increasingly the way Labor not only harvested donations from corporate and other entities and having witnessed the 2007 election campaign, I was concerned about what is happening to the body politic. It was a view confirmed over the past four years, when we saw clear evidence that community confidence in this place—in the Parliament, in government, in public administration—was being sapped, where people too often believed that decisions were being made on the basis of what support the party in power was receiving in donations rather than in relation to public interest. We have seen inquiries at the Independent

Commission Against Corruption, and I suspect that we will see more inquiries at the Independent Commission Against Corruption, that give evidence to why the public was uneasy about what was happening in New South Wales.

Almost the first thing I did when I became Opposition leader was seek to establish a parliamentary inquiry into campaign finance in New South Wales through a joint select committee. That was a motion I moved in May 2007 in the lower House. It was a motion that, not surprisingly, was comprehensively voted down by the Labor Party, including Mr Whan when he was the member for Monaro, because there was no interest, there was no appetite for it, because, as I say, over a four-year period, of more than \$24 million raised, on average, at \$115,000 a week. One only has to look at the books that have come out about the Labor Party over the past few years to understand the corrosive impact that that had. You only have to look at those books that have been published to understand the corrosive impact of that donations culture, the corrosive impact of the way in which power within the Labor Party had decentralised and was even damaging those who sat through it.

**The Hon. Dr PETER PHELPS:** You will be aware that certain members have falsely tried to portray this as a get unions or get Labor piece of legislation. Do you agree with Professor Orr that where you place caps on political parties you must necessarily place limitations upon those parties or else you get what is called smurfing, basically the division of campaign donations into smaller, independent entities to try to circumvent those laws?

**Mr BARRY O'FARRELL:** I will leave the smurfing and the other digital language to you, Dr Phelps, but I do accept there is an enormous flaw in existing legislation in New South Wales that this legislation we are putting forward also seeks to redress. That is, that you cannot treat an affiliated body, whether it is a union to the Labor Party or if there were an affiliated enterprise to the Liberal Party, in the same way that you treat a church organisation or the RSPCA. Clearly, a church organisation or the RSPCA is by its very nature a broad church, a diverse organisation that does not have a political agenda. But an organisation like an affiliated union that not only sits in the peak policy-making body of the ALP, not only influences preselections, but also chooses office bearers, as so often is seen, is clearly different from a genuine independent third-party group.

**The Hon. STEVE WHAN:** So they should not have the right to represent their members?

**Mr BARRY O'FARRELL:** They should have the right to represent their members but they should not have the right to port a cap that is meant to apply equally to all political parties. Parliament is meant to make laws equally without fear or favour. The fact is, under Labor's current electoral laws unions affiliated to the Labor Party, unions who by that affiliation want Labor elected, get to spend \$23 million more than any other group, whether affiliates to The Greens, to The Nationals or to the Liberal Party, ever get to do. You say they do not—and they do not in part, because of the disastrous policies that your Government pursued.

**The Hon. Dr PETER PHELPS:** Is it not also true that the United States experience of the proliferation of PACs—political action committees—as a way to circumvent the limits there prompted other Westminster jurisdictions such as New Zealand and Canada to impose comparable restrictions on third parties and third-party campaigning? Do you believe this is any way outside the Westminster tradition as exemplified by New Zealand, Canada and the United Kingdom?

**Mr BARRY O'FARRELL:** No. Indeed, in 2007, when I gave this issue enormous thought and consideration, it was the New Zealand, the Canadian and the British experience that prompted me to advocate—as the first politician in this State to do so—for caps on spending and also limits on donations. That recognised, as in New Zealand, as in Canada and as in other Commonwealth countries, the need to ensure that that was matched by control of third-party because otherwise you will get what you describe as smurfing, you will get an organisation set up that does the deed on behalf of the political party clearly towards the same goal.

**The Hon. Dr PETER PHELPS:** Do you agree with Chris Bowen, the Federal Minister for Immigration and Citizenship, when in his injunction on Wednesday this week to Labor Party people he said we should learn from the experience of our friends and then quotes Britain, the United States and Canada? Do you think the New South Wales Labor Party should also learn from Britain, the United States and Canada in relation to reforming the electoral laws of the State?

**Mr BARRY O'FARRELL:** Yes, I do think that Mr Bowen's exhortation to the ALP should be heard but clearly it is not being heard. We should learn and we should acknowledge that there were problems with the legislation passed in 2010. Those problems could have been resolved if The Greens had supported the Liberal-

Nationals parties in the upper House at that time. But I say again, Dr Phelps, this legislation seeks to effect change, to effect the significant reform that is needed in campaign finance in New South Wales in a very simple way. Because, the more complex you make it the more loopholes you open up. The more loopholes you have, the greater the rort will be.

This State should never shy away from showing leadership. The fact is that this gives us an opportunity—as GetUp! said when we introduced the bill—to show leadership across this nation when it comes to dollars in politics, when it comes to turning our back on the decisions-for-donations culture that grew up under Labor, and gives us an opportunity to show the public that they can have reason to be confident in what goes on in this Parliament.

**The Hon. JENNIFER GARDINER:** Premier, you have referred to the seeming inconsistency of The Greens in New South Wales on this issue: the fundamental part of the bill, the whole point of the bill. Are you aware that as recently as November 2011 in a dissenting report to the Federal Joint Standing Committee on Electoral Matters Lee Rhiannon set out a vision for the Australian Greens and recommended "a ban on all donations from all entities other than individuals." Would you care to comment on that seeming inconsistency?

**Mr BARRY O'FARRELL:** Ms Lee Rhiannon recommended in her dissenting report to that inquiry that there be a ban on all forms of donations and fundraising payments except those received from individuals on the electoral roll. Ms Gardiner, it does not always give me joy to agree with Ms Rhiannon but on this occasion we are at one. I also note from Ms Rhiannon's website that she issued a press release on 9 December, which essentially restated those views, and actually complimented the fact that New South Wales was seeking to reform electoral funding laws that would include, she hoped, a ban on all donations from all parties other than individuals. I notice also that on 9 August last year at the inquiry of the Joint Standing Committee on Electoral Matters into electoral funding someone called Chris Maltby—who I think is the Registered Officer of The Greens in New South Wales—had a shot at the New South Wales Liberal-National Government by saying,

We noted that the incoming government—

that is my Government—

... had promised to restrict the New South Wales funding model to donations from individuals. We are looking forward to them meeting that promise. They are somewhat delayed.

It is ironic that having introduced those reforms the delay is now caused by the Chairman and other members of this Committee who clearly do not want that sort of reform.

**The Hon. STEVE WHAN:** We obviously understand the bill better than you do then.

**Mr BARRY O'FARRELL:** I do not think you understood much in life better than me, Steve.

**The Hon. Dr PETER PHELPS:** Premier, do you believe that politics in New South Wales should be a contest of money or a contest of ideas?

**Mr BARRY O'FARRELL:** Dr Phelps, I was going to say that money should not buy results in New South Wales and I am reminded that in Monaro at the last election it did not—the public still saw through what went on. The fact is that it should be a contest of ideas. It should be about what people and parties are offering to the public of New South Wales. It should not be about who can buy the most advertising. It should not be about who can put the most letters through people's letterboxes. I go back to what I said to Mr Borsak: the problem with politics in New South Wales is that politicians have separated themselves from the community. The sooner we get back into the community, the sooner we start using shoe leather to get out there and talk to people the better. That was one of the reasons why earlier this week I went and doorknocked at the Punchbowl shopping centre to talk to people about what is going on in south-west Sydney, to get direct feedback from what people think.

Mr Chairman, you may not think that is important but as a member of the lower House what I have witnessed over 16 years is an increasing separation between members of Parliament and their communities. One of the goals we have set for ourselves in government is to ensure that certainly the members of the Liberal-National parties in both houses get into their communities, represent their communities, work as hard as people across this State do on the issues of concern to them, not on issues that relate to some corporate or other donor to their political party.

**The Hon. Dr PETER PHELPS:** Would you agree also that one of the side-effects of this legislation will be that political parties will now have more incentive to engage with individuals in the community to try and boost their membership base. Again, as Chris Bowen, the Federal Labor Minister for Immigration and Citizenship noted on Wednesday:

... measures to encourage membership of political parties are the best way of ensuring our membership is as broad as possible.

Is it not a positive consequence of this legislation that parties will have to focus on developing real policies for real people?

**Mr BARRY O'FARRELL:** Parties will have to be far more engaged with local communities and they will have to seek to grow their membership base. To go back to what Rodney Cavalier in his excellent book the *Power Crisis* describes as the first two decades of the Labor Party where local Labor leagues, where individuals—whether unionists or non-unionists—would join a local Labor league, pay their dues and those individual dues would then be used to support a candidate. It was only—as I am sure the Hon. Amanda Fazio knows—when the industrialists took over that unions gained majority control of the Labor Party and that sort of grassroots control in the Labor Party disappeared. There is nothing wrong with looking to history to see where things worked well.

Mr Cavalier is of that view; I am of that view. I want more community participation involvement in politics in New South Wales. Restricting donations to individuals will do that. Taking entities other than individuals out of the political donation process will do that. Yes, Dr Phelps, it will force all political parties to better engage communities in much the way that The Nationals before the last election engaged communities, for instance, in Tamworth—where I am going later today—in a community preselection that produced an excellent member of Parliament. Would you like that press release?

**CHAIR:** Certainly. Premier, you have taken two questions on notice. The Committee has resolved that answers to questions taken on notice be returned by Monday 30 January 2012. The secretariat will contact you in relation to the questions you have taken on notice and there may be further questions lodged by Committee members. The Committee thanks you for coming today.

**Mr BARRY O'FARRELL:** Thank you. Just by way of—

**CHAIR:** Sorry, I have closed the meeting.

**Mr BARRY O'FARRELL:** I want to table your press release.

**CHAIR:** Certainly.

**Document tabled.**

**Mr BARRY O'FARRELL:** But that was the issue. It is badged John Kaye's website. It is badged the 10 January last year. It is badged with many great comments supporting our reforms. I understand why you are embarrassed, Mr Chairman.

**The Hon. STEVE WHAN:** If the Premier would like to keep going I have many more questions that I would be delighted to ask him.

**Mr BARRY O'FARRELL:** I am happy to keep going.

**CHAIR:** No, I am sorry. I have closed the meeting.

**(The witness withdrew)**

**(Short adjournment)**

**ANNE FRANCES TWOMEY**, Professor, Constitutional Law, Faculty of Law, University of Sydney, sworn and examined:

**CHAIR:** Professor Twomey, thank you for attending today. Are you conversant with the terms of reference for this inquiry?

**Professor TWOMEY:** Yes, I am.

**CHAIR:** If you should consider at any stage that certain evidence you may wish to give or documents you may wish to tender to the Committee should be heard or seen only by the Committee could you please indicate that fact to the Committee and we will consider your request? Would you like to start by making a short opening statement? Can I just, parenthetically, thank you for your excellent submission. I am convinced that the entire Committee has read it many times over, as I have, so I would encourage you not to repeat it. But if you wish to make a five-minute verbal submission we would welcome that.

**Professor TWOMEY:** The first thing I want to say is that I am here, obviously, in relation to my expertise in constitutional law. I am not an expert in the field of politics, nor do I wish to engage in the politics. I say that particularly after the earlier session, which was far more exciting from a political point of view. I hope this is much more boring. The second point to make is that I read the second reading speech that the Premier, Mr O'Farrell, made and there was one point in it that quite struck me, and that was the point he made that constitutional issues are often used as an excuse for doing nothing. I think he is dead right on that. In some ways I regret that the report that I previously provided to the Government on political donations may have been used for that purpose.

The report that I wrote was never intended for the purposes of giving people an excuse to do nothing, but it was written from the point of view of wanting to make sure that what was done was done carefully and correctly and to make sure that it did not end up struck down by the High Court, because my personal view is that political expenditure and donations legislation is really important and therefore from my own interests I would like it to be done correctly so that it does not get struck down and that it can continue to have a very useful functional role in our society from here on.

That was the point of the concerns that I raised in this report. I regret that the consequences of that, at least for some time, may have been doing nothing. I am pleased, however, that something was eventually done, and I hope that moving into the future more will be done not just in New South Wales but in other jurisdictions and nationally. The other point to make on that, though, is that it is important that things are done constitutionally correctly because otherwise you might have a wonderful scheme that has one or two small flaws in it and that can bring the entire thing down. I think we are very conscious of that from the experience with the political advertising legislation from 1992. On the whole it was probably quite good legislation, but there were a couple of flaws in it that brought the entire thing down and—here is the crunch point in this—created a precedent that has been used for ever afterwards to bind both Commonwealth and State governments and cause all sorts of problems.

One of the main things at least when I used to advise governments that I used to try and ensure was in their minds was that if you come up with legislation that provokes the court in any way you are likely to get a, shall we say, creative judgement that is not just going to cause problems for this legislation but is going to cause problems for legislation for ever and again. The examples I used to use in those days was the Kable case—which used to strike fear into every Premier who heard it—and freedom of political communication and a few others. So as a general principle it is best not to provoke the High Court. From that point of view one needs to be sensitive to the things that concern them and, looking back to 1992, the two particular things that concerned them about that Commonwealth legislation, which banned political advertising, were that it was a bit lopsided in that it banned political advertising but it allowed advertising by political parties in proportion to the votes that they got in the previous election.

What the High Court did not like about that was that it favoured incumbents. So it was not a politically partisan in terms of favouring one party over another but it was always going to favour governments over oppositions and the High Court objected to that, and where that objection comes up is in the test: Is this law reasonably appropriate and adapted to achieve a political end? They saw this as not just about getting rid of perceptions of corruption; it was also about favouring the government, and once you throw into that some



ulterior motive, that is going to start causing you problems on that test of is it reasonably appropriate and adapted.

That is alarm bell number one if you have got any of those sorts of things. Alarm bell number two that rang off in that case was banning political communication by third parties. You will see in the judgements there they were concerned that third parties like environmental groups and all the rest of it—at the time of that legislation it was things like loggers; there was a lot of forestry stuff going on at the time—that banning those groups full stop from advertising during the period was the other thing that really provoked the High Court. They are two areas where the alarm bells were already rung in the High Court and they are things to avoid. I think both of those potentially get caught up with this legislation. That is why, despite my initially saying I do not want constitutional law to be seen as an excuse for doing nothing or being obstructive, I think in this particular case it is still something that you really have to be concerned about. That is pretty much my opening statement, although I am just wondering whether now I should, rather than your initiating it, try and clarify some things that were said in the previous session, because I had a little bit of a concern that it might have been going a little bit off the law there.

**CHAIR:** Professor Twomey, I think you can rest assured that at least three of the four parties here are going to do that. If you wish to you may, but I would take a gamble that somebody present might do that. I will hand you over to the gentle care of the Labor Party.

**The Hon. STEVE WHAN:** In response to that first comment, would you like to clarify some of your view on some of the things which were said by the previous witness?

**Professor TWOMEY:** I think there was just a little bit of confusion going on there. Can I say it is not a criticism at all of Mr O'Farrell or any of the participants. Personally I find this legislation extremely complicated and difficult, and I have great difficulty keeping it all in my head at the same time. So I am not infallible either and if I make mistakes here I apologise, although I am happy to swear that everything I say is true as much as I know it is true. But, as I say, this is really complicated legislation; it is very hard to follow. Where I think things went a bit off beam in the last session was that the odd statement seemed to be made, which I presume will be clarified, that third party campaigners cannot at all in the future campaign directly for and against candidates. I do not think that is right.

**CHAIR:** You are saying that the implication was that if the legislation were passed it would—

**Professor TWOMEY:** If this legislation is passed as is, my understanding is—and again I hope I am not wrong—that section 95F (10), which puts caps on electoral expenditure of third parties, will still exist.

**CHAIR:** That is section 95F (10) of the Act?

**Professor TWOMEY:** Of the existing Act, yes. That is not affected by this bill, as far as I can see. Third party campaigners will still be able to spend \$1,050,000, on campaigns for or against political candidates, parties, whatever. What was an issue, which is where I think we all went a bit astray here, is not that. That can happen so long as the third party campaigners use money from their own sources of revenue. Say, for example, you are a corporation, you can—

**The Hon. STEVE WHAN:** In other words, not through affiliate's fees to a peak body?

**Professor TWOMEY:** Not through political donations. Where the issue comes about—issues campaigns and all the rest of it, which is what we were really supposed to be talking about, so that is the confusion; let us move that bit out to the side—where that came up is in the section 96D provisions in the new bill, which prevent third party campaigners from receiving political donations from other people who are not on the electoral roll—other institutions, whatever. Where that arises the issue then is what is a political donation? We have seen from the definitions that Mr O'Farrell gave that a political donation is a gift made to or for the benefit of an entity to enable the entity to incur electoral expenditure. That is where the definition of electoral expenditure comes in there. Then the definition of electoral expenditure in section 87 (1) says that electoral expenditure is 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 purposes of influencing directly or indirectly the voting at an election.

So the dispute in the last session then largely turned on whether that would prevent third party campaigners running what are described as issues campaigns. Mr O'Farrell was of the view that it did not prevent that. The way I read it and the way some other people, particularly third parties, might read it is that it is just a little bit more uncertain because it talks about promoting or opposing indirectly a party and it also talks about influencing directly or indirectly voting at an election. Any issue that you discuss can be one that might influence the way people vote at an election; that is the whole idea of freedom of political communication, and the High Court has talked about that.

It could be issues such as animal liberation or drinking or road safety or any of those sorts of things, if any particular party, for example, might be proposing policies one way or another on it and if you are advocating in your issues supporting measures of road safety or harm minimisation to animals or whatever it is, potentially then you are either indirectly supporting the party that has a policy that is similar to the issues you are raising or you are doing your advertising and raising your issues for the purposes of directly or indirectly influencing the way people vote. Of course you are. Why would you be doing it otherwise? Really! On my reading of it, the consequence is that it does potentially affect issues campaigns. If I were an issues campaigning person, be it for the Cancer Council or whoever, I would want to be cautious because I would not want to breach the law. To the extent that there is any doubt, of course I would not.

I take Mr O'Farrell at his word that he does not intend that to be what it means. Therefore, the obvious response is to clarify it. If Mr O'Farrell believes, as he does, that this definition would not pick up issues-based campaigns by third parties, it needs a better definition to make it clear that that is not what it is intended to do. That will resolve the problem. Everyone seems to accept that third parties should be able to campaign on their issues. In addition, I think the cases, and particularly the 1992 case about political advertising, demonstrate that the High Court also thinks that third parties should be able to raise issues and should not be banned from doing so during election campaigns. That is my attempt at clarifying the issues.

**The Hon. STEVE WHAN:** Is it your view that if this legislation were to pass as it stands a third party campaign involving a corporation using its own resources or a wealthy individual could conduct a campaign but that an organisation relying on contributions from member bodies could not, or could not raise the money for that campaign?

