

REPORT OF PROCEEDINGS BEFORE

CORRECTED PROOF

**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 Wednesday 18 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. Khan
The Hon. Natasha Maclaren-Jones
The Hon. Dr P. R. Phelps
The Hon. P. T. Primrose
The Hon. S. J. R. Whan

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

The inquiry's 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 examine also the risks of a successful constitutional challenge if the bill were to be enacted. Today we will hear from representatives from a range of stakeholders, including representatives from Unions NSW, the Sporting Shooters Association (NSW) and the Finance Sector Union. Before commencing the taking of evidence I shall 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 resolved previously to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines governing broadcast of the 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 this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said in the Committee. Witnesses and members of their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I advise also that under a standing order of the Legislative Council any documents presented to the Committee that have 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 person. Finally, I remind everyone to turn off their mobile phones for the duration of the hearing. I welcome our first witnesses, Mr Mark Lennon and Mr Paul Doughty from Unions NSW.

MARK ROY ROBERT LENNON, Secretary, Unions NSW, and

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

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

Mr LENNON: I am.

Mr DOUGHTY: Yes, I am conversant with the terms of reference.

CHAIR: If at any stage you should consider that certain evidence you 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 and the Committee will consider your request. Would either of you like to make a short opening statement? We would ask you to keep it to approximately five minutes because we have a number of questions for you. We remind you that we have all read your submission and thank you for the effort you put into preparing it. There is absolutely no need to repeat that which is in your submission.

Mr LENNON: I will say a few words at the start. I welcome the opportunity to make this oral submission to the Committee. Given the potential consequences of this legislation, Unions NSW considers it is appropriate that the bill is the subject of an inquiry. We always understand at Unions NSW, and I think unionists understand, that our electoral laws covering such things as funding and disclosure are constantly in need of review or at least periodic review, particularly in an ever-changing world. To do that we have to ensure with these reviews that we are maintaining the integrity of the system so the public at large has confidence in it. However, the periodic reviews of our legislation to see if it is appropriate for the times and is upholding our democratic processes may show that further regulation is not needed.

From our union members' perspective we want to ensure that in the democratic process their collective voice can be exercised and not inhibited. Clearly, that is our paramount concern with any reforms to our electoral funding legislation, and it is a paramount concern with this particular piece of legislation. That is why we have addressed the key issues in the manner we have in our submission. It is also of concern from the union movement's perspective that what can be perceived as the union movement's political voice may be in fact just its traditional industrial voice that operates on a day-to-day basis as it sets out to campaign and improve wages and conditions for its members or, indeed, to protect wages and conditions for its members, and that when exercising that industrial voice it does not get mixed up in legislation that is meant to address political issues.

Whatever the outcome of particular pieces of electoral legislation, we must ensure that all parties—and from our perspective, clearly working people—must effectively be able to take their part and have their say in the political discourse of the day. Fundamentally, that is what should be at the heart of any piece of legislation affecting our electoral laws. It is so important for working people: we have fought and struggled for over 150 years to make sure that we can participate in the political discussions of the day and make sure that our voice is heard and that we have fair representation and equal balance when our voice is out in the public domain. In that respect the three key elements we have addressed in our submission to the inquiry are the question of limiting donations to individuals, to third-party campaigners the question of aggregation of expenditure when it comes to looking at political expenditure by political parties, and affiliation fees to political parties. We believe these severely impact on the ability for working people to take part in the political discourse of the day.

At the heart of this legislation and looking at the remarks from the Premier both in the second reading speech and in his submission is the issue—particularly when it comes to donations—that it is all too confusing and therefore we should just go to a system of individuals being the sole entity able to donate to political parties and, indeed, third-party campaigners. At the heart of it everyone would say on the face of it that that seems to make common sense, but it does not reflect how our political system operates, and it does not reflect how we can ensure that all people can have an effective political voice out there. The ability for working people to be able to act collectively to exercise their political voice is vitally important and that right has to be maintained. Simply by saying that we have got to a situation—and I do not know how we have got to this situation in recent years where we have had such argument and discussion about political donations generally—that all we can do now with the sweep of a pen is to just say it is individuals and nothing else is not the answer. We are in a pluralist society: democracy operates in a pluralist society. How we exercise our political voice is mixed and varied. In some cases that will be on the basis of the collective and in others on the basis of the individual. We

must ensure with any changes or variation to our legislation that the right to exercise your political voice on a collective basis remains. I will leave my opening remarks at that.

CHAIR: Thank you. I now invite Labor members to ask questions.

The Hon. STEVE WHAN: Thank you to Unions NSW representatives for attending today. Mr Lennon, would you outline for us some of the campaigns that have been run in recent years that you believe would not be able to be run under this legislation or would be affected by this legislation, and your proposals for solutions as to how this could work better?

Mr LENNON: On page 12 of our submission we have outlined a number of campaigns not just by the union movement but also by other entities, including business entities, that we believe could, not necessarily will, be adversely impacted by this legislation. Page 12 shows the diversity of the sorts of campaigning that takes place out there by third parties. It is probably a good thing that over the last 20 or 30 years our campaigning has become more open, that all third parties have had to engage in political debate in the public arena. I think that is one of the consequences of changes we have seen—more open transparency—evolve in our political system over the last 20 or 30 years. At least people know when they are hearing a voice out there that they have a fair opportunity now of knowing who is actually speaking, what their particular position is, what their ideology or values are and why they are out there in the public domain putting their point of view.

Let us be honest: 20 or 30 years ago in a lot of places a lot of this would have taken place behind closed doors. Now it takes place in the public domain and that is a good thing and that has to be allowed to remain. In terms of union campaigns, I think there is a couple in particular which would be severely limited by this legislation. Clearly we have gone to the question of our Better Services campaign. If we are limited to only taking donations from individuals then that would inhibit—we do not have any individuals who are members of our organisation so, effectively, we would not have the finances and the resources to conduct a campaign such as the Better Services campaign. Similarly, with the Rights at Work campaign which was run at a Federal level, I admit, but that would be a similar campaign if it were run at a State level that would be adversely affected, and given the state of industrial relations in this State for public sector workers it is a campaign clearly we would have to contemplate in the near future.

If you look at the other campaigns that unions have run, the joint Last Drinks campaign between a number of a community organisations—the health unions, the Police Association, of course, the Australian Medical Association—we see that that would no longer be able to be a campaign where it would have to take donations from individuals as a consequence. It is a campaign run by collective organisations that have contributed to it and therefore would not be able to operate effectively. We have seen our unions in transport and in public transport that have come together to run a number of campaigns—and they will continue to do so—that would be adversely affected. Any campaign in which unions are pooling their funds jointly to run it will be adversely affected by this legislation.

The Hon. STEVE WHAN: Has Unions NSW sought or received any legal advice on this bill? If so, what was the advice?

Mr LENNON: We have not received any legal advice on this particular bill as yet. We have been contemplating that but given this inquiry is taking place, and given a number of academics and constitutional experts, as I have seen, have put in submissions then we thought that was the appropriate way that that should be dealt with. We have had some informal advice that clearly there are constitutional questions about this legislation. We had a lot of advice about last year's legislation, simply about how we, as Unions NSW, are complying with the legislation. That is one of the other problems now with the legislation as a consequence of last year's amendments to the Act: the issue has become very complex about what is a donation, what is expenditure. A number of our affiliates have sought legal advice as to whether they are complying with the legislation as it presently stands. This will only compound the issue and make it more difficult, aside from the issues you have already raised about the question of constitutionality of the legislation.

The Hon. STEVE WHAN: Unions NSW submission also makes a recommendation about untangling the requirements for third party campaigners. Will you provide a further explanation of that recommendation?

Mr LENNON: I think the basic element of our submission is that we have been thrown into the legislation with political parties and it is not a well thought through process in that regard. Our third parties play a role in the political process in the first instance and once you make that decision about how third parties play a

role in the legislation in the first instance then the question is what need, if any, there is for a regulation. And to make it clearer and easier for third parties we believe that if there is going to be regulation of them that should be contained in a separate part of the Act. A number of our affiliates who have not dealt with the legislation before but are now captured by it because they are third party campaigners are struggling. That is why, as I said earlier, a lot of people have sought legal advice to make sure they are complying with the legislation.

Not being political parties in the context for them trying to deal with the legislation and the concept of electoral communication expenditure and electoral expenditure and swapping from section to section has become very complex. If there is perceived to be a need to regulate third parties then let us make that clear, obvious and in a separate place in the legislation. This legislation is notoriously difficult, I understand, to simplify but I think that, given that a lot of third parties are not regular players in the political process, it would be to everyone's benefit, to the community's benefit, if there is a separate provision or a separate section in the Act that applies to third parties when it comes to their requirements under the legislation.

The Hon. PETER PRIMROSE: I note on page 17 of the submission of Unions NSW, "Unions NSW has 64 affiliates, 22 of which are affiliated to the ALP. Union decisions to affiliate are made by their elected governing bodies." Are affiliation fees simply a way that affiliated unions add to a campaign war chest? Are affiliation fees used for that?

Mr LENNON: Are you referring to affiliation fees to Unions NSW?

The Hon. PETER PRIMROSE: No, affiliation fees to the Australian Labor Party.

Mr LENNON: I think that is a question ultimately for affiliates to the Australian Labor Party but my understanding is no. The issue is that affiliation fees, as is the case in the main with Unions NSW, are used for the purpose of administration of the party, and in the case of Unions NSW, for the administration of Unions NSW.

The Hon. PETER PRIMROSE: Is it the case that it is contrary to the electoral laws to use affiliation fees for party political purposes other than—

Mr LENNON: That is my understanding, yes.

The Hon. AMANDA FAZIO: If this legislation were implemented in its proposed form what avenues would you and your affiliated unions have to campaign on issues that affect your members? Would you be able to campaign against the government of the day in support of the rights of your members?

Mr LENNON: It would make it extremely difficult to do so. We would not have sufficient sources of revenue to be able to undertake effective campaigns. As I just said in answer to the question from the Hon. Peter Primrose, the majority of affiliation fees to Unions NSW are used for the administration and industrial pursuits of the organisation. Campaigning is a very difficult and expensive area. Without the ability to be able to raise levies as we do from our affiliates from time to time to campaign, which this legislation will clearly prevent us from doing, it would make it very difficult for us to conduct a campaign such as the Better Services campaign.

Clearly, as Unions NSW has said in its submission, the key area of campaigning these days is paid advertising, which is very expensive. I am not in great favour of paid advertising. I think the best way ultimately to get out there and campaign is to talk to people and do some grass roots campaigning, which I think everyone around the table would agree with. But also paid advertising is part of campaigning of the day and as it is very expensive we would not be able to embark on that sort of campaigning if this legislation were to pass.

The Hon. STEVE WHAN: Has Unions NSW had discussions with other bodies with similar concerns and similar membership structures, that is, organisations or peak bodies? If so, will you relate to the Committee any feedback you have had?

Mr LENNON: I will let Paul answer this question as he has discussed it with a number of entities.

Mr DOUGHTY: Yes, we are very much under the impression that many other organisations are not aware of how the provisions of this bill may capture their ordinary everyday activities. Given that we have made contact with some other organisations, a couple of which we see have made submissions to the inquiry or have indicated that they intend to make submissions to the inquiry going to the areas in which this bill, which may be

unintended, may capture their ordinary everyday activities. There is a significant amount of concern going back to how Unions NSW is affected and why we think it would be a good idea for the regulation of third party campaigns to be extracted from those same provisions applying to political parties.

Political parties are regulated by the regulation because they are created as a core purpose of running and winning political campaigns. For organisations such as Unions NSW, such as other peak bodies, that is, the Council of Social Service of New South Wales, the Cancer Council and the Sydney Alliance et cetera, their day-to-day activities are very much tied up with representation of their members and their political campaigning activity as a peripheral activity and that applies to us as much as it does for any of those other organisations. That was the reason, I guess, for the provisions of the Act we saw being more fitting under a separate section because the existing provisions are written for political parties.

This is partly driven by the time of year, and that is unavoidable, but a lot of organisations are not aware that they are potentially captured by this bill. Having said that, those that we have spoken to have indicated that they are very concerned about what they see as their everyday ordinary activity on behalf of their members and their constituent organisation will be tied up by this and it will affect the way they can do their job.

CHAIR: Thank you for your submission and for coming here today.

Mr LENNON: On holidays, I should note. This is an important issue and that is how important it is to me. I am here from my holidays.

CHAIR: I rule that remark out of order. It is not in the terms of reference of this inquiry. Will you take the Committee to Unions NSW recommendation No. 2 in which it talks about limiting the regulation of third party campaigns purely to that which is paid media advertising and material distributed on election day? I note that you have excluded from that recommendation the issues of direct mail and e-campaigning. Will you confirm that a number of unions during election campaigns have done direct mail at their expense in various electorates to seek to change the outcome of that electorate and endorse one candidate or another? Direct mail expenditure for an electorate in a State campaign is in the order of \$35,000 to \$60,000? Why has that been omitted from recommendation No. 2?

Mr LENNON: It was not intentional. As I said in my opening remarks, trying to work out with great clarity what is political expenditure and what should be disclosed et cetera is difficult. In that recommendation we are trying to say let us limit what is considered to pay political advertising to that which is, indeed, the big ticket items.

CHAIR: Do you see direct mail, which is a big ticket and high impact item and can be used to specifically try to influence the outcome on an electorate by electorate basis, as a valid issue for regulation?

Mr LENNON: It would be one we would certainly take into consideration that should be in the mix when you are considering what should be disclosed. Others may disagree, but I draw a line between a direct mail campaign to an electorate and a direct mail campaign to members of the union in the electorate. I think the latter is internal union communication. I am happy to argue the toss on that one but I do not think that is the context in which you are putting that to me.

CHAIR: No, it is not but it is an interesting question and unfortunately I do not have time to go there. I ask you to accept that it may be hypothetically that the Parliament is of a mind to limit donations to political parties purely to individuals. In that circumstance, how would you, for example, look at Unions NSW operating in such a context? How would it affect your operations and capacity to be a political player?

Mr LENNON: I am sorry: you are saying we limit political donations—

CHAIR: Donations to political parties are limited purely to individuals.

Mr LENNON: But for third-party campaigns?