**Professor TWOMEY:** They would certainly be constrained in their capacity to raise the money. Someone else pointed out in their submission—and rightly so—that a corporation such as, say, the association representing clubs and pubs or whatever, might be able to raise sufficient funds through commercial activities without donations. It is not only corporations; it may include other bodies. However, if you are able to raise the money commercially or if you have your own resources—that is, you are rich—you will have no problems running a third-party campaign. The problem with this legislation is that it affects only hierarchical lobbying groups.

**The Hon. Dr PETER PHELPS:** It is a peak body problem.

**Professor TWOMEY:** Yes. If a number of people have the same interest and they want to band together, but they are all organisations banding together to get one organisation to do the thing for them, they will have problems. I read Dr Joo-Cheong Tham's submission. He pointed out something that I had not considered; that is, you could get around this legislation by entering into a contact with a peak body to do your campaigning for you. That would not involve a donation and you would not be caught.

**The Hon. STEVE WHAN:** That is interesting.

**Professor TWOMEY:** That should be considered. If you think about it logically, you could pay an advertising agency, Unions Australia or the clubs association to run the campaign and that might defeat the legislation. I throw that in for consideration.

**The Hon. STEVE WHAN:** Professor Orr suggested in his evidence and in his submission that banning affiliation fees to political parties would be likely to fail a challenge on the basis of breaching freedom of association legislation. Do you have a view on that?

**The Hon. TREVOR KHAN:** I do not think that was his evidence.

**The Hon. AMANDA FAZIO:** It is not your turn, so butt out.

**Professor TWOMEY:** I am not as au fait on freedom of association as he is. My knowledge and expertise relate to freedom of political association. Professor Orr has done much more work on political parties, associations and the like than I have. However, I have not seen a great deal of enthusiasm. The problem at the moment is that this is all speculation because the High Court has never decided anything about freedom of political association and the like. To be honest, it is hard to tell. A lot of this is tealeaf reading when looking at the High Court and there are many steps that have to be taken. One step is whether there is a freedom of political association and, if so, what is the test, is it similar to the Lange test and so on. I cannot really help you with that because I am not sure.

**The Hon. STEVE WHAN:** You, Professor Tham and Professor Orr all seem to agree about the Lange test created by the High Court and that amendments to section 95G (6) and section 95G (7) burden freedom of political communication by further limiting the amount that a political party or an affiliated organisation can spend on election campaigns. Can you expand on that? That is the aggregation issue.

**Professor TWOMEY:** I have a problem with the aggregation stuff. On the whole I can understand there is a problem. I understand and accept that you do not want a situation where people can hive off bits and pieces and then establish another organisation and get the benefit of extra caps. You need to limit that somehow. I can see the point of the amendment to section 95G in doing that and I think the High Court would accept that you would not want a situation where people could exploit the rules and so on. The issue is more about how it is done. What disturbs me about the affiliation stuff, particularly in respect of section 95G (7), is that it is totally focused on one particular form of affiliation; that is, you can participate in preselection or it is authorised under the rules of the party to appoint delegates. Frankly, if I were advising the Government, I would suggest that it be drawn out further to prevent anyone else who would potentially smurf, or whatever it is called.

My submission refers to an existing provision which sort of goes in that direction and which is more general in nature. I suggested that you should be looking at this from a broader perspective to deal with the actual problem rather than focusing on one particular example of that problem. That is where you end up in trouble. It looks far too much as though there is an ulterior motive behind it; it looks far too much as though you are trying to achieve one particular thing as opposed to dealing with the problem as a whole. If you want it to meet the test of whether it is reasonably appropriate and adapted to achieve a legitimate end, you must ask what is the problem, what is the legitimate end and whether this legislation is reasonably appropriate and adapted to achieve that end. I think it is probably a bit too narrow and focused to do that.

**CHAIR:** Thank you for appearing and for your clarifying remarks in respect of the impacts of the legislation on third-party campaigners. You referred to section 87 (1) of the Act, which defines electoral expenditure and it all turns on whether an issues-based campaign is caught by the second part of the two-part test for the purposes of influencing directly or indirectly the voting in an election. Is it legally possible to craft a definition—and I declare that my party has attempted to do so—that separates issues-based campaigning as against campaigning that is truly just additional campaigning for a political party? This goes to both the aggregation issue and to the third-party issue.

**Professor TWOMEY:** It is really hard to do it and to do so effectively. The problem is that, in the end, whatever you do someone will try to get around it. That is inevitable. It does arise in some countries. Again, I am scratching my head to remember which countries do it. From recollection, there are places where you can run an issues campaign but you are not allowed to say, "Therefore, you should support x." You cannot include anything that supports a candidate or political party; you can only raise the issue and put your position. That is the limitation. Having said that, that simply means that people play join the dots. They note the issue and the concerns and then join the dots and conclude that they are being advised to vote for x. It might be better than what we have, but it is a little on the artificial side. If I had a brilliant answer in terms of how you do it, I would be more than happy to provide it to you and to every country in the world. However, I do not think that anyone has cracked this one yet.

**CHAIR:** Do you think the absence of a brilliant answer is a reason for not trying to do it?

**Professor TWOMEY:** Going back to my initial comment, no, it is not, but it is worth trying hard. Ultimately it comes down to the fact that people should be able to join together in bodies, be they unions or lobby groups of any kind, to express their views about political matters. As the High Court said through the political advertising case, you cannot ban them from doing that. However, you can limit how much they spend. That is fine and I have no problem with that.

**CHAIR:** Which we already do.

**Professor TWOMEY:** Yes. I have no problem with limiting third party campaigners to prevent them swamping the political issue. That is really important. They should be able to spend less. Perhaps you can try to limit the way that they advertise so that it is not overtly political and so that they are raising the political issues as opposed to encouraging party political support. In the end, I do not think you should be able to stop people from doing that because it is an essential part of the political system. Every group should be allowed to express its views if it wishes to do so.

**CHAIR:** I refer to the hypothetical case of the legislation being passed and there being a High Court challenge. Do I read from the two-part test that you and various other constitutional lawyers have mentioned that in the end the High Court might be required to adjudicate on the O'Farrell Government's intention in introducing this legislation? I imagine it would be argued by the plaintiffs that the intention was specifically to damage the Labor Party and the union movement. Would the High Court then have to make a decision on that?

**Professor TWOMEY:** No. It certainly would not expressly look at that issue. It would consider whether the law was reasonably appropriate and adapted to achieve a certain legitimate end. In looking at that it would consider whether it did more than what was necessary to achieve that end and whether there were other ways to achieve that end that would have avoided this incidental consequence of affecting x political party. We saw that in the political advertising case in 1992, where the court determined that that law favoured incumbents over oppositions and small parties, and that is a problem. The court has been looking at it in that more objective fashion. It certainly would not look into whether this political party wanted to damage that political party. That is not the level at which it would be looking at the issue.

**CHAIR:** Would amendments designed to make the legislation fit the specific stated goal mean it would be less likely to fall to a challenge?

**Professor TWOMEY:** Yes, that is absolutely right. If you wanted this sort of legislation to go through, it would be much better to make it more generic. The legislation has to be reasonably appropriate and adapted to deal with a particular problem. You have to ask what is the problem, what you are trying to achieve, what is the legitimate interest and how you can shape the legislation to achieve that legitimate interest. That is where it begins to fall down.

**CHAIR:** In identifying that problem, the agreement in principle speech—in this case it was presented by the Premier—would be relevant. Driving money out of politics would be the issue.

**Professor TWOMEY:** Normally the legitimate interest that underlies this sort of legislation is described as removing the risk of corruption or the perception of corruption in the political donations system. That tends to be legitimate interest No. 1. Under that there is a question about whether there is a second legitimate interest, which relates to the equal playing field scenario. That is a little more controversial because it is difficult when you start picking winners and losers. Political parties are not all equal—some have more supporters, some have better policies than others—

**CHAIR:** Yes.

**Professor TWOMEY:** —and some have better candidates than others. The United States Supreme Court has specifically considered this issue. It says that it is not interested in creating a level playing field because that involves choosing one element in terms of picking winners and losers—that is, the money—and not affecting all the other elements. It is very wary about doing that. The High Court has never arrived at that point in any cases that have been considered so far. There was an element of it in the Mulholland case, but generally so far the High Court has seen the legitimate interest as being removing the risk or the perception of corruption in the political process. If that is the aim, how does a law that prevents any corporation, business or whatever from making a donation to a political party—even though the \$5,000 cap is quite low—stop corruption and the like?

You think, well, it sort of does not really because if everybody can only donate up to a level of \$5,000, how is the local developer's \$5,000 going to be worth more than the fish and chip shop's \$5,000 and several other hundred people's \$5,000? It is not really and so the risk of corruption has been dealt with. You are making

it harder for yourself now that you have already got this level to actually justify why you need to take that further step. It is going to be more difficult.

**The Hon. ROBERT BORSAK:** I am interested in the talk about the banning of the aggregation of funds through groupings. I note the specific reference to shooters, and that is nice to see. Thank you very much. Are we better served politically by banning groupings of individuals from participating in the political process as groupings of individuals?

**Professor TWOMEY:** Sorry, do you mean in their groupings as political parties or do you mean lobby groups?

**The Hon. ROBERT BORSAK:** No, groupings as lobby groups and associations.

**Professor TWOMEY:** Banning them from the political process?

**The Hon. ROBERT BORSAK:** Effectively that is what this is doing?

**Professor TWOMEY:** It does not quite go that far because you can still do it to the extent that you raise money from individuals on the electoral roll and you can still do it so long as you raise money from your own resources. But it certainly limits the capacity of third parties to advertise or run campaigns. I do think that is a problem and I suspect the High Court would think that is a problem too. It is privileging some sorts of third parties and not others sorts of third parties. I think that is problematic. It does not go as far as banning them and that is what the 1992 legislation did; it just banned all third parties from advertising on the electronic media. Admittedly, they could still advertise through newspapers and the like, but the High Court thought not even that was enough. So there are potential problems with that.

**The Hon. ROBERT BORSAK:** Is there a difference between members of an association, whether as individuals or through sub organisations into a peak group and, say, shareholders of a corporation? Clearly, my understanding of what we are seeing here now is that shareholders of a corporation who contribute money into a corporation and then become shareholders of that corporation can, I suppose by inference, allow the management then to spend money on those sorts of campaigns?

**Professor TWOMEY:** Sorry, what was the question?

**The Hon. ROBERT BORSAK:** The question is that by its nature do you believe shareholders in a corporation are different to ordinary members of a not-for-profit association in the way that this bill potentially could treat them in the political process?

**Professor TWOMEY:** It is tricky because the contribution shareholders make in buying a share is that they are buying something of value, which then gives them a dividend and which they can sell at a particular time. They usually are not buying a share for the purposes of making a political contribution. Having said that, the corporation in which they hold shares will run, presumably, some sort of commercial activity and will make money and that money may then be used to run a political campaign. It is not necessarily the shareholders' funds themselves that are being used to run that campaign; it could be just the money the company makes to run the campaign. So it is slightly different from the position of the people who are contributing to an association or organisation.

But again there are some similarities. If you were a member of a shooting club and you paid money to your local shooting club as your fees, you presumably are not just paying money for them to campaign in an election; you are paying money to get whatever services and help and whatever advice they give you in their magazine or whatever. So in both cases you are trying to achieve something else, but some of that money then may go on at some stage to fund something else. It is just a bit difficult running these analogies because they can work in all sorts of different ways.

**The Hon. ROBERT BORSAK:** It is difficult. I understand that. I think that is part of the problem of the complications of how it is treating different classes of electors who are on the roll and where they have their money.

**Professor TWOMEY:** One thing I read this morning was, as I said, Associate Professor Joo-Cheong Tham's submission from the University of Melbourne. I thought he did a terrific job going through the various

categories of different sorts of organisations and how it would affect them. I would recommend the committee read that because I thought he did that analysis really quite well—better than me.

**The Hon. ROBERT BORSAK:** Therefore, do you believe that corporations using their own resources would be able to campaign without disadvantage as compared to, for example, the disadvantage that would be suffered by associations, trusts or others?

**Professor TWOMEY:** I certainly agree that under this legislation a corporation that raises its own money through commercial activities or, indeed, as I said—

**The Hon. ROBERT BORSAK:** High-wealth individuals?

**Professor TWOMEY:** —a registered club or something else would be able to fund its campaign up to its limit of one point something or other million without the same sorts of burdens placed upon it by peak organisations that try to get money from various other organisations that hold the same interest. Yes, I think it does treat the two quite differently.

**The Hon. ROBERT BORSAK:** Given, as you stated earlier, that your belief is that all campaigning, even if it is issues based, is political in nature—I hold that view as well and that it is just a matter of the continuum of where it starts and ends as far as I am concerned— in the long term everyone therefore will be disadvantaged by how all of this will come about. Is that the way you see it?

**Professor TWOMEY:** The Americans would say it has a chilling effect. When they talk about freedom of speech they talk about the chilling effect on it. So it will quieten voices. The sorts of voices that come from various groups of people with a similar interest who can no longer contribute collectively to a campaign and could only themselves individually run a really small campaign in a non-collective way: it is going to make a difference to them. The other thing that did worry me a bit as well is if you are expecting the organisations to get their donations from individuals on the electoral roll, crikey, imagine the administration. How would you know if you are a member of the local whatever club that the donations you are getting are from people on the electoral roll? Whenever they give you a membership fee or a donation do you have to get them to sign a declaration saying, "I am on the electoral roll" or something or other?

**The Hon. ROBERT BORSAK:** People will not do that.

**Professor TWOMEY:** Administratively it would be a nightmare and I guess a lot of people would not want to declare whether they are on the electoral roll, particularly the naughty ones who are not.

**The Hon. Dr PETER PHELPS:** Let me put on the record first what a wonderful book is your Annotated Constitution of New South Wales.

**Professor TWOMEY:** Thank you very much.

**The Hon. Dr PETER PHELPS:** I recommend that anyone who has an interest in the political history of New South Wales purchase a copy. You said that fairness as a constitutional issue might be controversial, yet the entire Canadian legislation is predicated upon fairness —although it arose out of the corruption scandal with the Liberal Party in Canada.

**Professor TWOMEY:** That is true.

**The Hon. Dr PETER PHELPS:** Surely you would agree that the Canadian judicial system is of a far more liberal sense than most other Westminster Anglo-sphere jurisdictions, yet are you aware of any example where the constitutionality of those far more rigorous electoral prohibitions has been successfully challenged?

**Professor TWOMEY:** Just starting with the Canadian thing, yes, you are right. The Canadians have diverged from the Americans by taking up that notion of equality. But that is very much based on the Canadian Charter of Rights because of the influence of equality they have in their charter, which the Americans of course do not have in theirs. So the Americans have the very strong free speech influence in theirs but the Canadians balance the free speech thing off the equality interests. That is what makes it really quite interesting. The difficulty for Australia and in trying to draw analogies from this is the question: Would we take the Canadian or

the American position? In not having a Bill of Rights we do not have that same equality pressure they have in the United States. If they had gone through with a Bill of Rights—

**The Hon. Dr PETER PHELPS:** Canada has a Bill of Rights too.

**Professor TWOMEY:** Yes and a Charter of Rights but, anyway, we will not get into that. The Canadian Charter of Rights equality issues influence that in a way. So the question in Australia therefore will be what sort of weight the High Court would put on that. The only case we have that deals with this a little bit is the Mulholland case, which I think was the DLP and above-the-line voting and all the rest of it. They tried to argue these sorts of equality issues. The High Court at that stage was quite dismissive of it. But then again, that was a while ago; different members on the court now. It is anybody's bet how that would run here. In terms of cases where any of this has ever been challenged and knocked down, I refer the committee—I presume you have a copy—to the report I did starting for the Iemma Government and by the time I submitted it it was the Rees Government. There are some cases that deal with this particularly in relation to the third-party donations. For example, in Canada, before they finally upheld those limitations, they had been knocked down as unconstitutional on two occasions. So it was only on the third occasion in the Harper case where the Canadian court upheld it. There was also a problem in the UK where they had a ridiculous third-party limit of five pounds, which got knocked down by the European Court of Human Rights. So in many of these cases it is more a question of where you set your limits.

**The Hon. Dr PETER PHELPS:** That is right. It is not an absolute.

**Professor TWOMEY:** It is not.

**The Hon. Dr PETER PHELPS:** It is the ridiculous position. So the \$1.1 million, or whatever it is, is hardly a ridiculous level.

**Professor TWOMEY:** It is probably fine. Yes.

**The Hon. Dr PETER PHELPS:** You said the legislation potentially privileges certain third parties?

**Professor TWOMEY:** Or just does not disadvantage them.

**The Hon. Dr PETER PHELPS:** That is right. For example, organisation A, which has 10,000 individual members, is still perfectly able to conduct a third-party campaign up to that \$1.1 million limit, but organisation X, for example, which is made up of organisations A, B, C and D, faces what I call the peak body problem?

**Professor TWOMEY:** That is right, yes.

**The Hon. Dr PETER PHELPS:** Nevertheless, individual organisations A, B, C and D are all still within their rights to campaign individually up to the \$1.1 million level?

**Professor TWOMEY:** That is right.

**The Hon. Dr PETER PHELPS:** So they can all conduct campaigns of an overtly political nature in that period up to the level?

**Professor TWOMEY:** Yes.

**The Hon. Dr PETER PHELPS:** So there is no restriction on them from doing so, is there?

**Professor TWOMEY:** No, they are not. The difficulty is taking away the capacity to collectively share resources. That is the problem.

**The Hon. Dr PETER PHELPS:** But then would you not argue in the High Court that it is an anti-avoidance measure? The courts do and have respected anti-avoidance measures in the past. For example, we cannot work on the basis that everyone is going to be pure and honest. Surely that would be an argument before the court that as an anti-avoidance measure for the prevention of the creation of front organisations this measure is important? It is not a limitation on valid, genuine member-based organisations where those memberships are

individual, but it is to contend against those organisations that are set up as fronts so that the original donors cannot be disclosed? Is that a fair assessment?

**Professor TWOMEY:** The arguments you would have to put would be in relation to whether this is a reasonably appropriate and adapted law to achieve a legitimate end. Certainly, a legitimate end could be to avoid evasion and I have no problem at all with the need to prevent evasion by preventing front organisations and splitting-off organisations to exploit the caps and all the rest of it, and I do not think the High Court would either. The question then is whether this law is reasonably appropriate and adapted to achieve that particular end. Then you have to ask yourself, "Well, is the fact that"—it is hard to think of an example that will not put everybody off side.