CHAIR: If we leave that out for the minute, if we do not limit it to third-party campaigners. Peak organisations can continue to operate as they currently do?

Mr LENNON: For Unions NSW and its ability to operate, if we were still getting the donations—donations are difficult because we say they are levies, and donations are considered a gift under the Act. We get levies from unions to run campaigns. They have a say in the campaign: it is a joint campaign. So it is a vexed question in itself. Let us go back to assuming we are still operating in the way we operate at present in our third-party campaigning, but individuals. I still think that if donations to political parties are limited to individuals, it would not necessarily have a huge effect on day-to-day operations but the impact on working people generally and their ability for their union to donate to their political party or affiliate to their political party is huge. We are not here just voicing our concerns on behalf of Unions NSW. I am here voicing my concerns on behalf of all working people and their ability to have a say in the issues of the day.

CHAIR: So the real impact of this issue on you is the way it captures the parties. Would you accept, therefore, that there should be a distinction between expenditure by third parties that is designed to promote a particular candidate or political party and expenditure that is designed for promoting a particular issue?

Mr LENNON: It depends how you say it. Supporting a particular candidate or political party, that is the problem, trying to draw some line about what is being engaged directly or indirectly in an election. That is the debate that needs to be had. I am not really in a space where I can say I can draw a clear distinction there and say if we are campaigning on issues that are not outside the legislation; it is about supporting political parties and things of that nature. It is a very nuanced question and difficult to give a clear answer without further consideration.

CHAIR: But most of what Unions NSW does during an election period or out of an election period is not specifically designed to cause people to vote for one political party or another?

Mr LENNON: That is right.

CHAIR: So most of it is designed to raise issues and effect policy change on issues that are of concern to members of your affiliated organisations?

Mr LENNON: To members of our affiliated organisations and to working people generally, that is right. Our primary role is to raise those concerns and be the voice—our vision is to be the voice of working people in New South Wales.

The Hon. ROBERT BORSAK: Your submission is extensive and very good, thank you. In relation to affiliation, and I am not sure about the constitutions of other parties, but it is a key area of the formative nature of the relationship between the Labor Party and unions. Why, in your opinion, is it important for the retention of the right of unions in New South Wales—we are talking about New South Wales—to affiliate with a party, particularly since probably about one-third of your affiliated unions are affiliated with the party? Why do you think that is important?

Mr LENNON: I come back to my opening remarks about the ability of working people to take part in political discussions or discourse of the day. That is done on various levels. Some will campaign through their union, raise an issue in a political context. A number of unions retain the view, established way back in 1891, that an important way of ensuring its members' interests can be protected and proved is through the workings of the parliamentary system and direct representation through a political party, which, in the main, happens to be the Australian Labor Party. Twenty-two of our affiliates, as you have pointed out, have made that decision that that is how they should do it, in addition to continuing to pursue matters industrially and at community level as well. We believe those unions and their members should have the right to continue to do that and therefore affiliate to the Labor Party or any other political party to be able to pursue the aims of their members. It is the right of anyone, I think, to come together collectively and campaign on political issues. Whether they do that as a third-party campaign or whether they do that by becoming directly involved with a political party, it is the right of those working people to make that decision.

The Hon. ROBERT BORSAK: The Committee's term of reference 1 (e) talks about the impact of donation caps on donations of registered voters and their organisations. Reading your submission and in your discussion I do not think you come to that, in your discussion on donations caps or on expenditure caps, because that is part of it as well. Have you any views in this area?

Mr LENNON: We were always, as at the present time—I might stand corrected here—we are limited to donations of \$2,000 under the present legislation.

CHAIR: Five thousand dollars. You can receive \$2,000—you are talking about donations yourself?

Mr LENNON: That is right. And again that limits our ability to campaign effectively. We believe if we want to have a balanced system we should not have any group, individual entities in the community, who have undue influence in the political process because of their ability to raise vast amounts of money compared with other parties or groups in society. Having said that, probably a cap of \$2,000 for us to effectively do our job is too small.

The Hon. ROBERT BORSAK: Do you think there might be some disadvantage in that sense when you compare what an individual registered as a third-party campaigner spending their own money could spend on a campaign in the electoral process? In other words, if you are a registered individual campaigner who has individual wealth to the tune of hundreds of millions of dollars perhaps—and there are plenty of those people in Australian society these days—they could register as a third-party campaigner and I think the aggregated figure at the moment is about \$1.1 million. They could spend that money because it is coming from their own resources.

Mr LENNON: That is right. That is part of the problem about moving to the whole system of individuals being the sole entities or who can donate in the political process. It clearly favours those at the wealthier end of the scale. Some of my colleagues have mentioned in their submissions—without mentioning particular individuals—in the mining industry particular individuals could undertake a campaign to the tune of a million dollars from their own pockets.

The Hon. ROBERT BORSAK: I think the current consumer price index adjusted cap is \$1.1 million or something like that.

Mr LENNON: Yes, and that is where we come back to the question about balance in the political process and everyone being able to take part and no-one being able to have undue influence, and moving to a system where basically it is all focused on the individual. Clearly it is going to favour those at the wealthier end of the scale. I think we quote in our submission the case in the United States of Meg Whitman, who was a former Microsoft executive with \$US120 million on her campaign last year in California.

The Hon. TREVOR KHAN: It didn't help.

Mr LENNON: That is right, but they are the sorts of circumstances we do not want to see arising in this country.

The Hon. ROBERT BORSAK: Is it right to characterise this sort of bill as a step backwards in time for democracy in New South Wales, in your view?

Mr LENNON: Clearly, because it has moved to individuals and puts limits on our rights as a third-party campaigner and limits on the rights of working people to affiliate with a political party, and also the question of the aggregation of expenditure—all those, we believe, will inhibit the right of working people to be effectively able to take a role and have a say in the political arguments of the day.

The Hon. TREVOR KHAN: You prepared a submission in January 2010, is that correct, that went to one of the previous inquiries?

Mr LENNON: That is right.

The Hon. TREVOR KHAN: That was your submission at that stage?

Mr LENNON: That is right.

The Hon. TREVOR KHAN: In a sense, your current submission of 11 January 2012 expands upon your submission of January 2010?

Mr LENNON: No, it contains some elements. We go to some of the elements of our previous submission of January 2010.

The Hon. TREVOR KHAN: On page 4 of the previous submission it dealt with a section headed, "Regulation of genuine third-party campaigning unnecessary." Would you agree with me that that, in an expanded form, is about the third area of submission you make in your January 2012 submission, that is the genuine issues-based campaign that you say would be restricted by this bill?

Mr LENNON: I am sorry, I am not following you. You are saying that the issue-based campaigning would be limited by this bill?

The Hon. TREVOR KHAN: Yes, that is your argument?

Mr LENNON: The argument is, of course, if we cannot get sufficient funding to be able to conduct campaigns, yes, we would be limited in the campaign we can undertake.

The Hon. TREVOR KHAN: I take it that between the January 2010 submission and the 2012 submission there was a Federal election?

Mr LENNON: Yes.

The Hon. TREVOR KHAN: Do I take it that what Unions NSW was doing in the context of the Federal election in 2010 was to run a genuine issues-based campaign? Is that what you would argue?

Mr LENNON: We were part of an ongoing campaign that took place at a national level of the union movement. We did not run the campaign as such.

The Hon. TREVOR KHAN: Would you promote that as an example of an issues-based campaign that was being run at that stage?

Mr LENNON: Absolutely, I think it would have to be.

The Hon. TREVOR KHAN: Your last annual report was your annual report of 2010, is that right?

Mr LENNON: The annual report for Unions NSW?

The Hon. TREVOR KHAN: Unions NSW.

Mr LENNON: Yes, that would be right, February 2010.

The Hon. TREVOR KHAN: If you go to page 17 of that report there is a section headed, "Political". That states:

Unions NSW as a peak body itself undertook the following Federal Election campaign activities—

And I will read out a couple:

Candidate Forums in Lindsay, Macarthur, Macquarie, Robertson

Allocation of 12 seat coordinators once the election was called

Mt Druitt mass meeting 450 union members for PM on the last over campaign

Is that the sort of thing that you were doing in this issues-based campaign?

Mr LENNON: That is in our annual report. I congratulate you on being one of the few people to ever read one of the annual reports. I appreciate it.

The Hon. TREVOR KHAN: That is what you would describe as an issues-based campaign?

Mr LENNON: Yes.

The Hon. TREVOR KHAN: I go on:

NSW unions variously undertook the following activities—candidate forums, pledges, events with candidates, doorknocking, letterboxing, street stalls, train stations, member conversations, phone polling and workplace meetings.

That is issue-based campaigning?

Mr LENNON: Yes.

The Hon. TREVOR KHAN: I go on:

The number of seats where unions campaigned, filled gaps in local campaigns or participated in some degree in the campaign was not limited to the original Unions NSW list of 10, but increased to 20 seats by the conclusion of the campaign.

That is what your report provides?

Mr LENNON: Yes, but we are talking about unions here.

The Hon. TREVOR KHAN: The 10 seats that increase to 20 seats, they were 10 seats or 20 seats that were essentially nominated as marginal seats by the ALP for you to campaign in?

Mr LENNON: I come back to the point, if I refer there in the report where we talk about candidate forums, these forums, we held forums as we do in all these campaigns, as we did with the better services campaign and continue to do so, these are candidate forums. They are open to all candidates to come, from whatever political persuasion.

The Hon. TREVOR KHAN: What you were doing was undertaking a coordinated campaign with the ALP, were you not? This was not a genuine issues-based campaign; it was a campaign directed to get ALP members elected?

Mr LENNON: It was a campaign directed to ensure that people were aware of where the party stood, particularly when it came to industrial relations laws and WorkChoices, and the return to WorkChoices, as you might recall. I conducted a number of those forums myself at places such as Katoomba and Queanbeyan. As I say, they were open to all candidates. They could all come along and state what their position is on a particular area of concern to working people, which was industrial relations, so all could be aware of where the prospective candidates stood on this key issue for working people.

The Hon. TREVOR KHAN: It was a targeted campaign organised to get Australian Labor Party members elected, was it not?

Mr LENNON: It was a campaign to get out there and tell people where the parties stood on the key issues to working people, in particular industrial relations.

The Hon. TREVOR KHAN: In truth it was not, as you describe it, a genuine issues-based campaign: it was a political campaign, was it not?

Mr LENNON: If anyone wants to look at the last Federal election and ask what the unions campaigned on—and we got criticised on it because we were considered to be too narrow by everyone out there—it was simply around the issue of the return of WorkChoices. Understand very clearly the level of concern amongst working people about the WorkChoices legislation and how important it is in any Federal election to be able to be made fully aware of where the respective candidates stand on that issue.

The Hon. TREVOR KHAN: In the 2010 Federal campaign Unions NSW was working hand in glove with the Australian Labor Party in clearly identified marginal electorates, was it not? It is not that hard, is it?

Mr LENNON: We work, as does any campaigning organisation—be it Unions NSW, the Australian Hotels Association or the clubs association or whoever it is—to campaign on issues on behalf of your members in areas where you feel you have the most leverage and clearly in any election campaign, State or Federal, that will be in marginal seats.

The Hon. TREVOR KHAN: Earlier Dr Kaye asked you questions about issues-based campaigns in what I think you would concede was a naive view that you can separate out an issues-based campaign from what

is a political campaign. The reality is that you cannot separate issues out from what is the guts—that is, political campaigning in marginal seats on behalf of the Australian Labor Party—can you?

Mr LENNON: Understand that Unions NSW has always taken the view that working people are intelligent enough to make up their own minds. What we do is put in front of them where respective parties and candidates stand on the issue. We have never been out there and advocated a vote on behalf of a particular political candidate, not Unions NSW. What our affiliates do is their business and that is their decision with regard to their own membership.

The Hon. TREVOR KHAN: If I go back to 1975 and identify past secretaries of Unions NSW amongst others we have John Ducker, Barrie Unsworth, Michael Costa and John Robertson. When are you coming to join us in the upper House?

The Hon. AMANDA FAZIO: What a stupid question! Do you not have a serious question to ask? This is a serious inquiry. You are turning it into a farce. You are a fool.

The Hon. TREVOR KHAN: Merry Christmas.

Mr LENNON: I am happy to answer that question. I have no intention—I might disappoint you—of coming to join you.

The Hon. Dr PETER PHELPS: As you are probably aware, political expenditure in New South Wales is now capped. Given that that is the regime that affects political parties, what is the view of Unions NSW on how to prevent "smurfing"—in other words, the use of additional parties to try to circumvent the expenditure caps by directing expenditure through them?

Mr LENNON: This is the argument about effectively third-party campaigners campaigning vicariously on behalf of political parties?

The Hon. Dr PETER PHELPS: That is right.

Mr LENNON: Well, I think we come back to the issue—and I have always been strong on this—of the question of disclosure, openness and transparency in our political process.

The Hon. Dr PETER PHELPS: But how do you prevent it? It is all right to say openness and transparency but if the Liberal Party is limited to \$150,000 in Campbelltown and a whole lot of organisations are suddenly "smurfed" in that electorate to create new bogus organisations that will then circumvent the limit. What does Unions NSW believe should be done about that?

Mr LENNON: That was what I was coming to. My point has always been—in previous inquiries here as well—that you have to have better disclosure laws. Who is this new entity? What is its source of funding? Who are its members? That has to be made open and transparent and put on the public record so people know where this entity is coming from. What are its motives, its support base and its resources, in particular its financial resources.

The Hon. Dr PETER PHELPS: But simple disclosure does not prevent the possibility that there will be large-scale funding directed towards a specific political outcome in contravention to the idea that it should be a level playing field in terms of expenditure?

Mr LENNON: I do not quite follow your question there.

The Hon. Dr PETER PHELPS: Say, for example, the Liberal Party can only spend \$150,000 in Campbelltown, the Labor Party can only spend \$150,000 in Campbelltown, The Greens, the Shooters and Fishers Party and whatever, then along comes additional third parties that suddenly have a lot of money—\$50,000 for Australians for socialism, \$50,000 for Australians for trade unions, \$50,000 for Australians for a just and democratic society, what is to stop—

Mr LENNON: Can I just answer your question? I accept that that is the case and that it has been a problem in the political process for a long time but I do not know that we should necessarily limit the ability of genuine third-party campaigners to get out there to overcome that particular problem other than to say we have

got to do our utmost and our best to make it clear and obvious to everyone who these entities are. Surely in the electronic world and this electronic day and age we can do that. When one of these entities appears then straightaway—and I read somewhere in one of the other submissions—they should be put up on the funding authority's website or something of that nature who they are, what they are and what their resources are. I also think that to some extent we have to give credit to the electors at large, who are naturally sceptical of the whole electoral process, to be able to think through these issues and question themselves about the genuineness or otherwise of these entities.

The Hon. Dr PETER PHELPS: Are you aware of the situation in the United Kingdom where trade unions are only allowed to donate money which is reserved in a specific fund to which the members of that union have agreed to contribute? What would be your opinion if that situation were to be replicated in New South Wales?

Mr LENNON: I am aware of the particular circumstances in the United Kingdom without going into the detail. My view on the whole question of affiliation is in the submission but let me go back to this: unions are democratic institutions. Their members vote every three or four years for their leadership and their committee of management, and they do so knowing what the union's position is in terms of affiliation or otherwise to political parties. That in itself is sufficient and that is the way the system should continue.

The Hon. Dr PETER PHELPS: So you disagree with the United Kingdom system being imposed here?

Mr LENNON: I think the system we have in New South Wales is sufficient.

(The witnesses withdrew)

(Short adjournment)

PAUL WILLIAM McNABB, President, Sporting Shooters Association (NSW) Inc, and

DIANA STEPHANIE MELHAM, Executive Director, Sporting Shooters Association of Australia (NSW) Inc., sworn and examined:

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

Mrs MELHAM: Yes, I am.

CHAIR: Mr McNabb, are you conversant with the terms of reference of this inquiry?

Mr McNABB: Yes.

CHAIR: If you should consider at any stage there is certain evidence you wish to give or documents you wish to tender that should be heard or seen only by the Committee indicate that fact and the Committee will consider your request. Would you like to start with an opening statement? If so, could you please keep it short: we have a lot of questions for you. I remind you we have read your written submission so there is no need to repeat that material.

Mr McNABB: I understand that. I thought I would bring along with me an Australian flag to remind me what country I am in, as I find the proposed changes to be very un-Australian. The Sporting Shooters Association of Australia [SSAA] in New South Wales has over 40,000 members who see it as a right for the SSAA to take part in the political process. Each year the members vote at an annual general meeting to choose how the SSAA will take part in that process—and that includes donations. The SSAA does not support the proposed changes. The changes are seen as a blatant attempt to silence our members. Our members are poor, lowly blue-collar workers who are legal and licensed shooters. The SSAA will not be silenced by these proposed changes.

If the changes are implemented it will force us back on to the streets as we did during the Unsworth Government. That Government fell, in part, due to work the SSAA did. If the changes are implemented there will be a return to street marches and riots. The other option is to do anti-politician type advertising where you just play the man not the ball. The current system is working. We give our donations to whoever we believe will do the best for our sport. It is a backward step to end up doing street marches or to go the American way. The SSAA, at both a national and State level, believes the current situation should remain.

The Hon. STEVE WHAN: Would you outline for us how these laws would directly affect you and your ability to represent your members; specifically relating to the structure of the SSAA and how you feel that will be captured by this legislation?

Mrs MELHAM: The main aim and objective of the Sporting Shooters Association of Australia is to represent the views of our members and protect our sport. We believe that these new changes will limit the capacity of the association to fulfil that part of the aims and objectives. Our organisation structure is based on members of our organisation within the branches and each entity within the organisation has an annual general meeting at which the members have a right to vote on the policy direction of the association for the following 12 months.

The Hon. STEVE WHAN: Your membership is not made up of natural individuals but organisations: Is that why you feel you will be captured by this legislation?

Mrs MELHAM: Yes. To explain our structure: We have individual people that belong to the branches, the branches belong to the State bodies and the State bodies, in turn, belong to the national body. We are representing 140,000 members Australia-wide and 42,000 members within New South Wales.

Mr McNABB: The decision the New South Wales association makes as to its political support is the outcome of an annual general meeting. It is not the president's whim or the New South Wales board's whim; it is the outcome of an annual general meeting.

The Hon. STEVE WHAN: Presently do your political contributions include direct contributions to political parties and campaigns?

Mr McNABB: Let us go by the last election: direct funding to a political party and some in-kind support. For instance, I have spent 40 years writing TV commercials so I run their advertising campaign for them and that is done by the Sporting Shooters Association of Australia [SSAA].

The Hon. STEVE WHAN: What is the general view of members of your member organisations as to their capacity to contribute as individuals by way of donations to the political process? Do you feel by preventing your organisation from making that contribution you would be removing their voice?

Mr McNABB: The reality is sporting shooters are blue-collar workers. These are people who have not a lot of disposable income and in many cases find it difficult to pay membership fees of \$75 a year. The possibility of them individually donating to political parties is nonexistent. That would be a reality statement.

The Hon. PETER PRIMROSE: Have you obtained any legal advice in relation to the constitutionality or otherwise of this legislation?

Mr McNABB: No, we have not.

The Hon. PETER PRIMROSE: From your experience in advocating for safe and responsible firearm use in New South Wales are you able to comment on what you believe this legislation would do to other not-for-profit organisations that attempt to inform their members through issues-based campaigns?

Mrs MELHAM: I believe any not-for-profit organisation that represents a group of members will be in the same boat as the SSAA. There is a reason for those members coming together to pool their views and give themselves a stronger voice. I believe it does not matter what issue you are advocating for, all not-for-profit organisations would be in exactly the same situation.

The Hon. PETER PRIMROSE: In their submission Unions NSW proposed, "Legislation applying to third-party campaigners should be untangled from that applying to parties and candidates and placed in a separate stand-alone part of the Act". Do you have a view on that?

Mr McNABB: No, not at this time.

The Hon. AMANDA FAZIO: If your association was unable to donate to political parties of your choice do you believe the association would be able to effectively represent your members in the New South Wales political scheme?

Mr McNABB: I suspect it would become support in a negative style. At the moment we can donate to the party or person we think will do the best job for us and push whoever that is or whatever that party is to work to a positive outcome. If that is denied to us then I think our output in communication to the general public would automatically become negative. I know my 40,000-plus shooters are oppressed and feel oppressed at any given moment. They would, through the annual general meeting process, expect us to be very negative to the government of the day when it comes to their sport. I think the SSAA would become a negative blot on the communications scene.

The Hon. AMANDA FAZIO: You stated at the outset that you are concerned that in your view this sort of proposed legislation was un-Australian and you also say in your submission that denying organisations such as your own the opportunity to effectively advance the interests of their members constitutes an unacceptable restriction to one of the freedoms enjoyed by all Australians. Why do you have such strong views in relation to this matter?

Mr McNABB: Our members are mostly pretty ordinary Australians who find it very difficult to express themselves. The SSAA gives them a voice to be heard, a freedom of speech, and a way to translate and verbalise the mumblings at rifle ranges and hunting clubs around the countryside and put it into action. That is what the SSAA does. The SSAA sees this proposal as an un-Australian activity that will take away their voice.

The Hon. AMANDA FAZIO: What is your view on the proposal to only allow individuals who are on the electoral roll to donate up to \$1,000? Do you think that favours wealthy people with a high level of disposable income as opposed to the members of your organisation?

Mr McNABB: Absolutely.

The Hon. AMANDA FAZIO: Do you think that is undemocratic?

Mr McNABB: Yes, and un-Australian.

The Hon. AMANDA FAZIO: You have outlined for us how you think these changes would affect your association and you have said that the alternative would be to directly voice your concerns by having protests. If your association were not allowed to run political campaigns what other negative impacts do you see this legislation having for your members and your organisation?

Mrs MELHAM: The main affect that we believe these changes will have is to limit the opportunities of the Sporting Shooters Association of Australia to advocate on behalf of members and shooting sports in general. The main opposition to the proposal is that it will reduce the voice of our members and participants in our sport and therefore the ability of the association to represent the sport and to address any issues that may arise.

The Hon. AMANDA FAZIO: Given that the Electoral Commissioner is about to conduct a full review into the current electoral funding laws, do you believe that this legislation should be held in abeyance until after that review is completed?

Mr McNABB: I am not aware of the finer points of that but it would seem logical to me that this is an information-based committee and when you guys have got the information that would play a part in that process I imagine. It is a bit late after the event.

The Hon. AMANDA FAZIO: Have you got any other comments that you wanted to make about these proposed changes?

Mr McNABB: Only that I cannot believe I am here in a Committee that is basically reviewing with the possibility of recommending an un-Australian activity. It is unbelievable. That is why I brought my flag—to remind me which country I am in.

The Hon. AMANDA FAZIO: Given that the Sporting Shooters Association is, in effect, affiliated with the Shooters and Fishers Party and that a number of trade unions are affiliated with the Labor Party, do you think that this legislation is targeting both the Shooters and Fishers Party and the Australian Labor Party?

Mr McNABB: Affiliated, first of all, is probably a harsh word. They are the flavour of the month with this and it changes on a regular basis.

The Hon. AMANDA FAZIO: Do you think this legislation is singling out individual parties?

Mr McNABB: Absolutely, yes. I was a bit shocked at "affiliated". We are not, and we take pride in our independence. If the Opposition or the Government decided to become very pro-sporting shooters I am sure the Shooters Party would have to look very closely at us in our future funding proposals.

The Hon. STEVE WHAN: You mentioned running negative campaigns if these avenues of contributing are taken away from you. If you were to run a protest campaign or something like that would not its financing be affected by this legislation as well? How would you finance a campaign like that?

Mr McNABB: Is it the proposal of the Government now to ban advertising and the freedom to advertise?

The Hon. STEVE WHAN: The legislation, as you have seen, affects third-party campaigns and it prevents affiliated organisations from contributing to peak bodies. How would that affect you?

Mr McNABB: I have not read the finer points or been advised on the finer points of that but I am sure as an advertising man there are plenty of ways to skin a cat and we would be out there skinning them with the best of them.

The Hon. STEVE WHAN: Would you like to take on notice that aspect of it?

Mr McNABB: I would take legal advice to be able to exercise my democratic freedom to advertise.

The Hon. AMANDA FAZIO: So do you believe that this legislation is probably unconstitutional?

Mr McNABB: I am not a constitutional expert but, as I keep saying, I find this whole thing totally un-Australian.

The Hon. AMANDA FAZIO: That is okay; we do too.

The Hon. PETER PRIMROSE: Do you believe that the effect of this legislation would be that the less well-off would be less able to participate in political debate?

Mr McNABB: Absolutely, without question.

CHAIR: Mr McNabb, I want to go to your highly passionate and very interesting opening remarks where you suggested you would be in a kind of dichotomous situation if this legislation went through. Either we have the existing situation, which you implied is kind of okay, or you would have your members on the street and you would be running negative campaigns and so on. You do not entertain any alternative for organising your political activity? For example, you do not entertain straight issues-based campaigning around the issue of gun regulation?

Mrs MELHAM: We already involve ourselves in issues-based campaigning so I guess yes we would continue to do that, but we see the other opportunity of supporting political parties that support our members' views as another option.

CHAIR: So, contrary to what Mr McNabb said in his opening remarks, you are suggesting, Mrs Melham, that there are two alternatives if this legislation were to go through in its current form: one would be Mr McNabb's dystopian view of the universe with people out on the streets, negative campaigning and some of the worst aspects of American politics coming into Australia; the other would be the issues-based campaigning where the Sporting Shooters Association did its own campaigning on the issues which are currently advocated by the political party that you tend to support?

Mrs MELHAM: I do not see them as two different options; I see them as two options that we use hand in hand. If one of those methods of advocating is taken away then we are going to have to replace that with something else, and that is what Paul is saying. We are looking at the bigger picture. We have the issues-based advocating and then we have the bigger, broader picture of advocating on behalf of the sport.

CHAIR: You see the only way you could advocate on behalf of the sport would be either by donating to a political party or by turning your members out on the street?

Mr McNABB: If you cannot donate to a political party what is left? Of course you can run campaigns on issues—

CHAIR: Mr McNabb, you are aware of, for example, the Better Services for a Better State campaign, the Last Drinks campaign, the campaign run by the Business Chamber of New South Wales—

Mr McNABB: I am not aware of that.

CHAIR: There were a number of campaigns run that were not specifically advocating for a political party but were issues-based campaigns where I think close to half a million dollars was spent across the State on these campaigns by different organisations. I may have that number wrong but a substantial amount of money was spent on campaigns that did not specifically advocate for a political party and did not involve having members on the street but were seen as effective ways of voicing the concerns of the members.

Mr McNABB: That is probably how the members of those groups expected those groups to act. I can only speak on behalf of how my members would want us to act.

CHAIR: You said that you were the voice of your members earlier on, that they were largely—I do not want to put words in your mouth but you were assessing they were not really, and I am trying not to be rude, they were not politically sophisticated, they were not politically able.

Mr McNABB: Average Australians.

The Hon. ROBERT BORSAK: That is right, they are Australians. They are not the elite, are they?

CHAIR: In a pejorative sense. But your role as an elite organisation, to use Mr Borsak's words—

The Hon. ROBERT BORSAK: They are not an elite organisation; they would even take your membership.

CHAIR: Your view is that role is to campaign on their behalf.

Mr McNABB: We are instructed by our AGM to campaign on their behalf in a way they instruct us to. If they instruct us not to campaign we will not.

CHAIR: Let us suppose the legislation goes through in its current form so you could not donate to political parties. Would you then see the legislation putting constraints on how money flows between—you mentioned three levels of the organisation: the local shooting clubs; your organisation, which is the association of those clubs; and the national organisation, which I understand to be the association of all the State bodies? Would you see the legislation as it is currently drafted imposing limitations on the internal financial relations between those three levels?

Mrs MELHAM: Even though we are all intertwined we are all individual organisations, we are all separately incorporated bodies—some are companies limited by guarantee et cetera—so I do not know how the limitations that you are suggesting would work because technically we are all separate organisations. The legislation would have to say that any organisation cannot have an arrangement with any other organisation because, okay, we may have the same name, we may represent different areas of the same industry, but we are all individual, separate organisations.