Various small organisations here have always organised themselves with a peak organisation to represent their collective interests. Does the fact that they get those donations from those organisations so they can collectively run a single campaign lead in any way to corruption or a perception of corruption or anything like that? I think that is where the argument begins to fall down. If you want to stop front bodies being established, then there are probably more focussed and direct ways of doing it. This way is probably going too broadly in attacking structural organisations where you have a peak body representing collective bodies. That in itself is not the problem. The problem is something else.

**The Hon. Dr PETER PHELPS:** But the problem is that were that not to be put in place you would have, as you had in the United States when the donation caps were brought in there, the creation of political action committees, the splitting up or the morphing of large donations into smaller bodies and the money found its own level like water?

**Professor TWOMEY:** Is it not the reverse? The problem is the creating of a whole lot of different bodies. What we are talking about here with the peak body thing is that there are a lot of little bodies and they are wanting to share their money in one body and it is subject to the one cap so you are not then exploiting the caps. If you had each of those little bodies doing their own thing then each of them would have the cap. So I think we are running the arguments in reverse direction here or at least getting a bit confused.

**The Hon. ROBERT BORSAK:** I would give up while I am ahead.

**Professor TWOMEY:** I think that we are getting confused because I think the first provision, 95G, is the one that is directed at—the aggregation one which is directed at trying to avoid the front bodies, but 96D to the extent that it is preventing political donations going from the smaller bodies to the one collective body is not the one that is about exploiting the caps because they are still all going to one body under the one cap that still has the \$1 million limit. So that is not the problem in relation to that one. I have to say I think we are all getting a big confused. There are just too many things going on here.

**The Hon. ROBERT BORSAK:** It is too complicated.

**The Hon. AMANDA FAZIO:** The legislation is unworkable.

**Professor TWOMEY:** I think I have bamboozled everybody.

**CHAIR:** I want to make it clear—

**The Hon. ROBERT BORSAK:** We are bamboozled by the bill.

**CHAIR:** —that you have provided excellent evidence and we appreciate the contribution you have made and the time you have taken to come here today and the time you put into writing your submission. So thank you. There may be some questions on notice.

**(The witness withdrew)**



**ANTHONY JOHN O'GRADY**, Manager, Projects and Compliance, New South Wales Nurses Association, and

**BRETT HOWARD HOLMES**, General Secretary, New South Wales Nurses Association, affirmed and examined, and

**JOHN MICHAEL MORAN**, External Media Issues Consultant, New South Wales Nurses Association, sworn and examined:

**CHAIR:** Are you familiar with the terms of reference of this inquiry?

**Mr O'GRADY:** I am.

**Mr HOLMES:** I have read them.

**Mr MORAN:** Yes, I am.

**CHAIR:** If at any stage you consider that certain evidence you may wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact to the Committee and we will consider your request. Would any or all of you like to make a brief opening statement? Thank you for your extremely detailed and comprehensive submission, which was of great guidance certainly to me and I presume all other members of the Committee. You can take it that that submission has been read carefully; therefore there is not much point in repeating it. If you make an opening statement I ask you to keep it as brief as possible and certainly no longer than five minutes.

**Mr HOLMES:** We welcome the chance to appear before this Committee, which has a very important opportunity to preserve key democratic rights in New South Wales: the freedom of collective rights and the freedom to engage in political discourse. I believe that the proposed bill, and indeed the Act, has serious unintended consequences for democracy in New South Wales. Clearly there is an attempt to constrain the raising of important policy issues in New South Wales and to restrict that to the established political parties and, we assume, the powerful media corporations in the proposed election period. Our submission outlines the range of concerns with the impact on our organisation and our democratic right to represent the interests of our membership, industrial, professional and otherwise.

We are an organisation which is very aware that our members live in the community and are impacted by everything that political parties decide should they become law. In fact, our members are often described as key workers in any community and there is no doubt that they are vital to the running of our health and aged care services, disability services, and corrective services. They have a right to have their collective voice heard at all times without arbitrary limitations set by Parliament. Our members in our democratic organisation frequently pass resolutions and give direction to the leadership to become involved in issues of social justice and community good.

Imagine if the Nurses Association no longer advocated for safe patient care or the public health system. State governments, which are the major employer of nurses, would be delighted that we have been silenced and that they could proceed with any cost-saving activity or even privatisation of our public health system without regard to the impact being fully debated and our views extensively canvassed. I trust the Committee will consider the issues we raise as a third-party campaigner and put aside the benefits to their current established political parties of the proposed bill and the current Act's disproportionate limitation on democratic rights that it imposes.

I also trust the Committee will seriously consider our questions of the implications of the bill and the Act on powerful and influential media campaigners who see no constraint in their constant campaigning against workers rights and the outcomes of successful union campaigns and even in their campaigns against governments. I trust the Committee will consider the impediments that the bill and the Act impose on our rights to run industrial and public campaigns which may be contrary to the policy or position of the effective employer of more than 43,000 nurses and midwives in this State, that is, the Government and the political parties that run the Government.

The Nurses Association is a proud campaigner for our members and the causes that they want us to pursue. Any attempt to silence or limit our capacity will be to the detriment ultimately of the people of New South Wales who benefit from better patient care. There is no doubt these are issues of public debate, but our rights to advocate on our members' views should not be limited. We are already mindful of the limited industrial options to act due in part to the nature of the work that our members undertake and public campaigning at any period of the government election cycle is vital to our ability to advocate for such things as safe patient care, wages or conditions.

**The Hon. STEVE WHAN:** Over the years the Nurses Association has participated with a number of other organisations in campaigns where you have pooled resources on those campaigns. Is that correct?

**Mr HOLMES:** That is correct.

**The Hon. STEVE WHAN:** The last drinks campaign?

**Mr HOLMES:** Yes, we are a member of the last drinks campaign.

**The Hon. STEVE WHAN:** This morning in evidence to this Committee the Premier suggested that issues-based campaigns would not be affected by this legislation. Can you tell us whether the last drinks campaign is captured by the existing definitions in the electoral legislation? Are you aware of whether it is?

**Mr HOLMES:** We took some advice as to whether we should declare and we were advised legally that we did not have to declare. I note, however, that the Police Association did declare, and that is evidence of the failure of the legislation and the regulations to be clear and easily understood. We certainly took the position, based on our legal advice, that campaigning around an issue which did not advocate a political party or a candidate as the beneficiary of such a policy issue should not be captured.

**The Hon. STEVE WHAN:** Is it your concern that future campaigns like that would be affected by this legislation?

**Mr HOLMES:** We are very concerned that campaigns like the better services campaign, which we contributed to an affiliate of Unions NSW and a major public sector union in New South Wales, are important activities for our peak bodies. I recognise that we are part of the Sydney Alliance as well—a very non-sectarian, non-political group, but in their activity they may well raise policies which would have some impact on a politician if they should say "Yes, I agree" or "No, I don't agree". So the legislation is so broad as to capture almost any raising of an idea that could at some point become a potential policy issue or a position taken by a politician.

**The Hon. STEVE WHAN:** Can you think of a campaign like this that you have been involved in that has not been aimed at influencing the policies of the government of the day or the alternative governments of the day?

**Mr HOLMES:** No. Ultimately, if you want change you have to be able to convince the Government and politicians of all creeds that change is necessary. That is how our community operates. The only way you get change is ultimately to convince politicians, their parties or the voters that change is necessary.

**The Hon. STEVE WHAN:** Would it be fair to say that you believe that this legislation would infringe on your association's freedom of speech in many ways?

**Mr HOLMES:** Clearly, and our submission goes to that point. The proposed legislation and the current Act impinge on our rights to freely advocate policy positions and raise them in the public debate.

**The Hon. STEVE WHAN:** The Nurses Association is not affiliated to the Australian Labor Party. Do you have a comment on whether you are supportive of a union's right to affiliate to a political party?

**Mr HOLMES:** That is right. Our rules and constitution mean that we are not affiliated but we believe that unions should have the right to join and affiliate with a political party or any other organisation that they see represents the best interests of their members.

**The Hon. STEVE WHAN:** Why should they have that right?

**Mr HOLMES:** I think very clearly when you look at the history of the Australian Labor Party, as you know very well, formed to benefit the workers, formed by unions for the interests of the working class that has stood the union movement and then ultimately the political arm of the Labor Party in good stead in a connection with the wider workforce, with a wider group of members than they would simply get by having contact with a few branch members who turn up to local branch meetings of parties.

**The Hon. STEVE WHAN:** Do you believe that if government were to dictate that you did not have that right that that would be a threat to your freedom of association in some way?

**Mr HOLMES:** Clearly it places limitations on what we can do, how much we can do in terms of expressing the views of our members.

**The Hon. AMANDA FAZIO:** On page 33 of your submission you refute the argument that we should follow down the path of other countries that have caps on political donations. You point out that most of the countries that are being held up as some sort of utopia of political funding legislation in fact are very different to Australia on one point, that is, they do not have compulsory voting. They spend so much because they have got to get people interested enough to turn out to vote. Would you elaborate a little bit more because I too am a bit sceptical about embracing Canada as being the be all and end all in relation to political legislation?

**Mr HOLMES:** Yes, I have a very soft spot for Canada having been there only last week but I do not believe it is the same as us. We have a lot in common but the very fact that Australia, unlike many of the other comparable countries, does have a compulsory voting system which I support, does make the situation different. That particular point does not seem to have been well canvassed or explored when those comparisons have been made.

**The Hon. AMANDA FAZIO:** On page 38 of your submission you say that a source of confusion exists between industrial and professional issues for nurses and midwives and so-called political and election issues. Would you elaborate further on that matter?

**Mr HOLMES:** The situation for nurses and midwives is, of course, that when we want to change something, when we want to improve something in our system, improve the working wages or conditions, or the numbers of nurses and midwives in our health system, it becomes more than just an industrial campaign. It becomes a political campaign because the only people who are going to make those decisions to change is the Government. It is the Treasurer and the Premier who ultimately decide the outcomes of our industrial campaigns. It is pleasure of the politicians who hear from their local constituents who happen to be nurses and midwives about what is the real story that makes them change their views and either support or not support campaigns that we run.

The nurse-to-patient ratio campaign was an example of that situation where we were running an industrial campaign which, no doubt, had to influence the real decision makers. It had to influence the Government of the day in order to be able to be resolved. We were contacted by the Electoral Funding Authority suggesting that our campaigning "may" be captured by the electoral funding. We were not advocating that people vote against the Government. We were advocating that people send a message to government but in purely sending a message to the Government, the major ultimate employer of 43,000 nurses in New South Wales, was seen to be political, at least by the funding authority at that point in time. On advice we did not agree. This is where it becomes very difficult and confusing as to how can we run an industrial campaign in the supposed six months prior to an election?

Is the Government's intention to lock out public sector workers from running a substantial campaign in aid of their members during that six-month period? You cannot avoid a reference to a government which is made up of politicians. You cannot avoid the situation where you would be advocating your case publicly in a broad campaign. As we have also said, in relation to the limitation on the expenditure of that campaign, in our submission you have seen that we have outlined how easy it is to spend \$1 million in a statewide campaign. We could be in a situation where we are running an industrial campaign that is determined to be political because we mention politicians or government and we may well have expended our \$1 million on that campaign and then be faced by a policy position by a government or an opposition which we would also need to campaign against but, having reach our cap, would be prevented from having a significant impact into that public campaign.

We can no longer trust big media to tell both sides of the story. We have identified in our submission very clearly that the media reserves its right to choose the truth, their truth about any public issue. They no longer see their role as telling both sides of the story. They can choose how they present the information. Any complete reliance on media is fraught with the danger of never being able to get the full story put out. You would recall that the Nurses Association has, on occasion, taken full-page advertisements to explain in full its position on important issues for the community.

**CHAIR:** You were not present when Mr O'Farrell gave evidence this morning to the Committee. To paraphrase his evidence he said that where organisations that campaign through peak bodies are doing so in a way that is purely issues-based and not designed to be political expenditure in the sense of party political expenditure, that that would not be affected by the legislation before this Committee. I think you have a fairly good understanding, at least as good as anybody can, of the legislation, particularly of the definitions in section 87 of the Act. Is it the understanding of your union that Mr O'Farrell is correct or incorrect in that assertion?

**Mr HOLMES:** The advice we received was that issues campaigning, such as the Better Services campaign which was run by a peak union body should not be captured. However, I believe the legislation is fraught with danger in that it is not clear that that is the case. It is not clear where you step over a line where you can be running an issue and then a political party says, "Oh yes, we agree with that now". The intention is to get politicians to agree. Once you have gone there though and you have got political support it then could fall into a political campaign because the politicians are now advocating your policy position.

**CHAIR:** I declare that we strongly supported you, but is it correct that when you did your ratios campaign you did a lot of public media around it?

**Mr HOLMES:** That is right.

**CHAIR:** Rather than just writing to myself and other politicians which you did you also spent a substantial amount of money on public campaigning. You had an excellent website. I think you set up a special website to run the campaign,

**Mr HOLMES:** That is right.

**CHAIR:** That would have cost a reasonable amount of money. You spent money, from recollection, on newspaper advertisements and electronic advertising. You spent a large amount of money. Why did you do that? Why did you bother spending money to talk to the voters? Why did you not take the cheaper option and speak to the Hon. Trevor Khan, the Hon. Steve Whan and myself and convince us?

**Mr HOLMES:** It is very important not only to take to the politicians about the issues but we raise those with the community. The Government refused to talk to us about nurse-to-patient ratios. Our claim was submitted in June and further submitted in September when we finalised the nurse-to-patient ratios. The Government refused until we took action. We take very seriously whatever industrial action we might be able to take. It is always very limited. We believe it is important that the community is fully aware of what action we are taking and why. We are also wise enough to understand that politicians will not change their position unless they think the voters want them to change their position. That was clearly necessary to convince the then government that it needed to move from its refusal to discuss nurse-to-patient ratios to a position of agreeing that there could be a compromise outcome that delivered part of what we were asking for and delivered for the people of New South Wales 1,400 additional nurses and midwives.

**CHAIR:** Why in your mind do you think politicians care about what the general public thinks? Clearly the chain that you have outlined for us is you could not get to the Government directly so you went into the public domain and spoke to the voters in order to put pressure on politicians. Why do politicians care about what voters think?

**Mr HOLMES:** It is all about their jobs, is it not?

**CHAIR:** It is all about how they vote in an election?

**Mr HOLMES:** It is.

**CHAIR:** You are saying that whenever you go into the public domain on an issue and spend money communicating in the public domain one of your objectives is for the purposes of influencing directly or indirectly, at least a perception amongst politicians, of how people might vote in an election?

**Mr HOLMES:** Clearly. Every time we raise an issue which falls within an electorate, a public hospital issue is a hot political issue. Health is number three on everyone's priority list.

**CHAIR:** All the public campaigning you engage in would be captured as electoral expenditure under section 87 (1) of the Act which says that if it is for the purposes of influencing directly or indirectly the voting in an election, it is therefore electoral expenditure?

**Mr HOLMES:** That is potentially right. We were not prepared to concede that and our legal advice said that we could fight that. I suppose I still wait for the Electoral Funding Authority to knock on my door and let us go to court.

**CHAIR:** So, the bill, which imposes yet further restrictions on the money you can use and which is being used by another body for electoral expenditure purposes, would impose further constraints on what you do, even if it were true that you were not advocating a vote for the Labor Party or The Greens or the Shooters or the Coalition? The bill as it stands would impose constraints on what you can do?

**Mr HOLMES:** That is right. Certainly in a six-month period.

**CHAIR:** Why in the six-month period? I am not clear on that.

**Mr HOLMES:** That is when I understand the cap is limited.

**CHAIR:** I was talking specifically with respect to the money you might give to another body for the purposes of campaigning, which this bill regulates. The bill does not regulate what you spend; it regulates what you can give to another body to spend on your behalf.

**Mr HOLMES:** That is right. So, if we were—and we do—to provide funding to Unions NSW, the Sydney Alliance, the coalition we have with the police, the doctors and the Health Services Union, all of those limitations stop us doing what we should be able to do, that is, join together with other like-minded people in free association, and campaign on issues that affect our members in the interests of our members and what they tell us to do.

**CHAIR:** So it is fair to say that the third-party provisions in the bill this Committee is looking at would have an effect on your perception of what you could do in communicating with the public about matters which are of concern to your union and your union's members?

**Mr HOLMES:** Clearly we have those concerns. Taken to the extent that is possible of reading the legislation there is a limitation or a potential limitation on what we would normally do in the course of our business.

**CHAIR:** If the legislation goes through and a new body is formed which is campaigning for a matter, not for the election of The Greens or the Labor Party but is campaigning on an issue that is clearly of concern to you and your members, would it be true that you would feel the legislation imposes some constraint on you before you engaged in that campaign?

**Mr HOLMES:** Under the proposal, we would have to seriously considering it because, as I understand it, it is \$2,000. No-one can even open a campaign for \$2,000. You do not have to turn around twice for that in a campaign sense.

**CHAIR:** So you would agree with Professor Twomey's argument, which again I think you might have missed, where she described the chilling effect of the legislation. Even if it did not constitutionally or in black-letter law have that effect, it would have the effect of damping down your enthusiasm to work together with other organisations?

**The Hon. TREVOR KHAN:** That is not the context in which she used the word "chilling".

**CHAIR:** Professor Twomey used to the word "chilling" to describe the effect the legislation would have on individuals—

**The Hon. JENNIFER GARDINER:** In the United States.

**CHAIR:** I note in the United States the citizens are mostly two-legged and homologous to those here in Australia. Maybe the same psychological effects happen here in Australia. Do you think it would have a chilling effect on you?

**Mr HOLMES:** Clearly it would have an effect as you describe it, as I understand your definition of that term. We obviously have the capacity to stand on our own and run substantial campaigns but it is important that when you are running a campaign that you seek all the support that you can get from other legitimate groups. A limitation or restriction on the ability to seek that support—whether you do it through affiliation or joint agreements that this is a campaign that we should all be in favour of—there is usually one group responsible for the major part of it because it is of higher interest to that organisation. For instance, the Police Association in its last drinks campaign came to us saying we think you have an interest in this and, clearly, from talking with our emergency department nurses we had an absolute interest in the last drinks campaign.

We were able to find nurses who work in emergency departments who were very free with their time to campaign on that issue, to be public speakers on that campaign. Clearly it was the Police Association who had the first idea and who took a large part of the organisation or carriage of that campaign, the responsibility. We could do the same for an issue around patient care. We could seek support from patient advocate groups, but they then could contribute to the campaign no more than \$2,000. It is a farcical situation where you prevent like organisations from joining together and to be able to campaign on issues that they have a similar position on.

**The Hon. NATASHA MACLAREN-JONES:** Could you give a specific example of campaigns—you referred to campaign restrictions in your submission—where you would be severely impacted, the words you used, if this legislation came through where you would not be able to campaign?