CHAIR: Just to be absolutely clear: it is not my legislation; this is legislation of the Government.

The Hon. ROBERT BORSAK: Just for the record, Mr McNabb, is the SSAA formally affiliated with the Shooters and Fishers Party? Do you have formal affiliation?

Mr McNABB: Absolutely not.

The Hon. ROBERT BORSAK: The word "affiliation" is being used here not in the same sense that it is being used in the formal affiliation and formation processes of the Labor Party. It just so happens, is it not true, that the Shooters and Fishers Party at this time is the best advocate for the members of the SSAA?

Mr McNABB: Absolutely, and I will add to that, from the early nineties right through to the middle 00s we did not even speak to the Shooters Party; we had major conflicts with them and disagreements.

The Hon. ROBERT BORSAK: It is true to say that the then Shooters Party and the SSAA had a very largely dysfunctional relationship?

Mr McNABB: Extremely.

The Hon. ROBERT BORSAK: You talked a bit about the current situation and that you would not be able to properly advocate for your members and the members would therefore not be able to advocate for themselves in the political fray. Just going back a little bit in history, why did the SSAA become involved in the political fight in the first place? I know you just mentioned, and I know from personal experience, that the SSAA spent probably the best part of 12 or 13 years wandering the halls of Macquarie Street here lobbying the

major parties and, without putting words in your mouth, getting nowhere. Why did the SSAA then become involved directly in the political fight?

Mr McNABB: The absolute straight answer is that our previous executive director Roy Smith put a proposal to the New South Wales board that the way we were handling the process was not working and the best way ahead was to get someone elected to the upper House and see if we could make that work for us. At that time the Shooters Party, as it was known, was not talking to us, literally, and I brokered a peace with Tingle, who in turn suggested that we swap a couple of people on boards, and the party agreed to support Roy Smith's run for the upper House. We decided to finance that run. Roy resigned from the Sporting Shooters Association because that was required under the rules. He got elected, and that is basically how we got to be where we are today, and if Roy had not passed on it would have been Roy sitting over there and not Mr Borsak.

The Hon. ROBERT BORSAK: We talked a bit about other campaigns but can you briefly tell us what other types of campaigns, other than the direct political campaigns, issues-based campaigns, the SSAA works on or conducts amongst its members and the general public?

Mrs MELHAM: We are very proactive in advocating for safety. There is a very strong safety culture within the shooting sports. One of the main aims of SSAA is to teach and advocate and, I guess, continually reinforce the need for safety within our sport. We have training programs, we have junior development programs and a number of other programs promoting that aspect of the sport.

Mr McNABB: On a lighter note, I believe our safety record is so good that over the past couple of hundred years more people have been killed on cricket fields than on rifle ranges.

The Hon. ROBERT BORSAK: How do you believe shooters feel about the way they are being treated from a political perspective in New South Wales, regardless of which government is in power?

Mr McNABB: Whether it is a Federal, State or whatever government—

The Hon. ROBERT BORSAK: On either side of politics.

Mr McNABB: Yes. They feel that there is a giant thrust to close down their sport, to take away their guns and to send them off to engage in some other activity. They are very fearful about the future of their sport.

The Hon. ROBERT BORSAK: Why?

Mr McNABB: In the past five or six years in this State we have made very positive gains in getting through to them that that is not the case. However, it is only since we have had a much better voice in the political process that I think my members now see illegal shootings and illegal gun ownership in the community as being removed from them. They now acknowledge that the community as a whole accepts that there are bad people and sporting shooters. That is a new thing in the past five years. But they still have grave doubts about the future of their sport.

The Hon. ROBERT BORSAK: Do you think that governments collectively—and I will not refer to recent events although you are alluding to them—are making enough of an effort to differentiate between the legal and illegal activities of shooters?

Mr McNABB: No, but something is happening in the community to separate the good guys from the bad guys. That has been noticeable at focus group gatherings that I have attended.

The Hon. ROBERT BORSAK: So you think the message is getting out there?

Mr McNABB: Slowly but surely, and that is because of our involvement in the political process.

The Hon. Dr PETER PHELPS: If this bill were to pass what would stop you from simply recommending to your members that they make an individual donation to the Shooters and Fishers Party of \$10 or \$20 or something like that? Why not approach it from that perspective?

Mrs MELHAM: As Paul alluded to earlier, the demographic of our membership is the less well-off and more blue-collar worker. Our annual membership fee is \$78 and they sometimes struggle to pay that in

addition to licence and permit fees that must be paid to participate in a shooting sport. That \$10 can be a significant amount of money for our members.

Mr McNABB: I know you find that hard to believe.

The Hon. Dr PETER PHELPS: Given the cost of ammunition, I do find it very hard to believe.

Mrs MELHAM: Exactly. If they have to choose between donating \$10 to support the Shooters and Fishers Party and buying ammunition to participate in their sport—

Mr McNABB: The bullets win.

The Hon. Dr PETER PHELPS: Approximately how much money did the Sporting Shooters Association of Australia donate to the Shooters and Fishers Party prior to the last State election?

Mrs MELHAM: Prior to 1 January 2011 we made a campaign donation of \$300,000. We also provided in-kind support of approximately \$25,000.

The Hon. Dr PETER PHELPS: That was \$300,000 donated by 40,000 members. If my maths does not fail me, that is in fact less than \$10.

Mrs MELHAM: Yes, but you are talking about a \$78 membership fee plus \$10. That \$300,000 came from not only membership fees but also the revenue-raising activities that the Sporting Shooters Association undertakes. Members pay \$78 and then contribute through the association, but they would pay \$88 if they were required to do it on their own.

Mr McNABB: I am sure that the 20,000-odd members of our biggest branch would be most miffed about your answer. They also donated another \$100,000. It was \$400,000 in total.

The Hon. Dr PETER PHELPS: Again, that is roughly \$10 per member. I cannot understand why you say it would be un-Australian to recommend to your members that they simply make a \$10 donation to a political party. You are in advertising and you could certainly write a direct mail letter stating that the association has evaluated the policies of all the parties and recommends that individual members donate \$10, \$20, \$30, \$40 or whatever to the Shooters and Fishers Party, which most accurately represents the views of the association. Why do you not do that?

Mr McNABB: It is possible for us to set up a call centre, as the major parties do, and to run a donation campaign for a whole year. It would cost a lot of money to set up such a centre and we cannot afford it. We would be wasting about \$250,000 a year to raise the money we require. Major parties can afford that but we cannot.

The Hon. Dr PETER PHELPS: But a proportion of your membership levy is effectively earmarked for political donations.

Mrs MELHAM: Not necessarily. The revenue obtained from membership fees is not the only source of contributions for political campaigns. The association has a number of money-making enterprises. It is a combination; it is not simply \$10 taken from the membership fee and donated to a political campaign.

The Hon. TREVOR KHAN: You made mention of \$300,000 and another \$100,000. I assume that that was until 1 January.

Mrs MELHAM: Yes.

The Hon. TREVOR KHAN: What was the figure for the period between 1 January and the date of the election?

Mrs MELHAM: It was \$15,000 in kind.

The Hon. TREVOR KHAN: So, essentially it was all done prior to 1 January?

Mrs MELHAM: Yes.

The Hon. ROBERT BORSAK: You will not catch us on that one.

The Hon. TREVOR KHAN: No.

The Hon. Dr PETER PHELPS: Is your primary concern the limitation on the Sporting Shooters Association's ability to donate to political parties or is it that if the individual system is enacted you will not be able to effectively campaign as a third party? What is your gripe? Is it that you want to be able to donate money to political parties?

The Hon. STEVE WHAN: It might be both.

The Hon. Dr PETER PHELPS: Yes. Is it both?

Mrs MELHAM: It is both, because we want to achieve our objective, which is to represent the views of our members. We are a very highly regulated and legislated sport. I refer to the point made by the Chairman about issues-based campaigning. That is good in some instances, but when you need a spokesperson or someone to advocate about legislation that perhaps needs to be amended or legislation that you do not want to be introduced the most effective way to have a voice is to support a political party or a politician who will advocate on that legislation on your behalf.

The Hon. TREVOR KHAN: Do I take it therefore that what you conclude is that by having made a donation of \$300,000 or \$400,000, or \$450,000 as occurred in 2007, the politicians who receive that money will vote how you want them to vote?

Mrs MELHAM: No, we are not making donations to buy votes; we are donating the money to those politicians or parties that we believe share the views of our members and our association. We are not in the business of buying votes. I should clarify that the additional \$100,000 donation made prior to 31 December 2010 was made by our Sydney branch, which is its own incorporated entity. When you asked the question I replied by providing the figures from the New South Wales branch.

The Hon. Dr PETER PHELPS: Have you done any analysis of or made any donations to members of political parties other than the Shooters and Fishers Party who might have a pro-firearm bent?

Mrs MELHAM: Not at the State level, but our Federal organisation has.

The Hon. Dr PETER PHELPS: Why have you not done it at a state level?

Mrs MELHAM: Until now, I guess we have been happy—

The Hon. STEVE WHAN: Point of order: I do not know that it is appropriate to question why witnesses make donations to particular parties. This inquiry is about the mechanisms and the bill in front of us.

The Hon. Dr PETER PHELPS: The motivation behind donations is surely a key reason behind electoral reform.

CHAIR: I remind witnesses that they must answer questions, but they can do so in the way they see fit.

Mr McNABB: You seem to overlook that we are directed by our body to do that.

The Hon. Dr PETER PHELPS: I understand your current arrangements, but Mrs Melham made the point that your association exists to support people who have a positive view towards legal firearm ownership in Australia. I wonder why you have not sought to identify people in the Labor Party, the Coalition, but perhaps not The Greens—although it might be different if it involved a Kalashnikov—who are of a pro-firearms bent and to support them. You said that it is done at the Federal level.

The Hon. ROBERT BORSAK: Dr Phelps is a licensed shooter.

The Hon. Dr PETER PHELPS: That is correct; I am a paid-up member of the Sporting Shooters Association of Australia, New South Wales branch.

Mr McNABB: You can rest assured that we do not take \$10 of your membership fee—

The Hon. Dr PETER PHELPS: And give it to the Hon. Robert Borsak.

Mr McNABB: No. At the annual general meeting before last, at which we were told what to do with the money and how much to donate—it really is a democratic process—the only submission we had for funds was from the Shooters and Fishers Party. If you would like to turn up to our next annual general meeting and put your hand up for funds I am sure we would consider your request favourably. However, I am not sure your leader would be happy. I do not anticipate requests for funding from individual politicians because they would be contrary to party policy.

The Hon. Dr PETER PHELPS: You referred to the democratic nature of your donation arrangements. Why not make it the ultimate democracy and say, "Look, we're not going to use your membership fees for donations. We recommend that you donate money to a particular political party." Rather than take the money in a collectivist fashion and distribute it as you see fit, why not leave it to individual members to make donations based on your recommendations about the appropriate party?

Mr McNABB: If this legislation is eventually enacted, I guess that is what we will end up having to do. However, it will be like trying to herd cats: it will be very difficult. We do not have the money that the big parties have to establish highly efficient marketing-driven call centres to raise funds.

The Hon. Dr PETER PHELPS: Members of your association receive a magazine every month. What would stop you from including a letter saying that the association recommends that members donate money to a particular party or candidates who are of a pro-firearms bent? There is nothing that would stop you doing that. You already send them the magazine 10 or 12 times a year. It would incur no additional administrative expense other than the cost of a single sheet of paper.

Mr McNABB: I accept that. However, the current system suits us much better and we are speaking in support of it. We think it is very good. If it changes we will have to change with it. However, if it ain't broke—

The Hon. JENNIFER GARDINER: When the annual general meeting instructs you to allocate money is that in response to submissions from your members about funding individual candidates as distinct from a party?

Mr McNABB: You could say that was the case with the Hon. Roy Smith.

The Hon. JENNIFER GARDINER: What about candidates from other political parties?

Mr McNABB: We have not in the past. There is no reason—

The Hon. JENNIFER GARDINER: So it never comes up at the annual general meeting?

Mr McNABB: No.

The Hon. TREVOR KHAN: Is your party registered as a third-party campaigner?

Mrs MELHAM: Yes.

The Hon. TREVOR KHAN: Did you engage in a third-party campaign prior to the last election?

Mrs MELHAM: No, we did not.

CHAIR: Thank you for giving evidence today. The Committee has resolved that answers to questions on notice must be returned by Monday 30 January 2012. The secretariat will contact you about the questions that you have taken on notice.

The Hon. Dr PETER PHELPS: But preferably earlier than that.

CHAIR: Yes, but obviously we must allow time for you to provide answers.

(The witnesses withdrew)

GEOFF DERRICK, Secretary, Finance Sector Union Australia (NSW), affirmed and examined:

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

Mr DERRICK: I am familiar with them, yes.

CHAIR: If at any stage you consider that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee could you please indicate that fact and the Committee will consider your request. Would you like to commence by making a short opening statement? If so, could I ask you to keep it to approximately five minutes as we have a large number of questions, as you may imagine. We have seen your submission and the Committee thanks you for its comprehensive nature and the work that went into it. We have read it, so there is no need to repeat matters canvassed in your submission.

Mr DERRICK: Thank you. I will keep my opening remarks brief. Our union supports a vibrant and democratic process from a government in Australia and New South Wales. Our view is that disclosure of political funding is very important to the vibrancy of our democracy and we wholeheartedly support disclosure legislation. We understand also that with the evolution of campaigning techniques and the development of new issues it is important from time to time to review the framework of our electoral democracy, and to that extent we welcome the inquiry and the opportunity to give evidence to the inquiry. We have considered the bill that is currently before the upper House and obviously taken the steps to make a submission. That submission was endorsed by the union's executive before it was submitted. We focus on a number of issues that are of particular concern for our union. Our union has developed a strategy in recent times of ensuring that we fulfil our obligation to our members to the fullest extent and that includes being active and quite focused on the various regulatory and legal infrastructure that directly impacts our industries and the living standards of our members. To that extent we look forward to continuing our direct involvement in the political process as a union and as part of a democratic New South Wales.

CHAIR: Thank you. I invite Labor members to ask questions for 15 minutes.

The Hon. STEVE WHAN: At the outset could you outline to us the reason the FSU affiliates with the Labor Party, and how does affiliating with the Labor Party assist members of the FSU?

Mr DERRICK: We affiliate to the Labor Party because we discovered over the course of our fairly long and we think proud history that politics is very important: politics makes a direct impact not only on our industry but also on the living standards of our members outside of work. For a long time we went as an unaffiliated organisation, but through the process of trying to influence political policy and government policy found that the most effective route for us was through an affiliation process with the ALP. By being affiliated with the ALP we are entitled to send a proportionate number of delegates to the ALP's conferences. Those conferences are the supreme decision-making body of the party and we have the opportunity to put forward our policy proposals to the party through those conferences. We vote on a proportionate basis with the other delegates to the conference. We found that as an open and transparent way that has been quite effective for us to raise an agenda that goes beyond the fairly narrow constraints of the issues that can only be dealt with in the work place between the union, employers and our industry.

The Hon. STEVE WHAN: How do you feel this legislation will impact on your ability to represent your members, firstly, from the point of view of your affiliation but, secondly, from the point of view of campaigns in which you participate as a union?

Mr DERRICK: We are concerned that the bill in its current form would disadvantage our union and other affiliated unions quite significantly. I think I have mentioned in our submission that if there were a scenario where our union as an affiliated entity engaged in a campaign during the election period and another union that was not affiliated engaged in a parallel campaign around the same issues and same materials any money that we spent, as I understand the bill, would be accumulated into the ALP's cap, yet money spent by the unaffiliated union is uncapped. We see that as a particular disadvantage for us simply because we have taken the choice to openly and transparently affiliate to the ALP and seek to influence the ALP's direction.

The Hon. STEVE WHAN: You mentioned also in your submission your concern about things like sponsorship of your conferences et cetera. Would you elaborate on that?

Mr DERRICK: Yes. I should preface it by saying that I am not a lawyer but, having reviewed the bill and reviewed the current Act, it appears to me that the proposed amendments to donations, which would limit them to third-party campaigners—and we expect that we would be a third-party campaigner for the purposes of the Act. If this was to become law, as we understand the current bill, the definition of donations can be retrospective and are limited to being received from natural persons who are on the electoral roll. In 2011 we conducted an FSU delegates conference in Sydney. We flew 20 delegates in from regional centres in country New South Wales. That was at significant expense. To offset that expense we sought and obtained sponsorship from a law firm and an industry super fund. That goes into our consolidated revenue. We are concerned that if we were to campaign in 2015 there is the possibility that by virtue of accepting a sponsorship contribution to a conference in 2011 we are effectively knocked out of being able to campaign as a third party because we have accepted a donation.

The Hon. PETER PRIMROSE: Your affiliation fees to the Labor Party simply add to the Labor Party's election war chest, do they not?

Mr DERRICK: I do not believe they do. As I understand it, the affiliation fees to the Labor Party make up a relatively small proportion of the total cost of running the party, although I am not the general secretary of the party. Our affiliation fees go to the cost of administration for the ALP year in, year out: things like the annual conference, which is a very expensive exercise, the administration of the office from time to time. I do not believe that our contributions add to the war chest of the ALP to any significant extent whatsoever.

The Hon. PETER PRIMROSE: Your submission, like the submission we have received, for instance, from Unions NSW, proposes that legislation applying to third-party campaigners be untangled from that applying to parties and candidates and placed in a separate stand-alone part of the Act. Could you elaborate on that proposal?

Mr DERRICK: We are concerned that in the bill's current form and, indeed, with the complications of the current Act, it is quite onerous and I think it is built on some false assumptions about the way third-party campaigns might be run. But we think that the obligations on us are much more onerous and burdensome from an administration point of view than, for example, the obligations on the *Daily Telegraph* or 2GB or another media outlet. We believe that through our process of registration with the State and Federal bodies we go through a very rigorous and transparent analysis of our affairs on an annual basis. We are very transparent about the way we spend members' money and we think that the combination of the current disclosure obligations on our own financial affairs and the capacity to disclose funding arrangements for third-party campaigners makes us quite different from the political parties that should be regulated much more closely through the donations regime.

The Hon. PETER PRIMROSE: At this stage have you sought any legal advice on the constitutionality of the proposed legislation?

Mr DERRICK: No, we have not.

The Hon. PETER PRIMROSE: In relation to affiliations, do you have any views on the suggestion that they may be capped as opposed to actually limiting the amount?

Mr DERRICK: I think there are some people in financial affairs who might be quite attracted to the concept of capping but, in reality, I do not think it is a viable option because the cost of affiliation is something that is determined democratically by the ALP on a regular basis. Our own decision to affiliate is reviewable by our executive at any time and, similarly, our annual general meeting can review or overturn or amend any decision of the executive. I do not see a particular advantage to be gained from capping affiliation fees, except if it were done as another attempt to somehow limit the capacity for our union and other affiliates to pay our fair share as part of the affiliation process.

The Hon. AMANDA FAZIO: I am not sure if you have had a chance to see the submission from Dr Graeme Orr, who looks in some part at the constitutionality of this proposed legislation. In his submission, while he is generally supportive of the ban and all but individual donations, he suggests that the bill should be amended to permit organisational membership fees, which is probably another term for affiliation fees, at a

reasonable level to cover the administration costs of servicing members. Do you think that is a reasonable suggestion?

Mr DERRICK: I am not familiar with the submission, but as you read it out to me, yes, I do. I think it is a sensible submission. It aligns with our own view that the political process and the nature of the political parties in this State have for over 100 years included the capacity for organisational affiliation or membership of parties and each party makes its own decision about whether or not to accept organisational membership. I do not see that there is a particular advantage to democracy in ruling out organisational membership of political parties.

The Hon. AMANDA FAZIO: Do you agree with the suggestions made in a number of submissions where concerns have been expressed that the amendments in the bill relating to affiliated organisations have a disproportionate impact on the Australian Labor Party as compared with other political parties? Do you see this as targeting the links between the industrial and political wings of the labour movement?

Mr DERRICK: I do not profess to understand the thinking of the Government at the time that Cabinet decided to go ahead with the current bill, but the way I interpret the bill is absolutely that it is a direct attempt to weaken the Labor Party and break the relationship between the union movement and the Labor Party, which has been in place for many, many years. I can only assume that there is some attempt to seek advantage by preventing unions being able to run effective campaigns during election periods on issues that are particularly relevant to their members. I say that in the context that all of our members' votes are there to be won by politicians on the day. We cannot and would not assume to dictate to members how they should vote. We would defend their right to the sanctity and privacy of the ballot box but we think it is important that we as a union together with other unions and like-minded groups are free to engage in the body politic of New South Wales to enrich the political process.

The Hon. AMANDA FAZIO: The proposal currently in the bill is that individuals on the electoral roll can donate up to \$1,000. Do you have any idea of the likelihood of any of your union members being prepared to donate \$1,000 as individuals to the political party of their choice?

Mr DERRICK: I can speculate: there is not chance. Our membership is predominantly made up of women. They overwhelmingly earn less than average weekly earnings. A very significant proportion of them work on a part-time base. They do not have \$1,000 disposable income to donate to a political party of any description.

The Hon. AMANDA FAZIO: Do you agree that this proposal could be seen as enfranchising the rich and disenfranchising workers on lower incomes?

Mr DERRICK: In our submission I think we pointed out that we reject the assumption that all individuals can participate in the political process equally, regardless of their financial situation, regardless of their socioeconomic circumstances, regardless of their geographic isolation. We just do not accept that that is true. We see that particular well-connected individuals and the wealthy have a higher capacity to engage in politics at an individual level, either through the avenue of individual donations or otherwise, than the vast bulk of the working people that our union represents.

The Hon. STEVE WHAN: You mentioned campaigns in which your union has participated that would be affected by this legislation. The committee heard from Unions NSW about some of those campaigns earlier. What is the implication for democracy of this bill prohibiting those campaigns where organisations pool resources compared with the ability of a high-wealth individual or a company to run a third-party campaign?

Mr DERRICK: It is obvious that if low-income working class people are disenfranchised from the political process then that process will be skewed away from their interests on a regular basis. We certainly have seen examples of that around the world. I am not an expert on international politics but I think we are all casual observers of the system in the United States of America, for example. I am regularly hearing commentary during the current United States debates about the extent to which high net worth individuals can buy candidates and campaigns and influence outcomes through ways which are not clear, democratic or transparent. We certainly think that it is important that we are able to contribute on a collective basis because that is the way that we can ensure there is a more open debate.

When we went through the Federal campaigns of 2007-10, 2007 particularly, we did take an interest in whether the Government of the day was prepared to abolish the WorkChoices legislation. That was making a hell of a difference to our members. Our members in the Commonwealth Bank, for example, went from having a collective agreement negotiated with the union in 2002 to the point where, prior to the negotiation of a new collective agreement under the Fair Work Act in 2009, 15,000 Australian Workplace Agreements had been issued to Commonwealth Bank workers, none of them had a built-in pay increase, all of them gave complete control of working hours to the employer, all of them abolished weekend penalty rates. They were atrocious documents and the pretence at the time that that was the individuals bargaining with their employer was proven to be nonsense because most of the documents were identical and there was no negotiation. We needed to get in front of that campaign.

CHAIR: In relation to affiliation fees, section 96 (6) of the Act currently quarantines affiliation fees from going into the campaign funds of a political party. Another section of the Act limits affiliation fees to \$2,000 per affiliated member. How do you defend the suggestion that, even though they are quarantined from being spent on campaigning issues, by allowing affiliation fees to go from an affiliate to a political party frees up other money to be used that would otherwise have to be used for the administration of that party to be used on campaigns?

Mr DERRICK: What is the question?

CHAIR: How would you respond to the fact that affiliation fees are in some senses de facto campaign donations and capped at any incredibly high level? A corporation making a donation under the current law can only make a \$5,000 donation but a union can make a \$2,000 times its number of members affiliation fee payment. Why is that not just freeing up money that would otherwise need to be spent on administering the party for campaign purposes?

Mr DERRICK: Firstly, I point out that our affiliation fees are nowhere near the legislative cap, and I am glad of that. Secondly, I would say that the fact that they are quarantined by law means that they are quarantined. My knowledge of the way the Australian Labor Party's finances operate is fairly scant. I do not think there is a reason for me to suspect—

CHAIR: That was not my question. My question was: Suppose your union, for the sake of argument, pays \$40,000 in affiliation fees to the Australian Labor Party. That is \$40,000 of administrative expenses that the Labor Party does not have to raise elsewhere. The accusation is that that \$40,000, even though it does not go to the campaign fund, frees up other donations to go into the campaign fund.

Mr DERRICK: I do not know whether that is true.

CHAIR: The argument is that because affiliation fees go to a party they effectively create a larger pool of donations for that party?

Mr DERRICK: I think I understand the argument but I cannot answer whether it works that way. I do not think it does. I think that because it is quarantined our affiliation fees go to the administration of the party and the party, as best I know, certainly does not survive on union affiliations alone. It has to have individual memberships as well, and also seek donations. I think it might be an interesting question at the time when affiliation fees were more than the value of administering the party but my understanding is that they are well short of that.

CHAIR: The legislation proposes to aggregate the political expenditure that your union would make during the cap period of 1 October to an election into the expenditure made by the Labor Party for the purposes of the cap on total expenditure both on a seat-by-seat basis and also on a statewide basis. What activities did you undertake in the last election or the election before that which you paid for, and possibly declared you as a third-party campaigner, that would now have an impact on the total expenditure capacity of the Labor Party?

Mr DERRICK: I was overseas for a large part of the 2011 election campaign. I do not particularly remember the 2007 election campaign.

CHAIR: Are you aware of what your union did during the 2011 election?

Mr DERRICK: I will take that question on notice and look at what we have reported that happened in 2011 or 2007, if you do not mind?

CHAIR: Okay. Will you answer the question in general form looking forward: What activities that you might contemplate doing in a future election would end up being in the expenditure bucket of the Labor Party?

Mr DERRICK: Contemplating and speculating is a dangerous game but you have invited me to do it so I will have a go. In 2015 there will be a State election. We have a different policy position to the ALP on a number of issues. A total hypothetical is we support the view of the construction unions that the Australian Building Construction Commission [ABCC] should be abolished. It has not been Labor Party policy to abolish it so, speculating about what might happen in the next Federal election, it is possible that we would go out alongside a number of other unions and campaign for the abolition of the ABCC. To the extent that that was contrary to ALP policy then I see it as being unreasonable that any expenditure we might put into that sort of campaign should be pooled with the cap of the ALP even though the message we put out there might be totally contrary to the message of the ALP.

CHAIR: What would happen under this legislation if your union were to decide, for example, to campaign in a seat—I am not saying you are going to do this—for a non-Labor Party candidate? Even though you are an affiliated union and therefore you are caught by the aggregation but you decided, for example, that you would campaign for the Shooters and Fishers Party candidate in Balmain.

Mr DERRICK: If we were to choose to campaign for the Shooters and Fishers Party in Balmain as an ALP affiliate every cent we spent on the campaign for the Shooters and Fishers Party candidate would be aggregated with the ALP's campaign and there would be a net reduction, as I understand it, on the ALP's total expenditure available to support their own candidate.

CHAIR: If your members turned hostile against the Australian Labor Party but did not disaffiliate from the ALP they could actually inflict quite a savage injury on the ALP by spending up to the election cap in a number of seats and stopping the ALP spending it all. Is that correct?

The Hon. TREVOR KHAN: It would be the ALP that would be doing the disaffiliating.

Mr DERRICK: I have actually never thought of it that way but you are probably right.

CHAIR: Do you envisage the situation where, for example, you would be running issues-based campaigns that were not designed to advantage any particular candidate?

Mr DERRICK: I am a bit concerned about how those things eventually get interpreted because my understanding of the Act at the moment is that there is a purpose test around electoral expenditure and electoral communication expenditure. I think that it would be a very difficult line to tread between campaigning on an issue in an election period where one or other candidate had a professed position for or against the position the union was supporting and then arguing that that was or was not an attempt to influence voting in the election. I think it is difficult for us. It has been a difficulty since the Act was amended in that way. As I said earlier, we know we do not, and we do not profess or seek to dictate to our members how they should vote on election day. We do take seriously our responsibility to inform them of issues which are relevant to our industry.