**Mr HOLMES:** This would severely limit a campaign which coincided with a—

**The Hon. NATASHA MACLAREN-JONES:** Could you give a specific example of a campaign that you previously worked on?

**Mr HOLMES:** Maybe it might be the defence against the constant attacks on unions and workers rights that we see bubbling along in the media every day. We only have to read Piers Ackerman to know there is a constant campaign against unions. You only have to read the *Australian*. If we are limited or restricted in being able to respond to such a campaign where they have all the power of the media—and ironically are big enough capitalists to accept advertising that may be contrary to what they are saying but they like the money—there is an example, I suppose, of a large campaign that you might need to continue to run.

**The Hon. NATASHA MACLAREN-JONES:** So your previous campaign would be your rights at work campaign?

**Mr HOLMES:** That is right.

**The Hon. NATASHA MACLAREN-JONES:** In the 2007 election you put out a statement saying you were spending \$1.2 million targeting marginal State electorates in relation to this. Would that be seen as a political campaign?

**Mr HOLMES:** We went broader than just marginal electorates. We campaigned right across the State. We did not single out individual politicians but we ran a campaign to try to ensure that our members were not subjected to the sorts of changes of laws that we have seen since your leader has been elected and your party has been in government.

**The Hon. NATASHA MACLAREN-JONES:** But your statement states that you would be publishing and targeting key marginal State electorates, so it is marginal seats. So, would you not say it is more about targeting seats to influence—

**Mr HOLMES:** Clearly, our 2007 campaign was about putting forward our concern about the impact of a change of government where we had seen at the national level a very clear and unprecedented attack on workers' rights through WorkChoices. We were campaigning against having that flow into New South Wales, and we have been proved correct. Your Government has proved us absolutely correct.

**The Hon. NATASHA MACLAREN-JONES:** Is it a coincidence that at the Federal campaign in 2007 you put out that your roadshow would target Dobell, Tumut-Cooma, Gunnedah, Queanbeyan, which is in the marginal seat of Eden-Monaro, and you went back to Eden-Monaro and targeted Macquarie? Again, was it just a coincidence?

**Mr HOLMES:** No. We are experienced campaigners and we know that you need to resource—

**The Hon. NATASHA MACLAREN-JONES:** So you were targeting marginal seats in a political campaign to influence an outcome?

**Mr HOLMES:** With some of our campaigns, yes, we did. We sent our members to talk to local politicians. We raised the issues that were of concern to our members in those local seats. There is nothing unusual about any campaign, if you want to have an impact, to pick appropriate targets where you can have an impact.

**The Hon. NATASHA MACLAREN-JONES:** How many members do you have in the Nurses Association?

**Mr HOLMES:** There are 54,500.

**The Hon. NATASHA MACLAREN-JONES:** How much is the membership fee?

**Mr HOLMES:** Registered nurses pay \$643 per year.

**The Hon. NATASHA MACLAREN-JONES:** How many are members of the ALP?

**Mr HOLMES:** I have no idea.

**The Hon. NATASHA MACLAREN-JONES:** I assume you are not affiliated with the Labor Party?

**Mr HOLMES:** We are not affiliated.

**The Hon. NATASHA MACLAREN-JONES:** But in the 2007 State election how much did you donate to the Labor Party or to run campaigns against the Coalition?

**Mr HOLMES:** It is in our declaration.

**The Hon. NATASHA MACLAREN-JONES:** I think it was around \$48,000 and \$1.2 million for the anti-coalition campaigns.

**Mr HOLMES:** You say they are anti-coalition. They were anti a policy that we expected the Coalition to bring in.

**The Hon. NATASHA MACLAREN-JONES:** At a Federal level, not a State level. Did you conduct a survey of your 54,000 members asking them whether or not they wanted money spent directly on an ALP campaign or sent to the ALP?

**Mr HOLMES:** First of all, we are a democratic organisation. In our submission we pointed out how policy decisions are made. We have a branch structure at worksites. Those branch officials are elected and delegates are elected in accordance with the Industrial Relations Act because they attend the annual conference, which is the supreme policy-making body. We have an annual conference around July or August of each year. Our delegates get to have input into that. In addition, our delegates attend a committee of delegates every two months. We have always been open with our members about running campaigns and there is no doubt that we are like any organisation. We have Liberal Party members, Greens members, members of the Labor Party.

**The Hon. NATASHA MACLAREN-JONES:** But you do not seem to donate to the other campaigns?

**Mr HOLMES:** No, we have donated in the past where we see that it is of benefit to us and it is of benefit to our members. I have never seen a benefit yet from the Liberal-Nationals Coalition but maybe when you come up with one the members might see that is a useful expenditure of money.

**The Hon. NATASHA MACLAREN-JONES:** Did you donate to the Labor Party in the 2011 State election?

**Mr HOLMES:** Our declaration is there. I think you will see we attended a couple of fundraisers. One was a Federal-related fundraiser—we have no way of knowing where that money went—and the other one was for our delegates to attend the Light on the Hill speech at Bathurst.

**The Hon. NATASHA MACLAREN-JONES:** Was it a strategic decision to not donate large sums of money to run campaigns in the 2011 State election because you want to keep that for a war chest for the Federal campaign?

**Mr HOLMES:** It was a strategic decision about the expenditure of members' money and the value we could get from it.

**The Hon. Dr PETER PHELPS:** Mr Holmes, I take it from your submission that the nurses believe that the cap on third-party expenditure should be totally removed?

**Mr HOLMES:** That is right.

**The Hon. Dr PETER PHELPS:** In other words, no longer a \$1.05 million or \$1.1 million expenditure cap? Totally removed?

**Mr HOLMES:** That is right. It is artificial. We have demonstrated very clearly that if you have a policy issue that you want to prosecute, \$1 million does not go very far.

**The Hon. Dr PETER PHELPS:** So you believe that theoretically a third-party organisation could spend \$1 million, \$2 million, \$5 million, \$15 million or \$20 million if it wanted to as a matter of principle in an election period?

**Mr HOLMES:** That is right. Then the electors have to make a judgement about whether they believe that is a worthwhile policy position. What is more important is that people who are spending that money are transparent in the reason why they are spending it and who it is that is spending it. In every advertising campaign we have always complied with saying who we are and what we are doing.

**The Hon. Dr PETER PHELPS:** Are you aware that that cap came in under the previous Labor Government?

**Mr HOLMES:** Yes. That does not mean I agree with it.

**The Hon. Dr PETER PHELPS:** Did you make any submission to the 2008 inquiry into electoral and political party funding in New South Wales when that matter was raised?

**Mr HOLMES:** As an affiliate of Unions NSW we are aware of their participation.

**The Hon. Dr PETER PHELPS:** But the nurses did not make a specific submission to that inquiry, did they?

**Mr HOLMES:** No, we did not.

**The Hon. Dr PETER PHELPS:** In March 2010 when that matter was again raised the NSW Nurses Association did not make a specific submission to that inquiry either, did it?

**Mr HOLMES:** No, we did not.



**The Hon. Dr PETER PHELPS:** It is only when a Liberal-Nationals Government comes into power that you feel that you are so aggrieved—

**The Hon. STEVE WHAN:** Point of order: My point of order is that there is no question. Dr Phelps is simply expressing a point of view.

**The Hon. Dr PETER PHELPS:** Mr Holmes, did you make any representations—

**CHAIR:** I have not ruled on the point of order.

**The Hon. Dr PETER PHELPS:** I withdraw the question. Mr Holmes, did you make any representations whatsoever to the Labor Government in relation to the expenditure cap?

**Mr HOLMES:** No, we did not—

**The Hon. Dr PETER PHELPS:** None whatsoever. Thank you. That is all I need to know. Secondly, you speak about countries with optional voting where there is a requirement to get out the vote. That, of course, requires more money to be spent. For example, you need to spend \$10 million to get people out to vote and an additional \$10 million to spend on issues campaigning, if you like, by political parties. Why then do you say that those countries, which have in fact introduced strong caps about expenditure, have less need to spend money than Australia or New South Wales does? Surely it is a counterintuitive proposal that you put: if you need to spend more money to get people out to vote why in New South Wales do you need to spend more money when there is compulsory voting anyway?

**Mr MORAN:** If I may answer that? I think the point about voluntary voting is that in getting the vote out, the capacity to get the vote out can distort the ballot result. If you have got 90 per cent to 95 per cent of your people voting just turning up to vote anyway because they are going to get a fine if they do not you are not fighting over that 10 per cent. If it is 50 per cent turnout or 60 percent turnout that extra 10 per cent—if you have been able through an issue to get that—can potentially distort the ballot. When you have a political culture where people are forced to engage through threat of a fine there is a whole different cultural setup. Debating issues and the like becomes the main game and everyone is engaged and everyone is able to decide then whether they agree with the issue or not no matter how much money is spent.

**The Hon. Dr PETER PHELPS:** I agree with you but I think it is counterintuitive that you say that those countries where you have to have a specific amount required to get out the vote, and have introduced limitations, have no reason to spend more than a situation in Australia. In New South Wales we are not required to spend money to get out the vote. In fact by your argument, your logic, you should have substantially lower expenditure, should you not?

**CHAIR:** Dr Phelps your time has expired but would you like to conclude that with a quick question?

**The Hon. Dr PETER PHELPS:** I added "should you not" at the end.

**CHAIR:** Mr Holmes, what is your answer?

**The Hon. AMANDA FAZIO:** If you understood it.

**Mr HOLMES:** I am having trouble trying to put it together. Dr Phelps has made a statement there. We simply raise this as an issue that we do not believe has been properly canvassed when making the comparisons.

**CHAIR:** Thank you gentlemen for appearing before the Committee today. The Committee also thanks you for your submission. No questions were taken on notice but some Committee members may wish to submit questions on notice to you.

**(The witnesses withdrew)**

**CHRISTOPHER HENRY MALTBY**, Registered Officer, The Greens NSW, affirmed and examined:

**CHAIR:** Welcome to this inquiry on the provisions of the Election Funding Expenditure and Disclosures Amendment Bill 2011. Are you conversant with the terms of reference of this inquiry?

**Mr MALTBY:** I am.

**CHAIR:** If at any stage you should consider that certain evidence you may wish to give or documents you may wish to tender to the Committee should be seen or heard only by the Committee, would you please indicate that fact and the Committee will consider your request. Would you like to make a short opening statement of less than five minutes? The Committee has had the benefit of reading your submission so there is no point in repeating that.

**Mr MALTBY:** Thank you. I will make a very short statement. I am anticipating lively questioning after this morning's exercise.

**The Hon. TREVOR KHAN:** Which one was that?

**Mr MALTBY:** I cannot remember now. In spite of some of the statements that were made earlier on, The Greens do generally support the thrust of this bill but with reservations. Those reservations have been outlined in our submission so I will leave them at that point, but I will highlight a few things. I would like to also correct the Premier on his statement that he was the first to bring the matter of the corrupting influence of political donations before the New South Wales Parliament. I believe that had been going on for somewhat longer. I will not necessarily claim that guernsey for The Greens but certainly Greens members of Parliament have been very strident in their position on this matter over a long period of time earlier than 2007.

This is a very complicated bill and the whole framework is very complicated. The 2010 Act is complicated as well. We had concerns about that at the time but nevertheless our Greens members of Parliament supported the passage of that bill because it was better than the previous situation. The Premier alleged that we could have improved it at that time. That is a matter of judgement. I do not believe that was possible. So we went for what was available. We are prepared at this point to support the further improvements of the bill but we want to make sure that they are in fact genuine improvements and that they do not damage the capacity for people to engage in political speech that is legitimate in New South Wales.

The particular concerns that we have—and these are outlined—are in relation to the third party problem and particularly the peak body issue that has been raised a number of times, and that seems to be primarily around the question of that definition of electoral expenditure. We are also concerned about the aggregation question in relation to affiliated unions and we have some concerns also about the affiliated bodies issue in general. In his submission the Premier mentioned that he thought we would have all and sundry suddenly affiliating to political parties if this did not go through. I do not think that is a reasonable thing but I think in the event that did occur it would certainly be within the scope of the Parliament to bring in necessary and appropriate regulation at that time. It does not seem to me that a bill which on the face of it—as has been identified by other submissions—is primarily targeted at the structure of the Labor Party is an appropriate thing for the Parliament to be undertaking at this point. Whether the Labor Party wants to amend its structure is a matter for the Labor Party. I think it should not be forced on it by a particular Parliament or a funding regime.

We do have a view about the size of affiliation fees. I think they are overly generous in the current environment but the fact that they are quarantined for administrative purposes is a good feature of the current arrangement. They are not an under the cover way to expand the war chest of the Australian Labor Party in campaigning in elections. So that is a good thing for the perceived fairness of the political process in this State. I will conclude there.

**The Hon. STEVE WHAN:** Thank you for your opening remarks but to clarify one point, Neville Wran was the first to start regulating election donations—so there has been a long history of that. I commence by picking up the point you have made about affiliation fees. I certainly agree with your point that it should be the Labor Party itself that determines its structure and not be forced to by a Liberal Government. You have mentioned that you have a concern with the size of those fees. The Greens are suggesting that there should be an overall cap on the amount per organisation—it has now been suggested at about \$7,500. Do you think it is an equitable outcome if as a basis of a cap like that one category of person is able to contribute a maximum of 11¢

and another is able to contribute the maximum of whatever might be set in the legislation, whether that is 50¢, \$1 or \$2? Surely The Greens would agree to have an overall cap per union or per organisation is actually an inequitable way of ensuring—

**Mr MALTBY:** I have sympathy with the point of view. We put those numbers into the submission with a view to starting a debate about that question. I think the key philosophical issue for us is not really the amount but to the extent that those things represent a fair cost to the party that is affiliating those members, if you like, or those proxy members in administering them. We do not want that to be a back channel for the funding of political activity by the party. It should reflect the true costs or some sort of cost in managing that affiliation and all those sorts of things. We would not have a particular problem with that. We are open to discussion I think about the amounts or the way that formula would be calculated so that it was balanced against the organisational costs of administering those members—noting, of course, that the 2010 bill also expanded substantially party administration funding from the Government. So between those two factors it may be more reasonable to have a smaller amount of affiliation fees than might have applied prior to the 2010 bill.

**The Hon. STEVE WHAN:** Hypothetically if there was to be a set limit on affiliation fees would you agree with the principle that that should be a cap or a limit applying to each individual in a union equally rather than at different amounts per union?

**Mr MALTBY:** I am not sure I can give a categorical statement to that but I appreciate the point. Within the remarks I made earlier I think that is a reasonable place to start but it may be that the costs associated with affiliation are more complicated than just a per member arrangement. That probably could be discussed some more within the scope of amendments to the bill.

**The Hon. STEVE WHAN:** Geoff Derrick, Secretary of the Finance Sector Union, gave evidence at this inquiry earlier in the week. He pointed out that the union's membership is predominantly made up of women who overwhelmingly earn less than average weekly earnings, many of them working on a part-time basis. He felt a ban on affiliation fees would discriminate against those who are not able to individually make donations to the political process. What is your view on that?

**Mr MALTBY:** I am aware of the general thrust of some of the submissions, which is that the present donations system favours more wealthy individuals, and I think that is just a fact of political life: people with higher discretionary incomes, if you like, are able to make more donations in the form of cash. It is still open, nevertheless, to those people to contribute at that time, and I think that the great strength of the Labor Party in the past has been its ability to get excellent workers, throughout campaigns and generally, on issues. So I do not see necessarily that making a 50¢ or a dollar or something contribution through their union to a political party is a big restraint on their ability to participate in the political process that does not already exist.

**The Hon. PETER PRIMROSE:** Can I just quote something from your submission? "The only way individual citizens can effectively resist the corporate economic power is to band together collectively. The capacity to do so should not be undermined by election funding legislation." That is from your submission?

**Mr MALTBY:** Indeed.

**The Hon. PETER PRIMROSE:** You would agree, would you, that unions, not-for-profit organisations and community organisations therefore should be able to represent their members by donating to a political party?

**Mr MALTBY:** I think it moves on from there, though, because politics is about the contest of ideas, and if you have got people who are involved in community organisations of various kinds, trade unions, environment groups, social service organisations, churches, et cetera, shooters bodies, whatever, they have legitimate interests; people join them to further those particular interests and they support them to further those interests. To then say the best way to represent those interests is to make donations to political parties is a step that I am not prepared to take on behalf of The Greens.

**The Hon. PETER PRIMROSE:** In terms of the electoral funding legislation, which the quote from your submission refers to, leaving aside that there may be a contestation of ideas or whatever, would you agree that unions, not-for-profit organisations, community organisations and others as one manifestation of that should be able to represent their members by donating to a political party, even if that is not the only manifestation?

**Mr MALTBY:** We in The Greens traditionally like to draw the distinction between membership-based organisations and other organisations. The problem, I think, is a practical one—once you start to say some organisations are okay and yet we want to restrict corporations because they have only one interest, which is financial essentially, whereas these people are representing community interests, it becomes very difficult to draw the line. On balance, and I agree that there are grey areas here and that the whole of the structure is going to be difficult to legislate in because of the nature of democracy, the greater good is served by restricting that capacity to donate on behalf of those community organisations when they have other avenues to express their point of view. The toxic effect of donations from corporations, which is why we have embarked on this whole reform process over many years, is also caught, and some of our legal submitters have also made that point, I think.

**The Hon. AMANDA FAZIO:** Given that this legislation would constrain greatly the right of unions, not-for-profit organisations, community organisations, et cetera, to represent their members by donating to a political party, how does that leave a group of people who are often the most disadvantaged in our community—migrant workers who are working in blue-collar industries, in the service industries, who have not been here long enough to become citizens and get on the electoral roll? Under this proposed regime they would have no voice in the political process; they would have no way of standing up for their rights in the workplace or anywhere else because unions would be disenfranchised from running these sorts of third-party campaigns to represent them. What do you think about this regime disenfranchising those sorts of people?

**Mr MALTBY:** If I understand the question correctly, you are suggesting that unions that receive, say, a membership fee from a person who was not a voter would not be able to use some of that money in their political campaigning because that would be caught by the test as to what was political communication and the prohibition of donations from non-enrolled people to contribute to those things. Surely their union—if they are a member of a union, and we will assume that they are for the sake of this, or some other organisation, and they were paying membership fees through the normal way—would then be able to campaign on the issues of concern to those people as well as anybody else. That union or body would not necessarily be able to donate to a political party, but I think we have had that discussion so I am not sure about that. But if you are identifying specific concerns about individuals, that unions might be unable to receive moneys from certain people because they are not on the electoral roll because they would be caught by this electoral expenditure thing—

**The Hon. AMANDA FAZIO:** No, I am not talking just about unions; I am talking about all of the third-party organisations that would be severely restricted if this bill in its current form went through, that those organisations, whether they be a grouping of migrant welfare centres or whatever else, these people are often some of the most needy people in the community in terms of having their voice heard and they would be completely disenfranchised by the proposed legislation. They could not donate as individuals because they are not on the roll and the ability of not-for-profit organisations that have been set up in the community to represent their interests would also be disenfranchised because an individual—for example, a migrant welfare centre, is not going to have the money and resources to run a third-party campaign; they would have to affiliate to a statewide body to run that campaign.

**Mr MALTBY:** We share that concern absolutely. I was not sure what you were articulating, but now you have articulated that way, absolutely. A serious problem with this legislation is that the ability to conduct issues-based campaigns by peak organisations of various kinds would be severely constrained by the way this bill has been written. We are totally opposed to that. I was very troubled to see the Premier not really understanding that aspect of what was being discussed here. It is his legislation; I would have thought that he was quite across that stuff. I think it is very fraught, and, as we just heard from the nurses, it may in fact apply well outside the six-month period of elections because to the extent that the body engages in any way in political communication then the cap is a matter for the six months but the prohibition on donations, or what might be perceived as a donation, is over the full cycle. So there would be a total inability of grassroots organisations to fund campaigns through peak bodies on the basis of donations towards those sorts of campaigns. If they could raise the money they could spend as much as they like, but the problem is in raising the money for those campaigns, and we think that is a real problem.

**CHAIR:** You are the Registered Officer of The Greens New South Wales and you are aware of how the party finances its campaigns and so on. If this legislation were passed unamended as it is would it have any impact on the finances of The Greens New South Wales?

**Mr MALTBY:** No.

**CHAIR:** If it were not passed would that have any impact on the finances of The Greens New South Wales?

**Mr MALTBY:** No.

**CHAIR:** If it were passed with the amendments proposed in your submission, either way, yes or no, would it have any impact on The Greens New South Wales?

**Mr MALTBY:** No. The Greens' election campaigns are largely funded by the public funding arrangements that are available and contributions from our members, who are all individual voters. The New South Wales Greens do not accept donations from corporations or other organisations, so none of these matters would be affected by it.

**CHAIR:** You heard Mr O'Farrell make a number of implications this morning. Can you explain to the Committee what is The Greens' motivation in supporting the establishment of this inquiry, in putting forward these amendments and in engaging with this issue?

**Mr MALTBY:** That is a very good question and I thank you for it. Our interest is in the furtherance of democracy. As a small party in this sphere but nevertheless one that has growing success we do not necessarily recognise that we are the be all and end all in the political sphere. We are also mindful of not imposing difficulties on further parties that might come along to replace us or to replace existing parties or to inject new voices as other issues emerge. The issues that founded The Greens might become less important and there might be others, so that is part of our motivation, and part of it is just that we are intensely committed to the idea of political debate on the basis of the importance of issues and in allowing the community to be involved in the determination of policy based on an issues debate, not on the very narrow debates and often very negative debates that we have seen in election campaigns. We do not want to see issues being squeezed out of the broader political debate by this sort of thing. So that is our main motivation in the submission and that is our main opposition to the provisions of the bill that we have highlighted.

**CHAIR:** I think you were here this morning during Mr O'Farrell's evidence and you heard Mr O'Farrell suggesting there is a contradiction between the party's policy of restricting donations to individuals and the amendments which we have put forward, or at least our failure to pass legislation unamended. Can you respond to that? Why do you think that is not a contradiction?

**Mr MALTBY:** I think Mr O'Farrell is referring directly to donations to political parties, and we have no objection to any of that stuff, as we have explained. Our concern is the extent that entities other than individuals participating in a third-party campaign would be restricted by this bill. That is not an inconsistency. All of our statements in the past and all our policies, as are available for anyone to read on our website, are about the funding of political parties; it is not about the control of third parties directly in that regard. We have been on the record about making sure that the third-party space is as fair as it can reasonably be, given the huge disparities in resources that are available.

We have seen, at the Federal level particularly, some extremely well funded campaigns on particular policy issues and, frankly, we think that that is excessive and we would like to control it some more. I think some of what is in the New South Wales existing 2010 Act would be a major improvement in the Federal sphere if that was adopted. It would prevent the quite destructive campaigns that have been waged in the Federal sphere by well funded third parties.

**CHAIR:** You heard Mr Whan ask you some questions about affiliation fees, and there was some discussion about the quantum and the limits and so on. I think you suggested that that was an interesting issue. In such a debate can you suggest to the Committee what sorts of principles should be used to set affiliation fee caps?

**Mr MALTBY:** I think I did address that. I think the affiliation should be a mechanism to increase participation in the party potentially; that if the union, through its democratic processes—and I am not sure they were always as democratic as they could be—nevertheless agreed to be part of the Labor Party or some other party then that may impose some burdens on the party to make sure that those people are given the opportunity to express their views in the forums of the party, in conferences and so forth. So those costs ought to be covered. If that turns into a de facto donation I think we have a problem with it. If that is going to expand the capacity of that party to campaign in ways that are not available to other parties then that would be an issue, I think.

**The Hon. ROBERT BORSAK:** I am just reading your recommendation number one. Do you believe that issues-based third-party campaigning, whether it be in the six-month period in the run-up to the election or prior to that, is in itself political in nature?

**Mr MALTBY:** I agree with what Professor Twomey said. The whole point about talking about political issues and the political sphere is because you want to influence people's voting. The reality is that politicians—with certain notable exceptions—are primarily interested, in many cases, in gaining office or retaining office, and they need votes to do that. Therefore, they are sensitive to the sorts of concerns that might cause people to change their vote or to vote in a particular way. A lot of the campaigns that third parties conduct are essentially about helping people to make up their mind about how they will vote. So they will obviously be caught by the definition in the Act.

**The Hon. ROBERT BORSAK:** Or influence their vote.

**Mr MALTBY:** Yes, and that is what interests the politicians in those issues.

**The Hon. ROBERT BORSAK:** Yes, and as Professor Twomey quite rightly said, the whole process is one of trying to influence people's opinions and votes. Why do you seek to exempt the money spent on issues-based campaigns not designed to promote a particular party or group of parties in recommendation 1(b) when you have acknowledged that all issues campaigning is political in nature? Where do you draw the line?

**Mr MALTBY:** I agree that it is a challenging area and Professor Twomey made exactly the same point. I do not think it is necessarily impossible, and she also went out of her way to make the point that that does not mean the Parliament should not attempt to make that distinction. We are suggesting that an attempt should be made to make that distinction. There are always grey areas. Campaigns such as Last Drinks, to which the nurses alluded—

**The Hon. ROBERT BORSAK:** But the nature of campaigns undertaken by, for example, the Nature Conservation Council of New South Wales, would advocate, would they not, that people should vote for The Greens?

**Mr MALTBY:** Absolutely not. In my experience—

**The Hon. ROBERT BORSAK:** When was the last time you saw one advocating that people vote for the Shooters and Fishers Party or for the O'Farrell Government?

**Mr MALTBY:** Or the last time I saw one that actually advocated people vote for The Greens. In my experience, these organisations campaign on issues such as the destruction of the environment in various areas—

**The Hon. ROBERT BORSAK:** And then follow the dots to? Why should they be allowed to conduct a political campaign just because it is an "issues-based" campaign? You have acknowledged yourself that it is political.

**Mr MALTBY:** Yes, I do indeed acknowledge that it is political.

**The Hon. ROBERT BORSAK:** Should we draw the line on that basis?

**Mr MALTBY:** There are organisations across the political spectrum that have issues of interest. You have allowed me to segue into an area that has not been addressed as well as it could be; that is, the concomitant obligation on people to disclose the source of the funding and to be reasonably factual in the way they represent those things. Ultimately we have to rely on voters to listen to the message, to note its source and to use that as part of their understanding in deciding whether it is important to them. If there are legitimate people who are not aware of an environmental issue or an issue relating to sporting shooters, religious practice or whatever, and if they see a communication from a body intending alerting them to that issue, they would like to know who is behind the message and then use that information in deciding whether it is relevant and whether it will influence their behaviour.

**The Hon. ROBERT BORSAK:** Your answer confirms my contention; that is, that they will look at who is behind the message and who funded it and they will have an implicit understanding of whom they should vote for. I repeat: Why should your recommendation seek to exempt a particular form of third-party campaigning and not others?

**Mr MALTBY:** There is an immediate distinction—

**The Hon. ROBERT BORSAK:** Where will you draw the line?

**Mr MALTBY:** —that draws the line between a message that proposes that this piece of natural beauty or heritage be destroyed—

**The Hon. ROBERT BORSAK:** Or utilised sustainably as opposed to being protected.

**Mr MALTBY:** —and this is the position of various parties on that issue, and one that says people should vote for The Greens because they will protect it, or for the Shooters and Fishers because they will protect your right to fish and so on. They are distinct kinds of communication and that is the distinction that we are trying to draw.

**The Hon. ROBERT BORSAK:** I thought you acknowledged that it was not easy to draw a line, and Professor Twomey said it was not. If we were to adopt your recommendation, would we not make life more difficult rather than easier?

**Mr MALTBY:** I agree with Professor Twomey that it may be hard in certain circumstances to draw that line, but that does not mean that we should not at least try. Some things are really messages about supporting particular candidates or opposing parties and those people are identified with a tick or a cross in a box. Those sorts of messages are unambiguously party related. When you are talking about broader political issues, campaigns such as Last Drinks are clearly political in nature but do not canvas votes for a particular party or place an onus on people to consider the positions of the different parties and how that accords with their own position on the issue. That would be useful and informative information as distinct from a direction. Those two places meet somewhere or another. I agree that there may be some difficulty in deciding where that boundary stands. However, that does not mean we should not attempt to set the boundary.

**The Hon. TREVOR KHAN:** I also take you to recommendation No. 1 on page four. In section (b) you say that the issuing of report cards on party's policies would be permitted. Let us suppose that the report card is put out by a group that nominates each party or each candidate and refers to contraception, termination of pregnancies, same-sex marriage, same-sex adoption and so on.

**Mr MALTBY:** I have seen report cards like that.

**The Hon. TREVOR KHAN:** One candidate might get all ticks and another candidate might get all crosses.

**The Hon. ROBERT BORSAK:** That is my point.

**The Hon. TREVOR KHAN:** I know. Without it advocating a vote for a particular party, the inevitable aim of that issues report card is to promote one candidate over another.

**Mr MALTBY:** I accept the point and we have seen that. I am particularly reminded of the Christian lobby's report card prepared for a number of recent elections in exactly that format. The Greens rate a lot of crosses on those report cards.

**The Hon. TREVOR KHAN:** Absolutely.

**Mr MALTBY:** As much as I dislike the expenditure of funding for that sort of activity, as long as the reporting is fair and they reasonably believe it to be true, and as much as it may be distasteful to people around the table to receive such report cards about their party, it is nevertheless an acceptable use of democracy.

**The Hon. TREVOR KHAN:** If you say that that is in a sense not advocating a vote for a particular party—referring to the words at the end of your recommendation 1 (b)—that is precisely what it is doing. It is a

form of political advertising under the guise of an issue that is as powerful as any other form of political advertising in terms of damning one candidate or praising another.

**The Hon. STEVE WHAN:** I did it for The Nationals.

**The Hon. TREVOR KHAN:** I am sure you did and I think we all have.

**Mr MALTBY:** There are other aspects of the electoral law that come into play. One is the related party stuff. If it is a genuine third party body that is not affiliated with a political party or associated with a political party, it is essentially trading on its status in the community to make those kinds of recommendations. If you represent the Australian Christian Lobby it is obvious where you are coming from. You have a certain membership and people generally know who you are, although they might not know that the organisation was once known as the Festival of Light. They have that background. Therefore, when they see a report card on those issues and they see who has produced it, they know that if they were the kind of person who supported the general aspirations of a body identified in that way and if they had reasonable grounds to believe the information was factual, I do not think there would be a problem.

**The Hon. TREVOR KHAN:** You may not. However, I am referring to recommendation 1(b), wherein you say "the money spent is issues-based and not designed to promote a particular party or group of parties".

**The Hon. ROBERT BORSAK:** You are saying the opposite.

**The Hon. TREVOR KHAN:** You then go on to talk about the issuing of report cards. The problem is that the first sentence says it must be issues-based and not designed to promote a particular party or group of parties and then you use the report card as an example of a legitimate issues-based mechanism. I think you now concede that that can be as damning as any other piece of political advertising.

**Mr MALTBY:** I identified that there are grey areas.

**The Hon. TREVOR KHAN:** They are more than grey.

**Mr MALTBY:** You can describe such a thing as being a legitimate education activity and that ranking the political parties by their stance on particular issues is a matter of public education. On the other hand, it may stray at some point into advocacy for a particular candidate. How you determine that is part of what we have recognised as the difficulty with this sort of stuff. I am familiar with lots of those kinds of report cards and they rarely have a line of ticks for one candidate and—

**The Hon. TREVOR KHAN:** You reckon?

**Mr MALTBY:** To that extent they are not fair dinkum.

**The Hon. TREVOR KHAN:** I think we have had our fun. The 2008 submission was prepared by Ms Rhiannon and you may have had some involvement.

**Mr MALTBY:** Yes.

**The Hon. TREVOR KHAN:** Recommendation 1.1 was to ban all forms of donations to political parties except those donations received from individuals or bequests. Do I take it that as of today that remains The Greens' position?

**Mr MALTBY:** Absolutely. That is what is in the submission.

**The Hon. TREVOR KHAN:** I am moving away from any cute games, if I can describe it that way. I now refer to page two of the submission, on which you state that allowing corporate or union money to be funnelled into separate bodies that is then used to campaign for candidates or parties would undermine any ban on corporate donations. Do you agree with that?

**Mr MALTBY:** Yes.



**The Hon. TREVOR KHAN:** Do I take it that funnelling corporate or union money—I do not need choose one over the other—could be, for instance, funnelling it into peak bodies that could then conduct a political campaign?

**Mr MALTBY:** It could be. There are multiple aspects that work against this. I accept the concern you are raising. However, the corporations and other corporate entities that may be membership-based organisations may have legitimate issues they want injected into the debate. There is nothing to stop a large corporation using the current third-party provisions to make a case. They can spend \$1.1 million during the cap period.

**The Hon. TREVOR KHAN:** Like the Nurses Federation.

**Mr MALTBY:** Yes. I think you are presupposing that a bunch of large corporations might find that it suits it to make donations to a third-party organisation that then conducts political campaigns.

**The Hon. TREVOR KHAN:** Like the coal seam gas users.

**The Hon. Dr PETER PHELPS:** Or the New South Wales Chamber of Commerce.

**Mr MALTBY:** Yes, and that is where the donation caps come into play. The capacity to aggregate millions of dollars from here, there and everywhere into a front organisation will not be available.

**The Hon. Dr PETER PHELPS:** Under the new legislation.

**Mr MALTBY:** No, under the current arrangements too because those donations are capped at \$5,000 to a party and \$2,000 to individuals. I do not think that scenario arises. If you have a company that has \$1 million it wants to spend on a political issue, it will just go out and spend it. The third-party provisions really do not influence that. If it wants to gang together and pretend to be something that it is not, then the donation caps will prevent that to a large extent. It might be possible to prevent it completely.

**The Hon. Dr PETER PHELPS:** Yes.

**Mr MALTBY:** We are not talking about the sort of environment you see in the United States where millions and millions of dollars are funnelled through PACs or super PACS or whatever and then spent anonymously. Essentially, you would not really know who the donors were.

**The Hon. Dr PETER PHELPS:** And we do not want that to happen here either.

**Mr MALTBY:** Indeed. We absolutely agree with that.

**The Hon. Dr PETER PHELPS:** You said that the 2010 legislation was not perfect but The Greens decided to support it because it was better than what existed. Would the same not apply also to the current bill before the House, and on that basis can we expect The Greens' support?

**Mr MALTBY:** I am not going to answer that question directly because it is not my place to make such statements.

**The Hon. Dr PETER PHELPS:** Do you not bind your parliamentarians with the policies?

**Mr MALTBY:** I personally do not do that. That is a matter for the party and we may so decide, but I do not know what the timetable is for the passage of the bill and the debate in the Parliament.

**CHAIR:** Perhaps the Hon. Dr Peter Phelps could tell you that.

**Mr MALTBY:** It is like the curate's egg: this bill is good in parts.

**The Hon. Dr PETER PHELPS:** Like the 2010 legislation was, which The Greens supported unanimously.

**Mr MALTBY:** That is correct and we may well find on balance that if it comes to that that we would support it but, on the other hand, it may be that after the debate it may be different. As I say, it is not my position to make such statements.

**The Hon. Dr PETER PHELPS:** I have one final matter and I always want it to benefit The Greens. In today's *Sydney Morning Herald* there appeared to be some distinction in the position of The Greens in relation to donations to political parties where one member of The Greens seemed to include affiliation fees in the understanding of donations to political parties. Is that view correct? Is it The Greens' view that affiliation fees, because money is fungible, should be considered as de facto donations to a political party?

**Mr MALTBY:** I know the Act has that meaning; they are considered to be donations under the Act. From what is in our submission and from what I have said I think we view that they are in fact a form of membership which is different, and membership is also considered a donation under the Act. We are not opposing the idea of people being able to join political parties. The question whether or not people are able to be represented in political parties through organisations like unions is something we are opposed to. We are not opposed to that. That explains the position we have articulated in the submission and here, which is that the issue is about legitimate administrative costs. We share your concern that we do not want millions of dollars to flow in.

**The Hon. Dr PETER PHELPS:** What is the current affiliation limit in the Act? It is \$2,000 per person is it not?

**Mr MALTBY:** It is. It is a very large number. If that was multiplied across the total membership of the sorts of bodies that might want to affiliate with political parties, it would be very substantial amounts of money, which would only be spent on administration, of course. I accept your fungibility concern.

**The Hon. Dr PETER PHELPS:** That is right. Let us take, for example, a political party we will call political party X, which has \$1 million in administrative costs and \$10 million in campaigning costs. The \$1 million made up by, if you like, affiliation fees means \$1 million in donation that does not need to be spent on administration but can be directly spent on campaigning. Given that, my next question is: What, for example, would stop the Liberal Party or some other party having a special commercial membership fee of, say, \$100,000 where they could be commercial members of the Liberal Party, thereby completely absorbing our costs for administration and allowing donations to be used entirely for campaigning.

**Mr MALTBY:** You may have missed my earlier response relating to party administrative funding and other things. I think the need for high-level affiliation fees is reduced by that if those fees are primarily for administration. Obviously, the example you gave would not be permissible under the current law because there is a cap on affiliation fees. I do not know how you would determine how many members a corporation might have in such a matter.

**The Hon. Dr PETER PHELPS:** What about shareholders?

**Mr MALTBY:** That would be bogus I think.

**CHAIR:** We appreciate your time in coming today, Mr Maltby. I do not believe that you took any questions on notice, but there may be questions on notice to you from Committee members.