CHAIR: You are referring to the complexities of section 87 (1) of the Act, which defines "electoral expenditure", of which communication expenditure is a part. It talks about two tests: one is expenditure for 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. Will you leave aside those differences for a moment? Will there be expenditure that your union will make, even though it is affiliated to the Labor Party that was not intended by your members, your governing structure and yourself as a secretary to help the ALP or damage or the Coalition, The Greens or whatever but was designed specifically to make members of the public aware of an issue? Thereby, of course, it influenced the voting in an election. Maybe none of us have any particular policy position on this issue but it is of concern to you?

Mr DERRICK: I am sorry, I don't understand the question?

CHAIR: I am trying to ask you: Do you see issues-based campaigning as separate to political campaigning? In your mind do you see a potential difference between the two?

Mr DERRICK: There may be but I struggle to see the difference given that section 87 (1) exists. Whatever we were to do is going to be subject to those tests.

CHAIR: Leave aside that. In your own mind, in the volition of your members and the volition of your governing bodies, could your union set out to raise an issue that your campaigning was not there to help the Labor Party?

The Hon. AMANDA FAZIO: Like abolishing the 5¢ coin.

Mr DERRICK: We would certainly raise issues on a regular basis either within the election period or outside the election period. My difficulty is that whenever we raise an issue in the public arena we want change of some description. We want someone to do something.

CHAIR: But not necessarily because you want people to vote for the Labor Party but because you want change. I am trying to get to the issue that by aggregating your funding do you think it is unfair on the Labor Party because you might not be campaigning for it?

Mr DERRICK: I think it is absolutely unfair to the extent that the bill in its current form assumes that anything that we do that is captured by the bill as electoral communications expenditure would automatically be aggregated with the ALP expenditure regardless of whether we were campaigning on an issue that had any relevance to the ALP or its candidates.

The Hon. TREVOR KHAN: That is not quite right. The problem relates to the nature of what they are doing.

CHAIR: The Hon. Trevor Khan will have the opportunity to put his opinion across in a minute. Mr Derrick, could I take you then to the possibility of a better definition in section 87 (1) of what constitutes electoral expenditure? Have you or your union or people around you turned your minds to a better definition?

Mr DERRICK: We would welcome a review of the definition of section 87 (1) but the importance of the definition swings very much on what limits and controls are applied to political expenditure and political communication expenditure because of that definition.

CHAIR: You invite us to write, and I think quite sensibly, along with Unions NSW, to recommend a new section of the Act that would deal with you as a third-party campaigner. That would enable us to then talk about a more nuanced definition of political campaigning. Do you have any recommendations to make in that regard particularly with regard to aggregation, what would be appropriate to aggregate and what would not be appropriate to aggregate?

Mr DERRICK: We have not turned our minds to rewriting the definitions but we certainly have the view that aggregation has no role to play in this process, because we are a separate, independent entity. We do not control what the Labor Party does; they certainly do not control what we do. We are affiliated for a purpose, to try to seek change.

CHAIR: Mr O'Farrell says this gives the Labor Party an unfair advantage because of the 22 affiliated unions each with an expenditure cap of a million dollars. As third parties it would give you and your associated entities the ability to deliver a \$22 million or more advantage to the Labor Party. How would you respond to that?

Mr DERRICK: It is nonsense. It simply is not going to happen because there is no way our union will put anything near a million dollars into a State election campaign.

CHAIR: Even if it were not a million dollars, even if it were \$100,000 for each of those 22 unions, that would be a \$2.2 million advantage to the Labor Party. How do you respond to that?

Mr DERRICK: I do not accept it is an advantage to the Labor Party. We campaign on issues that are relevant to our members. Our members decide who to vote for. As we go through the campaign process all political parties will go about their own means of raising funds, choosing campaign strategies, a whole bunch of things, practical and strategic decisions that parties will make in the lead up to and during an election period that

will give them either an advantage or will cost them dearly for the decisions they take. I do not see the fact that we and 21 other unions are affiliated with the ALP is an advantage over and above the Coalition or any other political party.

The Hon. TREVOR KHAN: I go back to Dr Kaye's barrow, which is the issues-based as opposed to any other. Let me pose this to you, and we will use the Hon. Amanda Fazio's five cent coin. You would agree with me you could envisage a circumstance where you commence to run your five cent campaign, start putting money into that campaign, and then one or other political party then adopts a position either pro or against the campaign you have already run. You could envisage that happening, could you not?

Mr DERRICK: It is possible, yes.

The Hon. TREVOR KHAN: It then becomes an issue in the campaign by the continuation of that campaign and by you continuing to spend money on it. Your campaign potentially affects the voting pattern of the electorate because of the way the parties have interacted with the issue that you may have initiated, is that not right? What I am putting is that you cannot separate issues out from the way people decide to vote?

Mr DERRICK: If ultimately the choices people make in the ballot box, based on one or other parties supporting the position they have taken on the abolition of 5¢ pieces the hypothesis holds firm.

The Hon. TREVOR KHAN: At least to that extent—and if you have had the opportunity to read The Greens submission you will see where this is going—the difficulty that exists with the proposition that The Greens are advancing is that it is naive to suggest you can separate an issue from people's decisions as to how they are going to vote. If you plug it hard enough it will influence people's voting performance, will it not?

Mr DERRICK: I do not know if it is just plugging it hard enough. We plugged a lot of things over the years and we got not the result we were looking for. We get involved in politics and we raise issues because we want change. If through the process of raising an issue one or the other political party adopts change we are seeking it is logical that we would advise our members that that is the political party that is supporting the change.

The Hon. TREVOR KHAN: And it is fair to say that the reason, at least in part, apart from the logic that you may be putting forward in your argument, that one or other party may adopt your position is because of the potential effect that agreement or disagreement with that position may have in the ballot box when election time comes round?

Mr DERRICK: That is probably true.

The Hon. TREVOR KHAN: I am not trying to trap you. It is just the nature of politics. You are running a campaign to achieve a result and you will achieve it by frightening the heck out of one or other political party?

Mr DERRICK: Probably frightening maybe one motivator. Doing the public good might be another.

The Hon. TREVOR KHAN: I want to go back a little and separate out the issue of affiliation and aggregation from the third-party campaigning aspect. One of the difficulties that exists in this exercise, putting aside aggregation and affiliation, is that once you seek to engage in a political campaign that makes you a third-party campaigner, does it not?

Mr DERRICK: I understand that to be the case, yes.

The Hon. TREVOR KHAN: So this issues-based question, it is the trigger of engaging in the process that makes you the third-party campaigner?

CHAIR: And spending \$2,000.

Mr DERRICK: Yes.

The Hon. TREVOR KHAN: In your submission—and in the Unions NSW submission—you have referred to environmental groups and various groups such as community groups. You would agree with me that

in terms of the overall pie of third-party campaigners we do not just have potentially environmental groups, community groups worried about school halls, and trade unions, do we?

Mr DERRICK: That is correct.

The Hon. TREVOR KHAN: It covers the full political spectrum?

Mr DERRICK: Yes.

The Hon. TREVOR KHAN: From the far left to the far right, all of those organisations with the capacity to influence the outcome? It is not only of the left that this is an issue?

Mr DERRICK: At a varying capacity.

The Hon. TREVOR KHAN: If we talk about the varying capacity, going back to what the Hon. Amanda Fazio asked about the effect of these being that it will only pass this over to the wealthy, are you aware, for instance, that in the fourth quarter of last year the Obama campaign and the Democratic National Committee raised some \$68 million in the United States?

Mr DERRICK: No, I am not aware of that.

The Hon. TREVOR KHAN: Are you aware that the average contribution to get that \$68 million was \$55?

Mr DERRICK: No, I am not aware. I am not familiar with the campaign at all.

The Hon. TREVOR KHAN: That means, the implication in the United States, particularly from the Democratic side, has been a grassroots campaign that gets small donations produces huge amounts of money.

Mr DERRICK: So the question was?

The Hon. TREVOR KHAN: The question is, you were asked to agree with the Hon. Amanda Fazio that this is for the wealthy when in fact the experience, particularly in the United States, is quite the reverse: It is that small donations achieve massive amounts. So what is occurring simply will not limit elections in New South Wales.

CHAIR: You are inviting Mr Derrick to comment on that assertion?

The Hon. TREVOR KHAN: Yes.

CHAIR: Mr Derrick, would you like to comment on that assertion?

Mr DERRICK: The only comment I would make is—and I am not familiar with the fine detail of the American fundraising machines, either Democratic or Republican—that my observation of the newspaper coverage of those campaigns is that there are also some very wealthy individuals who are putting a lot of money into the political exercise. When I was in the United States last year during the election period—I got back, I think, two days before the poll—the whole Wisconsin thing blew up. The whole coverage over there was that the Governor of Wisconsin was very closely connected with two very rich Koch brothers, who had reportedly bankrolled the Republican campaign in Wisconsin and in other places. Again, my observation of that campaign while I was in America and hearing the assertion of the Hon. Trevor Khan is that, while I do not doubt the assertion that the Obama campaign has been able to raise a lot of money through small donations, at the same time, with I assume significantly less effort, the other side of politics has raised very large sums from a small group of individuals very quickly.

The Hon. TREVOR KHAN: Are you aware that those very large amounts are being funnelled through the super PACs, that is, the unregulated third-party campaigners? That is where the problem is arising in the United States context is it not?

Mr DERRICK: Again, looking at the newspaper coverage I see there have been some developments—I am not even sure what they are—about the super PACs in the United States in the last week or so. But I know that electoral funding is a hot issue in America, and so it should be.

The Hon. Dr PETER PHELPS: You say you do not recommend to your members who they should vote for. If this bill were to be passed in its current form why would you not simply move to a situation where you write to all your members and say, "We believe you should donate individually to the Labor Party"? What would stop you from doing that?

Mr DERRICK: Nothing stops us from doing that except that it is not the way we go about business. We are a trade union: we do things on a collective basis. We have a democratic rules structure in place and it works very well for the union. The expense and bureaucracy associated with trying to set up an individual donations regime is something that has no attraction to us at all.

The Hon. Dr PETER PHELPS: You say bureaucracy. What is so hard about writing a letter? Presumably you write letters to your members on a regular basis. Why would you not simply say, "We cannot donate to political parties. We recommend you donate \$10 or \$15 or whatever it is to the Labor Party"?

Mr DERRICK: Just as we do not profess to dictate how members should vote in an election, I do not see there is any sense in our proposing that individuals should donate to the Labor Party or anyone else in particular. We have gone through a process which is typical for most unions, that is, we have made a policy decision that has been debated and voted on and is under regular review. We do these things on a collective basis.

The Hon. Dr PETER PHELPS: You say you are unhappy about making a recommendation to your members but you are more than happy to take their membership dues and then hypothecate a certain amount out to the Labor Party for affiliation fees and then another amount out for donations to the Labor Party and then another amount out to campaigns which presumably ostensibly help the Labor Party get elected. It seems to me you are happy to compulsorily extract money from people in your union but you are not prepared to say, "We leave it to you to make your own choice; however, this is our recommendation."

Mr DERRICK: We do not compulsorily extract money from people. Everybody who joins the Finance Sector Union does so on a voluntary basis. Hopefully our engagement in the public debate is there, quite transparent and open for people to make a decision on. People join us in the knowledge that we do this stuff.

The Hon. Dr PETER PHELPS: Are you aware that some people might join your union on the basis that they like collective wage negotiation but might not subscribe necessarily to the views of the Labor Party?

Mr DERRICK: I fully accept that we have members who do not vote Labor and who do not support the Labor Party. We have members who do not support a number of things we do. I have been around for a while doing this sort of work with and for our members. I remember a very vigorous debate when we took a policy position against smoking in the workplace, which was very unpopular with a large group of members and a number of them voted with their feet. They were so offended by the fact that we took a policy position opposing smoking in the workplace that they resigned from the union, as was their right. We make these decisions on a collective basis, not because we think a particular decision is necessarily popular on a given day but because we have a strategic view that the union's role and our capacity to achieve our objectives is enhanced by our capacity to engage in the political process in a formal way.

The Hon. Dr PETER PHELPS: Are you aware that trade unions in the United Kingdom can only donate money for campaigning if they specifically request individual members to allocate a certain amount of money that goes into a political campaigning fund?

Mr DERRICK: No.

The Hon. Dr PETER PHELPS: How would it affect the Finance Sector Union if such a situation were to be introduced in Australia that would mimic the situation put in place by the Labour Government in the United Kingdom whereby unions could only donate based on individual donations to that political fund?

Mr DERRICK: I do not know how it would affect us. I know it would put a particularly onerous burden on us to have to go through a process of setting up infrastructure, education, campaigning et cetera and we would get varying results from varying people at different times. Our view is that our engagement in the political process through our affiliation with the Labor Party is not particularly different from our engagement in a number of other policy areas where we make decisions on behalf of the collective—like smoking in the workplace.

The Hon. Dr PETER PHELPS: I take it from your previous answers that it is your view that the majority of your members would presumably find no utility whatsoever in donating money voluntarily to the Labor Party?

Mr DERRICK: I do not know.

The Hon. Dr PETER PHELPS: Have you ever asked them?

Mr DERRICK: No.

The Hon. Dr PETER PHELPS: Do you think it would be an idea to ask them?

Mr DERRICK: No.

The Hon. Dr PETER PHELPS: Are you on the administration committee of the Labor Party in New South Wales?

Mr DERRICK: Yes.

The Hon. Dr PETER PHELPS: Do they ever discuss elections?

Mr DERRICK: Yes.

The Hon. Dr PETER PHELPS: Do they discuss funding, advertising and campaigning in elections? I realise that administration committees are by nature quite secretive but I am sure by generalised answers—and Amanda can always ask me to stop when I get too close to disclosure of confidential information—that presumably you discuss things like funding of campaigns, advertising and those sorts of things?

Mr DERRICK: The administration committee receives financial reports and that includes the budgets for campaigns and the like, yes.

The Hon. Dr PETER PHELPS: So you would be aware of any possibility to dovetail a union campaign that was nominally not directed at the Labor Party but certainly was within the same sort of themes the Labor Party might be running its own campaign on?