**(The witness withdrew)**

**(Luncheon adjournment)**

**RAYMOND LEIGHTON FARLEY THEW**, Acting State Manager, Christian Democratic Party, and

**IAN EDWARD SMITH**, Treasurer and Party Agent, Christian Democratic Party, sworn and examined:

**CHAIR:** Are you conversant with the terms of reference for this inquiry?

**Mr THEW:** Yes.

**Mr SMITH:** Yes.

**CHAIR:** If at any stage you consider that certain evidence you wish to give or any documents you may wish to tender to the Committee should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Would you like to begin by making a short opening statement? We have read your submission, for which we thank you, so there is not much purpose in you repeating the content of it. Certainly, it is open to you to make a short statement, which we would ask you to keep as short as possible and certainly less than five minutes.

**Mr SMITH:** Without repeating what is there, I suppose I just reiterate that the Christian Democratic Party in principle supports the existing legislation but we believe there are a few things that need to be amended. Specifically, we do not believe that by just having donations limited to individuals that necessarily stops the perception of corruption that I am sure the legislation is pointing, is trying to generate. As we see it, the donation from the CEO of a corporation as an individual surely has the same influence as a donation on the part of his corporation. So from that perspective we do not see the limitation being required specifically to be from the point of view of coming only from an individual but from a corporation; it should be at the same level as an individual.

From the whole perspective of funding of parties, with I think a lot of activity that goes on outside the formal structure of parties, a lot of fundraising activity takes place through different structures and different bodies, without addressing those types of activities then the legislation does not stop that perception of corruption. As I state in the submission, I believe a wider definition of affiliated organisations, et cetera, needs to be derived such that, that sort of activity gets brought into the gambit of EFA reporting.

**The Hon. STEVE WHAN:** Can you give us an outline of how you feel this bill, if it was to be passed as is, might affect the Christian Democratic Party in terms of your funding sources or the way you operate?

**Mr SMITH:** We receive the majority of our donations from individuals but as I said in the submission there is, in terms of last year, about 15 per cent came from corporations or from church-related bodies. As I see it, the existing legislation would prevent that 15 per cent roughly.

**The Hon. STEVE WHAN:** So the church-related bodies are actual churches or church-affiliated groups?

**Mr SMITH:** It is a combination. It is not the Anglican Church or the Catholic Church per se but a particular Anglican church or a particular Baptist church or whatever—

**The Hon. STEVE WHAN:** A particular congregation.

**Mr SMITH:** That is right.

**The Hon. STEVE WHAN:** What is your understanding of the status of a congregation when it comes to a ban on corporate or organisational donations? They are affected in exactly the same way?

**Mr SMITH:** I would believe so in terms of the existing legislation or the legislation as proposed.

**The Hon. STEVE WHAN:** You say about 15 per cent of your donations come from those sources. What sort of dollar amounts are we talking about overall towards your last election campaign?

**Mr SMITH:** We are looking at probably about just under \$50,000.

**The Hon. STEVE WHAN:** In what sort of sizes? I notice in your recommendations you talk about matching those organisational donations with the individual donation. What sort of sizes of donations are you getting from groups like congregations or organisational organisations?

**Mr SMITH:** They are mostly smaller donations—nothing huge.

**The Hon. STEVE WHAN:** So would they be generally under \$2,000, \$5,000?

**Mr SMITH:** Most of them would be under the \$1,000 limit with only a few churches, church bodies that donate above that.

**The Hon. STEVE WHAN:** How many members does the party currently have? How many rank and file members does the party have?

**Mr SMITH:** This morning it was 1,417.

**The Hon. STEVE WHAN:** Are there any arrangements for other affiliated organisations formally or is it simply informal donations which you get?

**Mr SMITH:** Basically we have a large supporter database on top of the membership and it is people like that who support us in addition to the membership.

**The Hon. STEVE WHAN:** What sort of relationship do you have to the statewide umbrella Christian lobby groups that often run third-party campaigns during elections?

**Mr SMITH:** There is no formal affiliation.

**The Hon. STEVE WHAN:** No formal relationship. We heard an example before of groups that send out questionnaires on various issues on life and so on. Would you be concerned if groups like that were unable to conduct those types of campaigns because they could not raise funds from affiliate groups?

**Mr SMITH:** I would, yes.

**The Hon. STEVE WHAN:** Do you feel that that is restricting their ability to put their point of view across?

**Mr SMITH:** As I read the current legislation, and I think say with the Anglican Church, not that we would direct them or whatever, far from it, they have their own mind but if they want to run a campaign with regard to the same-sex marriage issue that is coming up shortly, then we would not believe they should be restricted in speaking out.

**The Hon. STEVE WHAN:** In terms of the Christian Democratic Party funding base, there have been suggestions made in this legislation that if organisations, including your church group and so on, are unable to contribute, all you would need to do perhaps is write to all the members of organisations and ask them to make a direct contribution to the party in question. How practical would that be for your party?

**Mr SMITH:** That would probably use up most of the money we would receive from donations.

**The Hon. STEVE WHAN:** So administratively it would be prohibitive?

**Mr SMITH:** Yes.

**The Hon. STEVE WHAN:** If this does come into force and donations are capped at \$1,000 and only to individuals on the electoral roll, what do you see the future of your party and your ability to advertise during election campaigns and in the long-term survival of the party? Do you feel that you will still be able to—

**Mr SMITH:** I believe we will definitely survive. We believe we have a mandate from God to be in existence, but in terms of advertising and whatever I suppose it obviously would restrict us to a certain extent unless we found another source of membership, we increased our membership or whatever.

**The Hon. STEVE WHAN:** You mean your membership base.

**Mr SMITH:** That is right.

**The Hon. STEVE WHAN:** Going on the question that you answered before about no specific relationships, there is no-one who pays affiliation fees as such, other than your direct members, to the party.

**Mr SMITH:** That is right.

**The Hon. AMANDA FAZIO:** I know that your party puts out the Family World News. That is put out on a regular basis throughout the election cycle every month. Do you have any paid advertising in that journal or is it just all articles that are contributed by members and supporters?

**Mr SMITH:** There may be some inserts. It is not a party paper per se.

**The Hon. STEVE WHAN:** Who is responsible? What organisation is responsible for that?

**Mr SMITH:** It is largely done by Reverend Fred Nile in conjunction with other sources and whatever.

**The Hon. STEVE WHAN:** Are you concerned that an activity like that might be impacted by this legislation?

**Mr SMITH:** I had not thought of it.

**The Hon. STEVE WHAN:** I had not either until it was mentioned.

**Mr SMITH:** I suppose in terms of any political comment.

**The Hon. AMANDA FAZIO:** Everybody who donates to a political party has to fill in disclosure returns that are sent to the Election Funding Authority. I do not mean to be rude about this but from my observing people handing out how-to-votes, et cetera, during election campaigns it would seem that a lot of the members of the Christian Democratic Party are in the older age bracket. You have membership fees that people pay but then you said you have a large supporters database. Do you think it is onerous for those people then to have to fill in disclosure returns if they made, for example, a \$200 or \$300 donation to the CDP?

**Mr SMITH:** Most definitely. I know this year in particular one older gentleman who has been supporting us for many years is in a nursing home. He is quite astute but just from the point of view even though we send him instructions and whatever, we needed to follow him up in regard to that.

**The Hon. PETER PRIMROSE:** Are all your 1,417 members on the electoral roll?

**Mr SMITH:** Yes.

**The Hon. PETER PRIMROSE:** What about all your supporters on your support base?

**Mr SMITH:** No, some of them probably would not be. Some of them are new immigrants that have not enrolled as yet.

**The Hon. PETER PRIMROSE:** With this proposed new legislation how easy will it be for you to ascertain which of these people who may choose to make a financial contribution are on the electoral roll?

**Mr SMITH:** We would have to crosscheck everything obviously against the electoral roll and make sure we had an up to date electoral roll.

**The Hon. PETER PRIMROSE:** How administratively complex would that be for you?

**Mr SMITH:** At the moment it would be as we do not have a big staff. It would create an extra load, yes.

**The Hon. STEVE WHAN:** What number of administrative staff do you have? What is the size of your office? The administrative side of this matter is something that is being talked about.

**Mr SMITH:** We basically have two.

**Mr THEW:** We have approximately five people part time and full time. The part-time ones come in for between one and three days a week. There is one fellow there full time. Yes, to answer the previous question, it will be administratively difficult for us to check that, but it is not something that we would shy away from if we had to do it.

**CHAIR:** Gentlemen, a matter involving the Anglican Church running a campaign on same-sex marriage was raised earlier. How would this legislation affect that campaign?

**Mr SMITH:** As I read the existing legislation I do not believe it would.

**CHAIR:** How will the bill that this Committee is specifically considering affect such a campaign?

**Mr SMITH:** I suppose if they are perceived to be saying, "Vote for this party" as against that party then that would be deemed to be—

**CHAIR:** Given the variety of different attitudes amongst both Labor and Coalition members of Parliament, would it be perceived as such?

**Mr SMITH:** I suppose if they are pushing a particular stance on the issue then that may flow through to longer term voting preferences. In terms of the legislation restricting that viewpoint I do not believe it would at this stage.

**CHAIR:** Do you think that the legislation as proposed by the Government would impact on the capacity of the Anglican Church to run a campaign?

**Mr SMITH:** Not as I read it at the moment.

**CHAIR:** What about the Council of Churches?

**Mr SMITH:** I do not see them as affiliated with a political party as such. There may be people on that who are members of political parties and how that would be interpreted is debatable.

**CHAIR:** Recommendation No. 1 in your submission states:

Expand the definition of "affiliated organisations" to include all these "external" organisations and include their funding and expenditure under the relevant Party donation and expenditure caps.

Will you explain by way of example what you mean by "external" organisations?

**Mr SMITH:** Some that come to mind are the Millennium Forum in regard to the Liberal Party or some of the dialogue groups that the Labor Party runs.

**CHAIR:** The Millennium Foundation is an associated entity, a wholly owned corporation, and under the State and Federal Acts it would automatically be already incorporated into the operations of the Liberal Party. A donation to the Millennium Foundation is treated by both State and Federal legislation as a donation to the Liberal Party. That is true. That is the current situation.

**Mr SMITH:** That is right.

**CHAIR:** Are there other examples other than associated entities to which you are referring?

**Mr SMITH:** There is no reason that a similar type of organisation could not be set up that could operate under the same premise of running functions that are not calling for donations, and a ticket is not deemed to be a donation. Although an organisation cannot claim a tax deduction for that donation they can claim a tax deduction for the ticket that they purchase to that function. There seems to be a bit of an anomaly there. In terms of similar organisations, as I say, I think there are other ones and I think The Nationals may have

some and, as I said, the dialogue groups. I think in terms of what the Australian Electoral Commission defines there are groups that come in and out of the gambit of what is an affiliated group and, without being an expert in the whole area, I do not monitor all the groups that are out there.

**CHAIR:** Mr Thew, do you wish to add to that?

**Mr THEW:** Yes, if I may. I would see the previous example of the Anglican Church and the same-sex marriage issue as an example of where the church has seen some legislation being proposed that is something to which it is opposed. It would not matter which party was introducing it; I imagine that they would still oppose it. In opposing it they are saying that they see it as being not good for society. They are not saying, therefore, "Vote for CDP candidates"; they are saying that what the Government of the day is proposing is wrong because of certain things. These churches, whilst we talk with them, are not in each other's pockets so to speak; they are completely separate. Those church organisations have, to the best of my knowledge, generally taken the view that they do not wish to be involved in the political party situation but they still wish to be involved in the political debate.

**CHAIR:** I am struggling to find the consequence of what you have said either for my previous question or for the question before that to Mr Smith.

**Mr THEW:** You drew attention to the word "external" and I thought you implied that you might see an organisation such as one of the mainstream churches, for example, the Anglican Church being an external organisation, as some sort of an arm for the Christian Democratic Party.

**CHAIR:** I most certainly was not going there and I certainly do not think that. My question was entirely innocent. I was trying to get a better understanding of your recommendation No. 1. There was no implication. The two were unrelated questions.

**Mr THEW:** I am sorry.

**The Hon. ROBERT BORSAK:** Under the heading "Donation and Expenditure Transparency" in the second paragraph your submission refers to an ongoing push to privatise or circumvent the electoral process through the establishment of numerous forums, industry groups, trusts and associations. Apart from those associations and trusts that have already existed for a long time, will you provide the Committee with examples of what you are referring to?

**Mr SMITH:** I think there is no reason that outside organisations cannot be created as a means of circumventing the legislation, functions or whatever, such as I suppose GetUp! or something like that. I would see that as one example of an organisation that promotes a particular point of view based on the money that it raises. If parties see that their capacity to promote themselves is limited by this then I am sure the thinkers within the party may try to go beyond that and I am sure that is why these other groups were created in the first place.

**The Hon. ROBERT BORSAK:** You also say that the authority of the Electoral Commission must be widened to encompass such organisations. Again, will you give me some idea of where you think the authority of the commission is not already wide enough? My understanding of the way the law is structured at the moment is that based on the definition of electoral expenditure, regardless of who spends it—and GetUp! is a good example—they may well be caught. Can you provide an example of when it would not happen?

**Mr SMITH:** I think in terms of running some television campaign, not necessarily—

**The Hon. ROBERT BORSAK:** Are you talking about issues-based campaigns as such?

**Mr SMITH:** Indirectly speaking out against an issue but obviously at the time of an election it would be obvious which party they are supporting.

**The Hon. ROBERT BORSAK:** You agree with the concept or the proposal that issues-based campaigning is really just political campaigning?

**Mr SMITH:** It can be. Obviously people out in the wider community are concerned about particular issues and how you can best encourage that debate and not have it stymied. It is up to the Committee to put a structure in place that enables that.

**The Hon. ROBERT BORSAK:** When you talk about some parties being disadvantaged when big money organisations and individuals use alternative ways to benefit them as opposed to their opponents, I take it that you want to bring those larger organisations, perhaps third party campaigners, more into the controls process?

**Mr SMITH:** That is right.

**The Hon. ROBERT BORSAK:** You said to the Hon. Steve Whan in relation to the donation process that all but 15 per cent of donations that your party receives come from individuals and primarily from church constituencies I presume. Is that right?

**Mr SMITH:** Individuals?

**The Hon. ROBERT BORSAK:** Individuals from within the church community?

**Mr SMITH:** Most of them would be church attendees.

**The Hon. ROBERT BORSAK:** Yes, and they do that as a separate will of their own? They decide that they will donate money? It is not coming via the—

**Mr SMITH:** It is not coming via the churches encouraging them to.

**The Hon. ROBERT BORSAK:** And most of those donations would be of \$1,000 or less?

**Mr SMITH:** Exactly.

**The Hon. ROBERT BORSAK:** How many of those donations would you get, just in round figures, in an electoral cycle?

**Mr SMITH:** I have nothing in front of me, but it would be several thousand, smaller donations.

**Mr THEW:** We can take that question on notice if you wish.

**The Hon. ROBERT BORSAK:** Yes, if you could take it on notice.

**Mr SMITH:** I think our latest was a disclosure on line.

**The Hon. STEVE WHAN:** It says 935 small donations, State, but that is individual ones as well.

**The Hon. ROBERT BORSAK:** The website shows that you raised about \$1.5 million over the electoral cycle, the last electoral cycle. So that would be a lot more than 900.

**The Hon. STEVE WHAN:** The disclosure I quoted was just the last year.

**Mr THEW:** Could you clarify the electoral cycle, please?

**The Hon. JENNIFER GARDINER:** Four years.

**The Hon. ROBERT BORSAK:** If you go to the year ended 30 June 2011, which I think is the one Mr Whan is talking about—just for instructive purposes, I am not interrogating you about it—\$504,000-odd worth. You can do the maths yourself. Say a thousand small donations.

**Mr THEW:** About \$500 each on average.



**The Hon. JENNIFER GARDINER:** Following up on that, the contributions from congregations that you were talking about earlier and the possible administrative implications of any changes to the law, can you give us a rundown on how the contribution from the church is gathered and processed?

**Mr SMITH:** I could not tell you other than we receive a donation that is sent in the name of a particular congregation. That would be a decision made by the parish council or the elders of that particular church.

**The Hon. JENNIFER GARDINER:** They have a bank account and they send you one cheque?

**Mr SMITH:** Yes.

**The Hon. JENNIFER GARDINER:** And a decision would be made by the parish council to do that?

**Mr SMITH:** That is right.

**The Hon. JENNIFER GARDINER:** Do you send out fundraising letters to churches or to parish councils, for example?

**Mr SMITH:** No, we do not, unless they asked to be put on our mailing lists. We do not specifically target churches.

**The Hon. JENNIFER GARDINER:** So they are pretty much unsolicited from certain churches, congregations?

**Mr SMITH:** Some of them have been long-term supporters of the Christian Democratic Party.

**The Hon. JENNIFER GARDINER:** So you do not see any necessary change to that sort of arrangement if this bill went through?

**Mr SMITH:** I would be concerned because—

**The Hon. JENNIFER GARDINER:** They are not individuals on the roll?

**Mr SMITH:** They are not on the roll; they are not individuals.

**The Hon. JENNIFER GARDINER:** Some of them are quite significant amounts. One parish council gave you \$5,500 for this last campaign?

**Mr SMITH:** Yes, quite.

**The Hon. NATASHA MACLAREN-JONES:** You raised concerns in relation to your party writing directly to those who contribute to the congregation or to an organisation where the funds would be transferred on. Could you not contact the organisation directly and ask it to either write to members of the organisation or put it in a newsletter that if they support you they could donate directly to you. That removes the concerns you raised that the money could not be brought in via the organisation.

**Mr SMITH:** I suppose that would be a possibility but I see it as a long-winded way. It would be up to the church to be either willing to open its database to us to mail out or, conversely, for them to approach their membership specifically. But I think it would be an unnecessary hindrance.

**Mr THEW:** And an administrative effort.

**The Hon. NATASHA MACLAREN-JONES:** But it is not an impossibility?

**Mr THEW:** It is not impossible. I would go further, though, to suggest that it would probably deter people from doing it. It is a lot easier, I would imagine, for a church or any social club or any organisation—for example, we have mentioned here the Sporting Shooters Association—to say at its committee meeting, "I move that we donate so much to the CDP," and it is seconded and passed and the Treasurer arranges for a cheque to go out, whereas to ask each individual member to make some personal contribution is something that will be

more easily forgotten, particularly when it is shared amongst a large number of members and it is \$2 from him and \$1 from her, and so on. It just becomes an administrative nightmare to send it and to process it.

**The Hon. NATASHA MACLAREN-JONES:** Your second recommendation regards an online facility being run for any donations lodged within 14 days. Are you proposing that that is done by an organisation or by individuals who have made a donation to that organisation?

**Mr SMITH:** I said reportable donations. So, within 14 days of a party banking a reportable donation, and the funding authority has some kind of online facility that information becomes available rather than something appearing in six months or more after the election. People can interrogate, and the media can raise whatever issues they want in regard to large donations.

**The Hon. NATASHA MACLAREN-JONES:** Do you think the time frame of 14 days would be an administrative challenge for your organisation to deal with if it has 100 people who have donated or given money in relation to a fundraising event?

**Mr THEW:** It is possible and obviously it is open to consideration whether it is 14 days or 28 days for some other figure that is practical.

**The Hon. Dr PETER PHELPS:** I want to take you back to your comments about supporters. You said your membership is all on the electoral roll. The majority of your supporters, putting aside the institutions and organisations, the parish councils, are on the electoral roll but there are additional supporters who will donate money to the party who are not currently on the electoral roll. Presumably they are not on the electoral roll because they are either breaking the law—which I am sure would not be the case for CDP supporters—but for what other instance would they not be on the roll?

**Mr THEW:** As I mentioned, they are people who are recent immigrants or whatever.

**The Hon. Dr PETER PHELPS:** Foreign nationals?

**Mr THEW:** Foreign nationals or visitors to the country.

**The Hon. Dr PETER PHELPS:** Are you aware that donations from non-citizens are banned in Canada, in New Zealand, in the United Kingdom and in the United States? Do you not think it would be a good idea that elections in Australia were funded by Australians rather than by foreign donors?

**Mr SMITH:** I would have thought that these people have come to Australia to create a new life as Australians and are getting involved in the political process. I am sure they support numerous parties.

**The Hon. Dr PETER PHELPS:** But as a basic principle would you think that foreign nationals paying money to political parties is an undesirable look, surely?

**Mr SMITH:** People who reside overseas, their residences are overseas; the people who reside in Australia, I have no qualms about.

**The Hon. Dr PETER PHELPS:** So you could have visitors come to Australia and give, I don't know, a million dollars to the Liberal Party and that would not be suspect?

**Mr SMITH:** Obviously there are limits that apply.

**The Hon. Dr PETER PHELPS:** But the basic principle is, surely, that if you accept that visitors from overseas can donate, why should they not be able to donate whatever they like?

**The Hon. PETER PRIMROSE:** Then you have to check.

**Mr SMITH:** Obviously you are creating a—

**The Hon. Dr PETER PHELPS:** Every party at this table has received foreign donations of some sort except for the Shooters and Fishers. Do you not think there is something unusual about having foreign nationals being able to donate when in every other Westminster country around the world they are banned from doing so?

**Mr THEW:** To answer the first of your questions, we were not aware of that, so thank you for telling us. The implications, though, are something for consideration, thank you.

**The Hon. AMANDA FAZIO:** I was interested in getting your views on whether you think the continual changes to the electoral funding regime are administratively burdensome for small parties who have moderate resources, perhaps like the Christian Democratic Party, and if they would work against the formation of new parties? Both of you have been involved in the administration of the CDP for quite some time, and keeping abreast of all the disclosures in political funding and disclosure regulations is pretty difficult. Do you think it is working against the continued existence of smaller parties and working against the formation of new smaller parties?

**Mr SMITH:** I think it would be a hindrance to smaller parties being formed or being funded and continuing. In our case, with these changes, obviously they impose extra guidelines and checks that we have to put in place, changes to computer systems, possibly. That is additional expense that we would have to cover somehow or other.

**The Hon. TREVOR KHAN:** One of the changes to the electoral funding laws that went through last year was a change that involved a potentially significant increase in the amount of public funding that was available to political parties. That is right, is it not?

**The Hon. Dr PETER PHELPS:** For administration.

**The Hon. TREVOR KHAN:** Amongst other things administration. That is right, is it not?

**Mr SMITH:** It is different for a party that receives \$2 million as against—to be a small party you obviously have to get people into Parliament and be elected, so for a small party to be formed, if it does not get someone elected, it does not receive access to that. It can receive a very small amount but it needs parliamentary representation to get funding.

**The Hon. TREVOR KHAN:** How much public funding over the new electoral cycle is the CDP anticipating to receive?

**Mr SMITH:** It would be about, forgetting the consumer price index increase, \$160K a year, so \$640,000, plus the CPI increase.

**The Hon. TREVOR KHAN:** How much does that compare to the previous electoral cycle?

**Mr SMITH:** It is significantly more. Obviously it still does not go, depending on how much the political party has to do to maintain support and compete with the larger parties, it is a big strain on the smaller parties, not only being formed but then to continue their existence with all this extra administrative work.

**The Hon. TREVOR KHAN:** Does not the additional electoral funding that you receive bring with it in part the opportunity not to be reliant, for instance, on the small donations you were talking about before?

**Mr SMITH:** An opportunity but not the reality. We still rely on volunteer support to do our administration.

**CHAIR:** Gentlemen, thank you for your written submission and for appearing before the Committee today. You did not take any questions on notice but there may be some questions on notice from Committee members.

**Mr THEW:** Thank you for the opportunity to be here.

**(The witnesses withdrew)**

**LENORE ANN HANKINSON**, Industrial Officer, NSW Teachers Federation, and

**JENNIFER LINDA DIAMOND**, General Secretary, NSW Teachers Federation, affirmed and examined:

**CHAIR:** Welcome to this inquiry on the provisions of the Election Funding Expenditure and Disclosures Amendment Bill 2011. Are you conversant with the terms of reference of this inquiry?

**Ms HANKINSON:** I am conversant.

**Ms DIAMOND:** Yes, I am.

**CHAIR:** If at any stage either of you should consider that certain evidence you may wish to give or documents you may wish to tender to the Committee should be seen or heard only by the Committee, would you please indicate that fact and the Committee will consider your request. Would either of you like to make a short opening statement of less than five minutes? The Committee thanks you for your submission, which members have had the benefit of reading, so there is no point in repeating that.

**Ms DIAMOND:** On behalf of the federation I will make some opening remarks. I would like to acknowledge that we are meeting on the traditional lands of the Gadigal people and on behalf of the federation pay respects to Elders past and present. I would also like to thank the Committee for the opportunity of allowing the federation to appear today. It is important that inquiries such as this do occur because they allow many voices or representative groups to be heard on behalf of their constituency. I make that statement because in one sense the proposed amendments mean that this kind of forum could be the only kind of forum in which we have the opportunity I guess to pursue some of the concerns that we have.

The NSW Teachers Federation is not affiliated to any political party—never has been and, I believe, never will be—and values its independence accordingly. I think it is fair to say that probably both major groups of political parties in this Parliament have probably muttered about us under their breath on numerous occasions so we believe we have some independence. For us the proposed changes would see the concept of participatory democracy under threat. We represent—and I am not going into the details contained in our submission—approximately 70,000 members across New South Wales. The federation has prided itself on being a campaigning union both on individual and local issues as well as statewide issues. Our members are constrained by the code of conduct and are not able to pursue matters in their own way as government employees, so the union is a very important forum for those individual and statewide issues.

The federation has a question of the inquiry: At what point does issues-based campaigning—which is what we believe we do—suddenly become political? That is not clear in the amendments. It is our concern that a government of whatever persuasion it might be is elected for four years and an election period goes for a particular amount of time but these amendments would effectively mean that an organisation such as ours is not able to pursue in a sustained way the kinds of campaigns that it does seek to address. Our goal ultimately is to have our issues addressed through improved, we believe, government policy and practice—that is at the bottom of everything we do. If these amendments were to come into effect it would mean we could not do that. Our issues are in the best interests of our members, the students in public education and public education itself. Ultimately if we do not stand up and follow these issues nobody else will.

We are also affiliated with Unions NSW, which represents broad union interests across a number of industries. Some of the campaigns in the past that we have engaged in with other affiliates in that forum include changes to occupational health and safety, workers compensation and, more recently, public sector sections of the unions seeking to improve the public service provisions in New South Wales. The changes to the Industrial Relations Act earlier this year have severely limited our opportunities to pursue many of these issues in the Industrial Relations Commission. There is such a narrow opportunity now and with these amendments potentially going through there are no other avenues effectively that we can continue to campaign in a meaningful way on behalf of our members. We believe that these amendments are quite puzzling for a start because we do not know what has triggered the need to suddenly "improve" the Act. If there is evidence of insufficient integrity or robustness in the processes then we might have some understanding as to why has come about but clearly it seems to be shutting down the voices of many and really only allowing those who have the wealth and privilege to consistently pursue their matters.

Some of the issues that we have taken up—I have to say that public education is our ongoing campaign and it will not stop because we do not believe that there is a fair go for public education. It probably began in earnest I would say back in 1996. We are talking in the Federal sphere and David Kemp as the Federal education Minister certainly made us get up off our seats and start campaigning. Those sorts of things lead to the Vincent inquiry, which did have a State focus. It is fair to say that many of the matters within that are still unaddressed. Unflued gas heaters, I have to say that neither the current nor the previous government has really addressed that issue for us in any satisfactory way. If these amendments were to come through we are not sure that we would have any capacity to continue to pursue that because of the ambiguity in the way that it sits.

**CHAIR:** Ms Diamond that is five minutes. Are there any final things you would like to say to conclude your opening remarks?

**Ms DIAMOND:** Just to make the point that we do represent the many and, as one of those organisations, many disempowered in any other way people. We believe that this only further entrenches that disempowerment of people in what is supposed to be representative government in New South Wales. Thank you.

**The Hon. STEVE WHAN:** One of the points made in your opening is also one of the key points to have been raised here today—that is, what is an issues-based campaign and when does that become a political campaign? Earlier today the Premier gave the Vincent inquiry report as an example of an issues-based campaign that was not a political campaign. You have run a number of campaigns since then. I notice in the returns for the last election you declared \$137,000 worth of expenditure. Presumably you did so because you were advised that the campaigns that you were running were liable to be declared under that. Is that correct?

**Ms DIAMOND:** Yes, that is correct.

**The Hon. STEVE WHAN:** I do not know what these were for but it has almost \$100,000 for radio advertising, which would presumably be on public education but you were also running the TAFE campaign as well. One of the questions there is where does it become a political verses an issues-based campaign. Did you specifically receive advice on that?

**Ms DIAMOND:** We are seeking advice from the legislative processes because that is where the decisions have come from. I have heard various legal opinions and they can go both ways. So it is really up to the Parliament to determine what is or is not in that sense because that is where it has all come from. In terms of that advertising and the TAFE campaign in particular, that campaign kicked off about June 2010—well ahead of any formal election period. The campaign is still continuing post the election. As I have said, it is all part of the issues that we have about TAFE—I will not go into the detail of what they are. That is what I mean when I say they are ongoing; they will not go away. What I did say was that our goal is to have these issues addressed in government policy and practice whatever the government is and however long or short it may be in power. We want those things addressed because it is about better conditions for students and better working conditions for the teachers who work in public education.

**The Hon. STEVE WHAN:** From the point of view of this inquiry it is very difficult to draw that line and for you to understand what the definition is between a political campaign and an issues campaign?

**Ms DIAMOND:** For us I guess a political campaign as opposed to an industrial campaign of stoppages and the like it is a political campaign. For example, in the TAFE campaign our members approached various members of Parliament and candidates indeed in the lead up to the election seeking support for five key concerns. Potential candidates of all political persuasions either chose to sign or not sign that pledge seeking improvements in TAFE provisions. So it was political in one sense but I would suggest it is a small "p" political and go back to the point that we are not affiliated and choose not to be affiliated to any party. That does not mean that these things are not political in the end.

**The Hon. STEVE WHAN:** On the point that you are not affiliated to any political party, do you believe that government sought to be able to dictate to your union that you should not be able to affiliate or support a political party?

**Ms DIAMOND:** I do not know that it is appropriate for a government to do that, be it to an organisation or to an individual. I mean where do you start drawing that line then? If you can say it to this group do you then say it to all of the individuals within that group? I would have to say that there have been many of our members who were affiliated to political parties, probably more of them to the one party—the Australian

Labor Party—than others, and in recent times have chosen not to be. I know that we also have members who are members of the Liberal Party or indeed The Nationals and The Greens as well. However, that is the individual decision. As a union representing the broad interests of our members it is not in our interests to do that and it is not appropriate for governments to tell us what we can or cannot do in that respect.

**The Hon. STEVE WHAN:** Many of the individual campaigns which you run just as the Teachers Federation, the fundraising for those presumably comes from your individual members and therefore would not be prohibited by this legislation. What campaigns have you participated in recently where you have grouped together with other organisations and other unions and all contributed to a campaign, and are you fearful of what might happen with those? You gave an example in your opening of the changes to industrial relations policies and so on where you have grouped with other organisations.

**Ms DIAMOND:** We do not fundraise. Our business is based on just the membership fees alone, so we do not have fundraising for particular campaigns. It has been in those broader interests, as I said: the industrial relations changes and the public sector union—last year now—as far as the better services and the cuts to the public sector and more recently with the Federal harmonisation: the occupational health and safety or work health safety legislation.

**The Hon. STEVE WHAN:** How would it affect your members if you were not able to contribute jointly to campaigns like that run by a group, whoever that group might be?

**Ms DIAMOND:** I believe that it would give us less public voice in that process, and I have to say that our members also see themselves as part of the big union and see themselves as working hand-in-hand with others who are not able to speak up for themselves. I will cite the cleaners as an example of a work group where over many years teachers have stood side by side with them. Number one is the impact in their workplaces as far as changes to cleaning and the like, but cleaners being a very vulnerable group of workers, it gives our members a sense of unity in being able to stand with others and share the issues and concerns in a broader way. So it is not necessarily self-interest but in the public interest that these matters are addressed. Being in public education I believe that our members see that their work is in the public interest and for the public good and that is why it is important that they stand with other the unions on those core areas.

**The Hon. PETER PRIMROSE:** I note your quote from Amy Gutmann in *Money and Politics*. The quote is: "Organised association is increasingly essential for the effective use of free speech. Without access to an association that is willing to speak up for our views and values we have a very limited ability to be heard by many other people to influence the political process unless we happen to be rich and famous." Do you believe that this legislation would impeach your free speech?

**Ms DIAMOND:** We do. As I said, the ambiguity of it for a start. You talk about drawing a line between issues-based campaigning and the political process, but this is open-ended and we ask: When can we continue to do the campaigns that we do, because we have suddenly hit a cap on the expenditure for that? Many of our campaigns involve public contact. You mentioned radio advertising earlier. We have also put in advertising in the press, and that is certainly not cheap and that would certainly constrain any capacity to continue to campaign on a particular issue such as league tables, for example, or student reporting, because we have exhausted our capacity to do so in that way. I am not sure if I have addressed the question.

**The Hon. AMANDA FAZIO:** Ms Diamond, could I ask you a question about a matter you raised on page five of your submission? In the second last paragraph you talk about how you believe that this legislation threatens your federation's ability to work collectively with organisations like Unions NSW and you talk about paid advertising during elections or at any time in the election cycle, and then you raise an issue that I think everyone is aware of but most people do not comment on in relation to election funding and disclosure and that is, you say, "The proposed amendment rather than addressing the abuse of the electoral process by the unfair concentration of media and other forms of campaigning actually suppresses the broad voice of the community groups on a range of issues."

You were just talking about the high cost of advertising on radio for things like the last election campaign. How do you feel when you are paying for ads to go on radio and this would become part of your expenditure cap when you have got commentators on the radio who have no cap apart from having a four-hour show—that is their cap: four hours every day—to indoctrinate people in any way, shape or form they want about who they should or should not vote for, or even to denigrate issues-based campaigns that organisations such as yours are running?

**Ms DIAMOND:** I think you do bring up the point—I ran out of time in my five minutes and I apologise—that the media does have unfettered access in that way, and we are not saying that the media should be constrained or confined, because our concern is censorship and shutting down, but the issue is nor should other organisations or groups be denied that same freedom of speech, which is implied in the constitution and the way that this country operates. Just going back to the statement that you read out from Amy Gutmann, I think you just have to look at certain other countries around the globe at the moment to see the people standing up and refusing to be gagged or repressed or denied those opportunities, and I will just cite Egypt as an example of how important it is that people can stand up and bring their concerns forward. That government at that time chose not to heed those concerns, but we, as I said, would expect that we can hopefully influence government policy for what we believe is a better way forward and in the interests of our members. We just believe in a more open process.

**CHAIR:** Thank you for your submission, which was extremely comprehensive. This morning the Premier gave his evidence and he brought in a copy of the Vinson inquiry report. Am I correct in saying that the Vinson inquiry report was not actually produced by the New South Wales Teachers Federation; it was produced by an organisation which I think is called the Public Education Alliance?

**Ms DIAMOND:** It is correct. The Teachers Federation was a significant financial contributor.

**CHAIR:** So the Teachers Federation contributed money to the Public Education Alliance for paying Professor Vinson, Dr Johnson, the third inquiry I cannot remember, and for producing the document? Is that correct?

**Ms DIAMOND:** That is right.

**CHAIR:** And all the other things?

**Ms DIAMOND:** The process of engaging in the inquiry.

**CHAIR:** I recall at the time there was a debate because it was a substantial amount of money.

**Ms DIAMOND:** Yes, it was.

**CHAIR:** I do not think it is a secret that the Teachers Federation was the major donor. You gave that money to the Public Education Alliance; the Public Education Alliance then spent the money?

**Ms DIAMOND:** We were the administrative body, because some of those groups within that alliance—for example, the principals associations—are ideologically aligned in that process in support of public education, and the parents and citizens group.

**CHAIR:** It was an aggregation of funds into one body?

**Ms DIAMOND:** Yes.

**CHAIR:** For example, that document formed the basis of your Twenty is Plenty campaign that was highly successful in reducing class sizes in years K1, 2 and 3, and continues to provide benefits throughout the public education system—and probably the private education system too, but that is another matter. I think both of you, Ms Hankinson and Ms Diamond, were officials of the Teachers Federation—at least active within the Teachers Federation at the time. The debate around the reason why the federation and the other bodies were involved in producing that document was really about influencing public opinion, was it not?

**Ms DIAMOND:** It was about influencing public opinion, but it was also about taking up the issues because nobody else was.

**CHAIR:** If you wanted to take up the issues there was nothing to stop the then president of the Teachers Federation or the secretary of the Teachers Federation at the time going and seeing the then Opposition leader, the then Premier and Lee Rhiannon, who was representing the Greens, and having a chat with them and saying, "This is a great idea", but you chose not to do that. Instead, you went into the public domain with that

document. You spent a lot of money—wisely, I might say from a personal perspective—on that activity. Why did you do that? Why did you bother telling the public about this?