Mr DERRICK: I am sorry?

The Hon. Dr PETER PHELPS: If the Labor Party were running a campaign on a particular issue the administration committee would be aware of it and it would be certainly possible for you to recommend to your union that a complementary, if not an identical campaign, should also be run at that time?

The Hon. STEVE WHAN: Have you got any corporate donations from donors on the Liberal Party administration committee?

The Hon. Dr PETER PHELPS: You had your turn, Steve.

Mr DERRICK: With respect, I think you are making certain assumptions about what I get told as a member of the administration committee.

The Hon. Dr PETER PHELPS: I take it you are not in Amanda's faction then?

Mr DERRICK: Factions?

The Hon. AMANDA FAZIO: What are you talking about?

CHAIR: Mr Derrick, thank you both for your submission and for appearing before the Committee today. You have undertaken to take a question on notice. The Committee has resolved that answers to questions taken on notice are to be returned by Monday 30 January 2012.

Mr DERRICK: That is my first day back. Is that by close of business on Monday 30 January?

CHAIR: I am sure we make it that in your case.

(The witness withdrew)

JOHN SAXON TINGLE, Vice Chairman, Shooters and Fishers Party, sworn and examined:

CHAIR: Welcome to the inquiry on the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2022. Are you conversant with the terms of reference of this inquiry?

The Hon. JOHN TINGLE: As much as I have been able to look at, study and understand them, yes.

CHAIR: If at any stage during questioning there is certain evidence you wish to give or certain documents you wish to tender to the Committee and you feel that that evidence or those documents should be heard or seen only by the Committee would you please indicate that fact and the Committee will consider your request. Would you like to start by making a short opening statement? If so, please keep it to five minutes. I remind you that the Committee has read the written submission received from the Shooters and Fishers Party so I ask you not to repeat that information in your opening statement.

The Hon. JOHN TINGLE: Thank you. Good afternoon, ladies and gentlemen. I am here to speak for the party which I founded and of which I am still Vice Chairman, the Shooters and Fishers Party. I want to also base a lot of what I have to say on more than half a century of political journalism and more than a quarter of a century of current affairs, talkback radio and television programs, which I believe has given me a reasonably clear idea of the attitudes and ideas of many ordinary Australians. In addition I rely on something like 11 years as a member of this Parliament. I believe that the proposed bill opens a can of worms and I cannot resist the feeling that this can of worms has been opened because in politics in New South Wales and other parts of Australia the political worm—that is, the minor parties, the Independents, the newcomers, the interlopers and brash upstarts—has turned and the major parties are beginning to feel the strain.

As we consider what the Government is proposing I believe we should also see the whole process as a series of forks in the road to democratic election of governments. It is a process of alternatives: either you have external funding of election campaigns of political parties or you do not. If you do have external political funding you may feel you have to decide what sorts of external funding will be allowed. Do you allow anyone to donate to political parties or just some people? Do you allow just individual people or do you allow groups of people who have formed into common-interest associations of various types to donate to political parties which support their interests? Whatever sort of source you allow for donations you still have to decide whether you want to dictate maximum amounts that can be donated or whether you leave it open. Then, when you have worked all that out, you probably want to figure out a way to stop donations being used to buy political favours—what we commonly call corruption. So there is the lid off the can with all the worms wriggling around inside it.

CHAIR: I interrupt you for a moment. Hansard is recording your evidence. You might recall the remarkable people that they are. Will you give your statement a little more slowly?

The Hon. JOHN TINGLE: I have a copy of this if it becomes necessary afterwards. I am trying to get it done in five minutes. I am hurrying because I timed it at eight minutes.

CHAIR: I would prefer you to take the extra three minutes rather than cause a repetitive strain injury.

The Hon. JOHN TINGLE: The current Government has come up with a bill to ostensibly keep all those worms from escaping the can. The bill has been touted by the Government and by the Premier as designed to "rid this State of the risk, reality and perception of corruption and undue influence". Obviously, that is a highly desirable and laudable aim but I would suggest that the big question is whether this bill actually has the capacity to achieve that end and whether, in fact, it is more likely to succeed in that intention than do the very stringent reporting and disclosure provisions already in place. I would suggest—for reasons I will mention in a moment—that this bill does not have that capacity and that it is little more than an attempt to concentrate political power in a manner which is advantageous to the parties currently in power.

Proposing that political donations should be lawful only if made by an individual who is on an electoral roll is disingenuous to say the very least. I believe this alone is one of the major flaws in this legislation and shows a lack of understanding of the average man and woman in the street Australian voter, which I find quite disturbing. All those years of listening on my radio programs to people expressing their disinterest, or even their outright contempt, for the political process and politicians in general has convinced me that the average Australian voter is hardly likely to rush off, cheque in hand, to offer individual donations of any amount to any

politician or political party if this proposal should become law. On the contrary, they already resent what they see as the overpayment of their elected representatives and what they are told is a huge range of perks those representatives have showered upon them that are not available to those men and women in the street.

Sure, the minority of Australians who are active members of political parties and who are involved through that in the political process might well put their hands in their pockets, but the individuals who would reach for their chequebooks are the people with something to gain by having a particular party of whatever flavour in power. By definition those individuals would be people to whom power is important and, I would suggest, who also have the power and the resources to fund electoral campaigns either directly or by third-party involvement. Caps and limitations and aggregation controls would not curtail the activities of those people. There are ways and means around most laws if you have the money, the power and the will.

If this proposal becomes law it will pave the way for elitist government by the few. I believe it would be a mockery of democracy. There is an old and cynical saying, "We get the government we deserve. What on earth could we have done to deserve this lot?" With this law there could well be an answer to that question and that answer would be, "Well, we bought it." This sort of legislation is really talking about the size represented by numbers of individuals and certainly does not achieve the sort of level playing field that a true democracy would be expected to offer to any of its citizens trying to achieve political office. It is talking about resources. Even a superficial glance at the political playing field would show that the smaller parties do not have the resources of the big parties and must be electorally disadvantaged by a limit being placed on the resources available to them from which electoral funding can come.

To compound the problem, placing a cap—a limit—on the amount which an individual or a community interest group can expend in support of a favoured political candidate or party similarly works against the smaller parties and may well raise constitutional issues. Who knows? I am not a constitutional lawyer. Then aggregating all expenditure whether made directly by a party from its own resources, including donations, or made in their own right by supporting interest groups in favour of that party is once again placing severe limitations on parties that represent large numbers of other groups. Those parties range from the Labor Party with its union affiliations to smaller parties such as my own Shooters and Fishers Party, which depends on the financial support of the manifold organisations it represents in the legitimate shooting, fishing, four-wheel driving and other outdoor pastimes.

In large part our support comes from hundreds of small clubs and associations, incorporated and unincorporated, and we believe that they should be allowed to aggregate contributions from their individual members and then make those donations to a party or apply them in third-party support activities, with each club or association having the status of an individual in the manner proposed by this legislation, if this legislation becomes law. Another important consideration, quite apart from the possibility of this legislation being struck down by a High Court challenge is, as I mentioned before, that if you are big enough, powerful enough, and sufficiently determined to hold on to power at all costs then you will ultimately be able to find a way around any law such as this in a manner which those with much less power and limited resources will never be able to do and that can lead to government of even more tightly vested interest.

I believe that far from empowering the individual and inhibiting corruption this legislation has the potential to become in effect a garrotte on genuine democratic suffrage. The outcry about this unfair and discriminatory legislation comes from a wide spectrum of our community. The questions and unease about it voiced by those with an expert appreciation of the law and the Constitution must surely make us uneasy about the motives behind this bill. From my party's point of view this is a piece of cynical, politically opportunistic legislation aimed at insulating at least one major party against the rising tide of minor parties and Independents whose increasing numbers in Australian parliaments must surely indicate that the major parties need to look to their laurels. Simply trying to nobble the smaller parties just underlines their effectiveness and growing appeal to the Australian voter.

Honourable members, the Shooters and Fishers Party will not support this legislation. I commend the recommendation in the submission made by my party for your urgent consideration. The Shooters and Fishers Party sees the proposed legislation as nothing more than a devious, discriminatory and deliberate attempt at a new and highly undesirable form of political gerrymander.

The Hon. STEVE WHAN: Could you outline for us what impact this legislation, if passed, would have on the Shooters and Fishers Party and your finances and ability to continue in the long term?

The Hon. JOHN TINGLE: It would have enormous effect because we depend on contributions from associations, clubs which operate as third-party supporters, and direct contributors and donors to our party funds. If this legislation comes in in the form proposed in this bill then most of those organisations will be blocked from providing us with the sort of funds which have been necessary in the last few elections particularly for us to compete. I started this party in 1992 and we contested the election in 1995 with a total budget of \$27,000. I was elected on that much—to my own surprise. These days the demand for television, radio and newspaper advertising is so great that a small party needs a disproportionate amount of money in terms of its size relative to a big party to be able to compete successfully. If this legislation comes in with a limitation to individual donations, the caps and the aggregation problems, in the course of perhaps two election cycles we would be deprived of the money available to us to compete in an election.

The Hon. STEVE WHAN: What sort of proportions of income do you get from the organisations you are talking about—the Sporting Shooters Association of Australia [SSAA] and shooting clubs around New South Wales—as compared to individual member contributions?

The Hon. JOHN TINGLE: I would have to guess because I am not a financial person and do not handle party finances. I would say 80 to 90 per cent. Our contribution from membership fees is quite small. We do get contributions from organisations, such as the hunting club organisations, which contribute to us on a fixed per capita basis, but it is only a few dollars. The major part of our finance comes from donations and third-party support from organisations such as the Sporting Shooters Association of Australia, the Hunter District Hunting Club, the Australian Deer Association and various other sporting groups that see us as representing their interests in Parliament and want to make sure we stay there to do it.

The Hon. STEVE WHAN: I refer to the comments you have made on caps and the comments we heard earlier from the Sporting Shooters Association. Does your party have difficulties with the current caps? Is my understanding correct that you believe they are too small at the moment?

The Hon. JOHN TINGLE: We do. We believe the caps are unrealistic in terms of today's financial situation, the incomes of individuals and the funds available to groups such as the ones who support us. We believe they should be higher. I am not prepared to put a figure on it because I am not a financial wizard; I am a journalist. I cannot even add up my cheque butts.

The Hon. STEVE WHAN: We have had some comments about the equity of these measures in the proposed bill and also some comments from the SSAA about the average income or the income levels of members of their organisation. Do you feel that these measures would be taking away a right or equity from people who are not able to make large political donations?

The Hon. JOHN TINGLE: Yes. That is what I was trying to say in the comments I made this morning. The way it is structured plays into the hands of people with power and money in a way that the average working Australian, average voter, would not be able to compete financially.

The Hon. STEVE WHAN: I got the impression from your opening comments that you feel the legislation is aimed at minor parties. Would you go further and say that you believe that this legislation is aimed at eliminating opposition to the current Government?

The Hon. JOHN TINGLE: Yes, I think I would: I would say that for whichever party brought this in if they were in power. It does reside more power in the government of the day. I think the major parties, and I know you are a member of one of them, are feeling a bit uncomfortable with the growing presence of Independents and minor parties. It was made clear to me while I was in Parliament that both of the big parties would be quite happy if we were not there at all.

The Hon. STEVE WHAN: In terms of amendments to this legislation, have you particular parts of the legislation you would like to see amended or do you believe it should be rejected overall?

The Hon. JOHN TINGLE: I believe it should be rejected overall because I think it is a flawed piece of legislation. The basic idea of having individuals as the only people who can make donations fails to understand the attitude and the way the Australian individual functions. We are not a politically active people. Therefore, while we might be in an organisation and prepared to contribute through that organisation we are not going to rush cheque in hand and give money to a political party; we are not like that.

The Hon. PETER PRIMROSE: Mr Tingle, in earlier discussions we have had a philosophical debate about the issue—I go back to Britain and Mrs Thatcher—that there is no such thing as a society and the only way we can accordingly participate in the electoral process is as individuals making individual decisions. We have also heard that currently particularly people on lower incomes can aggregate together and seek to collectively influence political activities. I was wondering if you could comment from your experience with the community: Is that what Australians tend to do?

The Hon. JOHN TINGLE: I think it is the only way they can actually exercise effective influence on the political process or any other thing in society because if they cannot aggregate they do not have effect: they are individuals and not of a size to be influential. The individual has a great deal of difficulty making himself or herself heard in Australian society—and many other societies. I see no reason why people should not be able to come together in a common cause. We do it all the time. Whether it is a trade union, friendly society, Probus club or Rotary club—both of which I have been a member of—they are there, I believe, in a common cause and obviously would want that common cause advanced. I think that is an essential element of democracy.

The Hon. AMANDA FAZIO: If donations are capped to individuals, as proposed in this legislation, what impact would that have on the operation of the Shooters and Fishers Party?

The Hon. JOHN TINGLE: It would have quite a severe impact. At present we depend on the organisations and clubs which are contributing to us and probably constitute something like 80 per cent of our income or revenue stream. I am guessing the percentage when I suggest that figure. If they were capped, if they were limited, if aggregation became an impossible thing, then a club—let us call it the Bandywallop shooting club—could not say we believe that the Shooters and Fishers Party is in Parliament supporting our interests and defending our right to pursue our pastime, so each of our 50 members will donate \$1 in order for us to donate \$50 to the Shooters and Fishers Party. That scenario is obviously hypothetical. But the point is that the caps that are put on are unrealistic in terms of the Bandywallop shooting club. No-one has the money that the cap calls for so it does not matter. Unless that club can gather the members' money and make that donation in the status of an individual, and not as a group of people, then this legislation would affect it enormously because it would limit the number of people who contribute. That is the way I read it.

The Hon. AMANDA FAZIO: Do you believe that the requirement that individuals who donate have to complete electoral funding returns themselves and keep track of that would work against members of the Shooters and Fishers Party donating as individuals?

The Hon. JOHN TINGLE: It would probably work against individual members of any party donating because people do not like filling in forms. They do not like putting their name to things and I think it is an unnecessary stricture on people's democratic right to choose whom they support politically. It is an unnecessary stricture on what help they will give a party externally as a third-party issue. I do not think it is necessary and it does not achieve anything.

The Hon. AMANDA FAZIO: How many members does the Shooters and Fishers Party now have?