**Ms DIAMOND:** We had undertaken the standard lobbying approaches to various members of Parliament with our concerns, and while many of them were very sympathetic, party policy or whatever it might have been at the time, budget constraints, whatever, meant that those things were not proceeding. We also thought that by having that independence—it is not just the Teachers Federation banging on yet again about this issue; here they come again—we had recognised independent academic research to back it up. Some of the things that Mr Vinson included in his inquiry are not necessarily things that we were in agreement with, but that was part of the independence, and in the main the key issues were backed up: that these were areas in need.

**CHAIR:** It is fair to say that the reason why you put it into the public domain was because you wanted to make the public aware of it so they would put pressure on their elected representatives?

**Ms DIAMOND:** That is true, but it is also fair to say that I think the media picked up on it and saw that there were genuine and valid concerns within that, and that assisted that awareness.

**CHAIR:** The fact that the media picked up on it was to influence the public and hence influence—

**Ms DIAMOND:** That is right. It is all part of the same cycle.

**CHAIR:** It would be fair therefore to say that the purpose and the timing of the Vinson inquiry, from recollection, is that it was released within the election cycle with the election cycle in mind? Your campaign culminated with the 2003 State election, from recollection.

**Ms DIAMOND:** The report itself came out in 2001 and I think it started in 1999—the very first phase of just seeking submissions—and then Tony Vinson spent about a year going around the State listening to various groups. It was more than just a one-off election focus.

**CHAIR:** It would be fair to say that part of the purpose of doing the Vinson inquiry was to influence people in the way they were thinking about the election and the way they were approaching the election in order to put pressure on the incoming government?

**Ms DIAMOND:** Most definitely, and seeking to have improvements, as I said, as part of any election commitment from whichever party was to be successful.

**CHAIR:** So therefore it would be fair to say that the purpose of the Vinson inquiry would at least in part be for influencing directly or indirectly the voting at an election?

**Ms DIAMOND:** Yes.

**CHAIR:** So therefore under the current definition of electoral expenditure in section 87 of the Act it would be captured?

**Ms DIAMOND:** Most definitely.

**CHAIR:** Therefore, what you did then would be illegal under the bill as it is now proposed?

**Ms DIAMOND:** Not illegal. I would suggest it would be significantly impacted.

**CHAIR:** The Public Education Alliance collected funding to do something—

**Ms DIAMOND:** We might have gotten three pages out of the inquiry as a result of that rather than the comprehensive document we did.

**Ms HANKINSON:** Our argument also in the submission is that it is the ambiguity surrounding this whole blurring of the legislation. There is no accurate depiction of where in the electoral cycle this is supposed to occur, and also the fact that we have this relationship with a peak body. Although we have an independent voice and an independent position this legislation will capture that sort of activity. We use in the submission the case study of Invest in TAFE for a Better State, which I think also exemplifies that ambiguity.



**CHAIR:** The relevance is that Mr O'Farrell claimed that the Vinson process would not be captured by the legislation. I think we constructed an argument here that it possibly would be.

**The Hon. ROBERT BORSAK:** I note from your comprehensive submission that the Teachers Federation is affiliated with many other community-based organisations. There is quite a list of them. Do you believe that your relationship with those organisations will be affected in the future?

**Ms DIAMOND:** Those affiliations are determined by our state council; it determines which groups we will continue to be affiliated with. We generally have one representative who attends management or executive meetings of some sort. There would be many people at those meetings and ours would be just one voice of many.

**The Hon. ROBERT BORSAK:** Understanding the tentacles of this fundraising and expenditure—

**Ms DIAMOND:** It will start to impact. It rolls on; it is a domino effect.

**The Hon. ROBERT BORSAK:** Given you are on the committee and perhaps you are participating in the management and control of those organisations, how do you understand the impact on your ability to raise funds and to spend those moneys on campaigns? How will that be affected by the activities of your affiliates and how will your activities affect those affiliates? If you say you do not have an understanding, that is perfectly reasonable, because that is one of the things we are trying to understand.

**Ms DIAMOND:** Our affiliation with these groups indicates support. It is more a gesture of solidarity rather than any major financial commitment. Those organisations may have policies or positions that are different from ours and that would not constrain us. However, we hope to see things of concern to us considered by or taken up within some of those groups.

**The Hon. ROBERT BORSAK:** That would be logical and you would want to do that for good social and economic reasons. However, this legislation could mean that if their expenditure is defined as electoral expenditure—

**Ms DIAMOND:** That could shut us down for anything else we may wish to pursue. Essentially it starts to unpick the connections that exist.

**The Hon. ROBERT BORSAK:** So you agree with that proposition. If this is carried to its illogical conclusion, we would end up with a bunch of organisations such as yours being islands unto themselves if they try to preserve their expenditure under the cap and they would not be able to form a group. Regardless of the fact that money is not changing hands, you would be caught. Do you accept that?

**Ms DIAMOND:** Yes.

**The Hon. ROBERT BORSAK:** From what you and the Chair have said, it is very difficult, if not at this stage impossible—and it may never be possible—to define legislatively a community-based campaign as opposed to a political campaign. In some cases it may relate to timing, and we keep talking about the last six months. That is not my view, especially when one considers the type of campaigns that the Teachers Federation runs, which are generally long-term and cover a number of electoral cycles. The public schools campaign is one such example. If you had to keep track of that you might not even be able to quantify the amount from one period to the next.

**Ms DIAMOND:** That is correct. As I said, the issue is the issue and it is ongoing. It is probably fair to say about any number of groups that an election campaign is an opportunity to push those issues in a more public way than has occurred in the past two years in terms of public awareness.

**The Hon. ROBERT BORSAK:** You said that the federation is not officially affiliated with any political party.

**Ms DIAMOND:** Or unofficially.

**The Hon. ROBERT BORSAK:** That leads to my next question. Do you believe that your campaigns from time to time may implicitly recommend a vote for a particular party? I am not referring to any particular campaign.

**Ms DIAMOND:** No, but that probably links to what I said about elections being an opportunity. We have issued report cards in the past, and that was mentioned in our submission. They relate to an issue; that is, if the issue is class sizes, we will make a comment about that. It may be that every party gets a tick or a cross. It is a very simple reference, but it is about the issues and where the parties stand rather than saying that we think so and so should be supported.

**The Hon. ROBERT BORSAK:** We had a discussion about this earlier today with another witness. From what you have said, you would agree that a report card would be a political statement.

**Ms DIAMOND:** It is.

**The Hon. ROBERT BORSAK:** It is political?

**Ms DIAMOND:** It is at that point.

**The Hon. ROBERT BORSAK:** As far as you are concerned, from a third-party campaigner point of view, and given the timing and proximity to the election campaign, it would very definitely be a political statement.

**The Hon. TREVOR KHAN:** I agree with you again.

**The Hon. ROBERT BORSAK:** I know and it is the second time. It is terrible.

**The Hon. Dr PETER PHELPS:** The world will split open and we will all be eaten by dragons.

**Ms DIAMOND:** It is also a political statement in a non-campaign period. At the start of a campaign we assess where the parties stand in terms of particular issues. That will also influence how we go about campaigning. If we know that no party supports our view or that they are in fact hostile, clearly we will pursue particular pathways.

**The Hon. ROBERT BORSAK:** You are implicitly saying that from time to time you might recommend support for or opposition to particular parties, whether or not they are in government or trying to get into government.

**Ms DIAMOND:** More often than not we would recommend putting the most hostile party well down on the ballot paper rather than recommend that a party be brought up the ballot paper.

**The Hon. ROBERT BORSAK:** If this bill were passed as was intended—that is, substantially unamended—then you would see a substantial decrease in the level of your public activities as far as third party campaigning was concerned because of a lack of money and the difficulties with accountability. Is that correct?

**Ms DIAMOND:** The accountability is the issue, and the capacity to continue because of the constraints contained in the legislation.

**The Hon. TREVOR KHAN:** Are you registered as a third-party campaigner now under the Act?

**Ms DIAMOND:** Yes.

**The Hon. TREVOR KHAN:** So you would agree with me that in the six months prior to the election you would have an electoral expenditure cap of \$1.1 million?

**Ms DIAMOND:** That is my understanding.

**The Hon. TREVOR KHAN:** Did you spend \$1.1 million in that period prior to the last State election?

**Ms DIAMOND:** No.

**The Hon. TREVOR KHAN:** Did you spend anywhere near that?

**Ms DIAMOND:** I would say less than half of that.

**The Hon. TREVOR KHAN:** Was there any six-month period between 2007 and 2011 when you spent \$1.1 million on campaigning?

**Ms DIAMOND:** Not on election campaigning, but we certainly have in terms of the federal inquiry into funding for schools—the Gonski review. We have spent a significant amount in terms of encouraging submissions and the like.

**The Hon. TREVOR KHAN:** Was that \$1.1 million in six months?

**Ms DIAMOND:** It was a fairly intense period, and I think we did. It was certainly not party political; once again, it was about the issues.

**The Hon. TREVOR KHAN:** Sure.

**Ms DIAMOND:** No, but that is the only time. I am happy to provide the figures on notice. We do not believe that throwing all of our money at an election is the best way to deliver for our members. As I said, our campaigns are long term and we want to embed them and to change policy.

**The Hon. TREVOR KHAN:** I accept that you will check.

**Ms DIAMOND:** I will check the books.

**The Hon. TREVOR KHAN:** If there is a cap, as there is under the current legislation, of \$1.1 million or thereabouts, and that has not constrained your campaigning activity, and putting aside the peak body issue, how do you see this legislation further restricting the capacity of your union to embark on campaigns?

**Ms DIAMOND:** I will go back to the point made about the Vinson inquiry. We run joint actions with other groups. If the third-party amalgamation were to be implemented, it would constrain us. Putting Unions NSW to one side, there are those other groups. It may influence or deter us from conducting a campaign in a particular way and we would have to consider other ways that may not be as effective.

**The Hon. TREVOR KHAN:** Or it may involve a restructuring of your campaigning.

**Ms DIAMOND:** It may. We have determined the best strategies for our campaigns. I suppose we may have to implement other strategies that might not deliver as effectively.

**The Hon. TREVOR KHAN:** Or, indeed, different strategies that you have not previously adopted because that is the way you have always done it in the past?

**Ms DIAMOND:** We are a collective organisation and it is all about engaging our members. That is the way we do it and any advertising we do has been done on behalf of our members and after debate with our council.

**The Hon. TREVOR KHAN:** I am not being critical of that.

**Ms DIAMOND:** We do not believe we would be effective as a top-down organisation that announces that it is doing A, B, C and D or does not involve its members.

**The Hon. TREVOR KHAN:** I am not suggesting that.

**Ms DIAMOND:** We would have to change what has been an inclusive process. That is the key. Whatever the outcome of the campaign, we keep on keeping on because our members are with us and they know that we engage and include them. Part of that depends on our communication with them as well. Those report cards are an example of the material that we post out to our members.

**The Hon. TREVOR KHAN:** Mr Borsak suggested that that may be a form of political campaigning. I think you would agree.

**Ms DIAMOND:** Yes.

**The Hon. TREVOR KHAN:** But you are not suggesting, for instance, that in the six months prior to the last State election you spent a significant sum preparing report cards such as that?

**Ms DIAMOND:** No.

**The Hon. TREVOR KHAN:** You would have spent \$10,000, \$20,000 or \$30,000 on distributing report cards to your members and others.

**Ms DIAMOND:** We try to be sensible in our processes and to be mindful of our members' contributions. As I said, that is just one aspect of the campaign. While it is important, we are mindful that whichever party comes to power we will have to campaign post the election and we must have the resources to do so.

**The Hon. TREVOR KHAN:** If you have a cap of \$1.1 million or thereabouts in the six months prior to the election, given what you have said that would not impede your capacity to represent your members and, in the broader sense, to prosecute the issues as you perceive them.

**Ms DIAMOND:** No, it would not be for the Teachers Federation alone. However, some of the matters we have taken up at elections have been joint union matters. The public sector is one area and the industrial relations legislation impacts on public sector workers. When you aggregate them and look at any affiliations, that is where it starts to close in on us.

**The Hon. TREVOR KHAN:** I was careful in my wording. You said earlier that this proposal was, in a sense, sprung on you and that it had not been ventilated. Is that your general perception of events and this bill?

**Ms DIAMOND:** As I said, the impetus for the amendments is puzzling us.

**The Hon. ROBERT BORSAK:** It is payback.

**The Hon. AMANDA FAZIO:** It is designed to nobble the Labor Party.

**The Hon. TREVOR KHAN:** Are you aware that in inquiries conducted in 2008 and 2010 both the Liberal Party and The Greens proposed that donations to political parties be restricted to individual donors?

**Ms DIAMOND:** Yes.

**The Hon. TREVOR KHAN:** And that, for instance, companies and other organisations, I think was the term used by The Greens, and I am not having a shot at them because, plainly, it was a Liberal Party issue, were to be restricted in their capacity?

**Ms DIAMOND:** Yes, we were aware of that but, as I said, being an organisation that does not affiliate or make contributions, it was something that we are aware of but not immediately in front of us.

**The Hon. TREVOR KHAN:** Were you aware that when the legislation went through in November 2010 the issue of corporate and trade union donations was an issue of debate at that time?

**Ms DIAMOND:** Yes. I became aware because suddenly we were now having to account for everything and make sure did this confirm to electoral spending or was it campaigning. I made the point earlier about legal opinions. We could not see that there was the distinction there for us to be totally comfortable that everything we were doing would not breach the legislation.

**The Hon. TREVOR KHAN:** I am not quite sure if that is, in part, in response to my question. Can I also put to you that it was ventilated as part of the policy position of the Liberals and The Nationals going into the last election that there would be donation reform to restrict donations to individuals and not from trade unions and companies?

**Ms DIAMOND:** No.

**The Hon. TREVOR KHAN:** Were you aware that that was ventilated in the context of the perception of the corruption of the political system that had occurred I think fairly—

**The Hon. STEVE WHAN:** Point of order: I am not sure that we need to go down the member's version of history in this without any questions.

**The Hon. TREVOR KHAN:** Actually it was a question.

**CHAIR:** Could you indicate the relevance of this?

**The Hon. AMANDA FAZIO:** There is no relevance.

**CHAIR:** Order!

**The Hon. AMANDA FAZIO:** He just likes the sound of his own voice.

**CHAIR:** Can you give us—

**The Hon. PETER PRIMROSE:** Just a hint.

**The Hon. TREVOR KHAN:** Chair, are you going to control the Committee?

**CHAIR:** Yes, can the Committee control? Can you explain the relevance?

**The Hon. TREVOR KHAN:** The relevance is that it arises out of answers already given by this witness.

**Ms DIAMOND:** Can you ask the question again because I am not sure what the question was asking me?

**CHAIR:** Ignore the interjections and put the question again.

**The Hon. TREVOR KHAN:** The question was whether she is aware, in essence, that the issue of electoral reform, including the restriction of donations to individuals and not from companies or other organisations, arose out of a perception of corruption of the political process?

**CHAIR:** That is relevant to the terms of reference. Could you please answer the question?

**Ms DIAMOND:** No, I am not aware. We do support transparency in the processes and we would hope that that happens, but we do not believe that these amendments are the way to provide transparency and clarity.

**The Hon. Dr PETER PHELPS:** I take it from your submission that you do not believe that third parties should have unlimited expenditure during the final six months of a campaign period?

**Ms DIAMOND:** Again, that creates an inequality if you like. At the start of my presentation today I talked about the capacity for various individuals or, indeed, groups to have a voice.

**The Hon. Dr PETER PHELPS:** To flood the market, basically?

**Ms DIAMOND:** Yes, to have a voice. I will just use Clubs NSW or Clubs Australia as an example of a very big and affluent group.

**The Hon. Dr PETER PHELPS:** Cashed up, you can say.

**Ms DIAMOND:** Yes, cashed up. That is fine. For them to have unfettered access is perhaps a concern given the number of individuals who get dragged up into or affected by their capacity to argue and perhaps persuade governments of any persuasion what they do. I agree that there do need to be limits, be they on

individuals or organisations. It is crazy that so much should be thrown into that process. That goes back to the transparency again.

**The Hon. Dr PETER PHELPS:** So the federation does accept that in that final six-month period where people are particularly focussed on the upcoming election there is a legitimate role for, if you like, monetary restrictions on how much third parties can spend to influence electors?

**Ms DIAMOND:** There does need to be some sense and reason to that, yes.

**The Hon. Dr PETER PHELPS:** Outside of that six-month period what do you feel are the constraints upon you given that, effectively, as a federation you can campaign continually from the previous election through to six months prior to the next election virtually unfettered?

**Ms DIAMOND:** Our members can certainly take up matters with MPs and the rest of it.

**The Hon. Dr PETER PHELPS:** But you as a federation can do so as well.

**Ms DIAMOND:** That is right, and then as the federation we can engage in paid communications.

**The Hon. Dr PETER PHELPS:** Yes.

**Ms DIAMOND:** There is a limit to that in terms of our own financial capacity. And it is fair to say that often if we seek other forms of communication, which are less expensive, for example, through media releases and the like, the media does not always take up our issues, unless there is an alignment with the media perhaps on a particular issue that they think is worthwhile. I will just use student bullying as an example. We have been on about student violence and the rest of it over a long time, until the *Daily Telegraph* ran its little online survey and suddenly it is an issue. But for that kind of expenditure we do have limits and it is not just at election time. As I said, we are mindful of being able to continue the campaigns. Obviously, the electoral period focuses the public's attention and they certainly are bombarded across electronic and print communications. I guess you are then one of many competing in that regard. Yes, we can—

**The Hon. Dr PETER PHELPS:** I just want to make—

**CHAIR:** Dr Phelps, time has well and truly expired.

**Ms DIAMOND:** We can campaign, but the effectiveness of that perhaps is in persuading governments. Let us face it, in its early days of government it can afford to sit down and just ignore as best it can people knocking on the door asking for issues to be raised. It does not matter how much we might put forward. So the issue of spending is a concern. We are probably in a more fortunate position than many other organisations in that we have perhaps more cash than others, other community groups, for example, in bringing those issues forward. While it is good that there are caps, the fact that there are some unfettered, if you like, individuals who can continue to campaign regardless of what it might cost at whatever time, be it during that immediate electoral cycle or at other times, is a concern.

**The Hon. Dr PETER PHELPS:** But the federation is unfettered outside that three-year six-month period though?

**Ms DIAMOND:** We are not clear from these amendments that we are.

**CHAIR:** I ask the witness not to answer that question. Dr Phelps your time has expired. In fairness to the other Committee members I cannot take that answer. If Dr Phelps wishes to obtain further information, he can put questions on notice. I thank the Teachers Federation witnesses for attending.

**Ms HANKINSON:** Dr Kaye, the federation has a letter to tender to the Hon. Adrian Piccoli to show that issues outside the electoral cycle continue to be of importance.

**Document tabled.**

**CHAIR:** Thank you for attending.

**(The witnesses withdrew)**

**(The Committee adjourned at 3.38 p.m.)**

---