The Hon. JOHN TINGLE: I do not know. I am not ducking the question; I do not know. I am the vice chairman and founder of the party but I do not have much to do with the day-to-day running of the party. Ask the gentleman to your right: he may be able to tell you.

The Hon. ROBERT BORSAK: I am not saying anything.

The Hon. AMANDA FAZIO: I want to turn to some of the recommendations that were included in the Shooters and Fishers Party submission. One of them is that you are advocating that there be a removal of the distinction between administrative and electoral moneys from expenditure and funding. Why do you think that is important?

The Hon. JOHN TINGLE: We do not think the division between those two things achieves anything. In other words, put broadly, you can find yourself out of money in one and overflowing with cash in the other. It is an artificial division and there should be, I hate to use the word again, an aggregation of those funds so they are available to the party or members to use as they see fit. Does that make sense?

The Hon. AMANDA FAZIO: Yes, so you can use the money.

The Hon. JOHN TINGLE: Whatever it is most useful for.

CHAIR: Mr Tingle, can I take you to the third paragraph of the Fishers and Shooters Party submission? It starts, "The Fishers and Shooters Party remind the Chair that there are already rigorous means to guard against undue influence and to ensure transparency to the political process." It goes on to say, "Details of the donations are publicly available on the Election Funding Authority's website where they may be scrutinised in detail. If anyone has any concerns these may be raised with the Election Funding Authority or the Independent Commission Against Corruption." You would be familiar with section 8 of the Independent Commission Against Corruption Act?

The Hon. JOHN TINGLE: Not like the back of my hand but I know roughly what it is about.

CHAIR: You understand there is a definition of "corruption" in the Independent Commission Against Corruption Act?

The Hon. JOHN TINGLE: Yes.

CHAIR: You would be aware there are formal restrictions on what parties can do in the Election Funding, Expenditure and Disclosures Act. Is your party saying that they are the only matters which are reportable to the Independent Commission Against Corruption [ICAC] and on which the ICAC could act? They are the only things we should be concerned about?

The Hon. JOHN TINGLE: No. We are not saying that at all. We are using that as an example of what can be reported. We are not saying that is all that can be reported.

CHAIR: Anything which is within the laws of New South Wales and currently lawful under the Acts and regulations of Parliament is all we need to worry about?

The Hon. JOHN TINGLE: I am not quite sure I understand the question. I am not sure what you are asking me.

CHAIR: I am having an obscure day. Mr Tingle, what I am asking is: You seem to say in that section of your submission that a high level of rigorous disclosure is all that is needed.

The Hon. JOHN TINGLE: We think it is. We think that the tools and safeguards are there to make the process as transparent as it can be made.

CHAIR: You go on at recommendation 4 to say that a ban on donations from developers and tobacco companies should be introduced. It is already there, as it turns out. You are saying that does need to be there. On the one hand you are saying all we need is good quality disclosure and then you say we need to pick on these two industries—developers and tobacco. Why those two industries and why does disclosure work for all other industries such as gambling, alcohol and prostitution, but it does not work for tobacco and for developers?

Mr TINGLE: Because those are, I suppose, two fairly well recognised areas where corruption is likely to happen and has been known to happen in the past and in fact, if I remember correctly, has been the subject of some ICAC investigations. Maybe we should extend it to those other groups that you said. But these are two which are so obvious and so common—

CHAIR: Where is corruption in tobacco? I am on the public record as being no friend of the tobacco industry and I in fact moved a ban on tobacco donations.

Mr TINGLE: We share a point of view.

CHAIR: I think most people do. Where is the corruption in tobacco? It was not because of corruption in the tobacco industry, it was because of undue influence. At that stage it was legal—the Liberal Party took a large amount of money from the tobacco industry—

The Hon. AMANDA FAZIO: And continues to do so.

CHAIR: It does not; we banned them. Nobody was alleging corruption, nobody was alleging any law of the land or regulation—

The Hon. ROBERT BORSAK: You are alleging a corruption of the process by giving too much money.

The Hon. AMANDA FAZIO: Point of order: My point of order is relevance. I do not see that this question is related to the terms of reference.

CHAIR: I will take a different line. Would you explain why you singled out developers and tobacco and not alcohol and not others in recommendation 4?

The Hon. JOHN TINGLE: For a start, and this may be misunderstood when I say you and I share a common view on tobacco, because I consider it is a major health risk and I am still concerned about why the tobacco industry still gets government subsidies and why the tobacco industry is still seen as respectable and is still not seen, as I believe it to be, as a major health risk in this community of ours. Therefore, while I did not personally frame that particular recommendation I support it because I think that those two groups—the developers and tobacco, but you want to concentrate on tobacco I think—really should not have too close an ear to government and therefore if they are producing donations, contributions, whatever you want to call them, obviously those things are only ever done to get influence and the ear of government.

CHAIR: That is exactly my point. But do you not think that is true of a whole range of other industries—the defence industry, the prostitution industry and a whole range of industries that various people have various objections to?

The Hon. JOHN TINGLE: I have been involved in personally trying to suppress some of those other organisations you mention. Perhaps the real answer to this is that maybe we should also be seeking to bring some sort of curbs and controls on them as well. Maybe we have not gone far enough with the developers and the tobacco industry.

The Hon. ROBERT BORSAK: I will take on notice your suggestion that perhaps we should add a few others in there. We might add a few Greens organisations. Just going to your discussion in relation to the artificial barrier between electoral moneys and administrative moneys and the need to throw money from one account to the other, et cetera, what is your view on this artificial division as it relates to members of our party and why they pay membership fees, given that they are currently paying \$30 a year—a massive amount of money?

The Hon. JOHN TINGLE: We are not an expensive party. I am not quite sure what is the correct way to answer that because I am not quite sure what you are asking me.

The Hon. ROBERT BORSAK: What I am asking you is: Do you believe that the members of the Shooters and Fishers Party pay their membership fee to be spent on administrative and bureaucratic overheads or is that money being paid by the members being contributed to be used for their advocacy processes by the party?

The Hon. JOHN TINGLE: Both, I think.

The Hon. ROBERT BORSAK: Which do you think is more important to the average member of the Shooters and Fishers Party?

The Hon. JOHN TINGLE: What is more important to the average member of the Shooters and Fishers Party is supporting our parliamentary and electoral performance. They like to be members of the party but I think if I asked them, "How much of the \$30 would you like to see spent on supporting your sport, your pastime, politically?" they would probably say \$29.

The Hon. ROBERT BORSAK: I think that is the answer I was looking for, thank you. This probably gets down to the primary part of the discussion in relation to what we have been talking about here this morning, and not necessarily talking about the trigger of why you set the party up: Why do you feel the party came into existence in the first place?

The Hon. JOHN TINGLE: The party came into existence because we felt that there was a very large group of legitimate people in this community pursuing a perfectly legitimate pastime who were being unfairly singled out and targeted by the government of that particular day—and this was before Port Arthur and before the Howard gun laws. We felt that we were being unnecessarily restricted and bound about and we were warned that more laws were coming into place which would make our pastime even harder to follow, and because there was a general upsurge of feeling of resentment about it the party came into being as some sort of a bulwark to say that we were not all criminals, we are not all homicidal maniacs. But the only way we could get that message across was by representation in Parliament. So we started it not expecting ever to win a seat, but we seem to have managed to do that. It was a gesture of defiance more than anything else.

The Hon. ROBERT BORSAK: It was a continuing gesture of defiance. One of the recommendations in your submission talks about the reintroduction of the political education fund, and I am not taking you to the point which has been made in previous submissions that we never did get any of that money, but the party is seeking a recommendation for that political education fund to be reintroduced. Why do you think that needs to be done, especially in light of the unnecessarily complicated level of amendments that we are discussing here today?

The Hon. JOHN TINGLE: I think it needs to be done because, first of all, it was available but not available to all parties. If I remember correctly it was not available in the upper House—I have been out of Parliament for five years. If any sort of a grant like that is ever going to be made available surely common sense and democracy says it must be made available universally. We think it was a very important idea because political education really does not exist in Australia. People have said to me in the past that people do not understand how to vote and whenever an election came around and I was doing my radio programs on wherever it was—2UE or 2GB—I would get hundreds of people ringing up saying, "What do we do? Do you have to vote? How do you distribute preferences?" and so on. Somebody else said to me once, "What we need to do is educate people", and then somebody else said, "Yes, but who would you trust to do the educating?"

I believe that there is a need for the Australian electorate to understand what it does when it goes to a polling place on election day and what can and cannot be done with its vote—and we are talking now about the perception that their vote can be taken and used for a purpose they do not want. Those sorts of things are common. It needs to be sorted out, and therefore I think that it should be done through the parties and therefore I think it should be reinstated.

The Hon. ROBERT BORSAK: Do you think—to be a bit cynical about it—it is in the interests of certain parties to maintain that ignorance by not having this sort of fund?

The Hon. JOHN TINGLE: There is a saying journalists have, which is: Don't spoil a good story with the facts.

The Hon. ROBERT BORSAK: We wear that every day around here.

The Hon. JOHN TINGLE: I am not making a distinction between political sides in this; I think the temptation for any political party which is in power is obviously to try to preserve that power, and very often public and other ignorance serves that end very well.

The Hon. Dr PETER PHELPS: You said there is disinterest and resentment amongst the Australian public about politics. Would not requiring parties to make a more active effort to reach out to individual members help to counteract that?

The Hon. JOHN TINGLE: No, I do not think so because I think it comes from a much deeper root than that. I think a lot of it has to do with the Australian convict mindset, which has been well and truly documented very often. What I found was that people were saying that politicians are a special and cosseted group of people who are not entitled to be cosseted the way they are. I have to say that very often there is a completely inaccurate version or idea of the perks and lurks that politicians get. There is a very poor understanding of the amount of work they have to do, and I think all those things create this attitude that ordinary people resent politicians. I do not think that anything we can do legislatively is going to change that.

The Hon. Dr PETER PHELPS: But if parties were compelled by circumstances to make a greater effort to go out and reach out to individuals why would that be a bad thing?

The Hon. JOHN TINGLE: I did not say it would be a bad thing; I just do not think it would necessarily be a successful thing because people do not trust politicians and political parties. Before parties can go out and reach out to people they have first got to make people trust them.

The Hon. Dr PETER PHELPS: It is a chicken and egg situation, surely?

The Hon. JOHN TINGLE: Of course it is, exactly.

The Hon. Dr PETER PHELPS: Basically the view of the Shooters and Fishers Party is that it should be a laissez-faire approach, and that is that there should be less regulation than there is at present in relation to donations?

The Hon. JOHN TINGLE: We thought the pre-existing system seemed to be working fairly successfully and it was the old thing of if it ain't broke don't fix it.

The Hon. Dr PETER PHELPS: Say in a future government the Labor Party was returned to office—

The Hon. STEVE WHAN: When?

The Hon. Dr PETER PHELPS: I do not know—2047, 2051, somewhere around that time. You accepted the principle that there are certain industries which should be banned from donating—

The Hon. JOHN TINGLE: From donation yes.

The Hon. Dr PETER PHELPS: What would happen if, for example, the gun control lobbyists decided to exert influence to try to get donations from firearms manufacturers, ammunition manufacturers, importers? What if they pressured the Government to say firearms represent a public health risk—the usual sort of stuff that they go on with—and therefore because they are a public health risk they should be banned from donating?

The Hon. JOHN TINGLE: You are saying people in the firearms industry should be banned from donating? Is that what you are saying?

The Hon. Dr PETER PHELPS: Yes.

The Hon. JOHN TINGLE: I do not know that they donate at the minute. Whether they need to be banned from donating is the question. I do not think that makes any sense, with great respect.

The Hon. Dr PETER PHELPS: So you do not believe that by agreeing to the principle that certain industries should be banned it opens up a potential attack on other industries which some people might consider to be public health risks?

The Hon. JOHN TINGLE: Some people might consider them to be public health risks but I think they would have to be a demonstrated public health risk, as the tobacco industry is, before you could validate that idea.

The Hon. Dr PETER PHELPS: You say that people do not like putting their names to things. Is that not an argument for the abolition of any disclosure requirements whatsoever?

The Hon. JOHN TINGLE: No, I am talking about individuals who do not necessarily want to be known as having made donations to things: the number of people who prefer to donate anonymously; the number of people who do not want someone knocking on their door saying, "You donated to this, now give us some money". What I was trying to suggest was that people do not necessarily like to be noticed. I am talking about ordinary individuals, not politicians.

The Hon. Dr PETER PHELPS: If you follow that argument to its logical extension then people should not have to declare any amount that they donate to any political party. That is a valid position to take if you want to take it but I want to make it clear on the record that that is your position.

The Hon. JOHN TINGLE: No, it is not my position that people should not be required to donate anything. What I am saying is that people might be happier. I think what you are referring to is my comment that a club should be able to get its members to contribute to the club and to provide external financing as an individual—they do not have to name all the people who put their dollar in at the Bandywallop shooting club.

The Hon. Dr PETER PHELPS: So, on that principle, say 10 industrialists get together and each decides to donate \$1 million to the free enterprise foundation. Should the free enterprise foundation then be able to donate \$10 million without declaring the sources of their donations?

The Hon. JOHN TINGLE: By sources of donations you are talking about industrialists and people of that sort, are you?

The Hon. Dr PETER PHELPS: Ordinary Australians who have a spare \$1 million hanging around.

The Hon. JOHN TINGLE: I think you can draw a distinction between a man and woman in the street putting in 10 bucks to support, say, the Shooters Party and a major organisation putting in several hundred thousand dollars to support a political party. There is a difference.

The Hon. Dr PETER PHELPS: I have no problem with them putting in \$10 but why would not the Shooters Party accept that it is up to individuals to donate to their organisation at levels which in that instance would be below the disclosure threshold? Why would you not accept that as a valid—

The Hon. JOHN TINGLE: "It is up to individuals to donate"—they were the words you used?

The Hon. Dr PETER PHELPS: That is right, yes.

The Hon. JOHN TINGLE: "Up to" suggests some sort of compulsion or mandate.

The Hon. Dr PETER PHELPS: I am not suggesting that. You are suggesting—

The Hon. JOHN TINGLE: No, I am not.

The Hon. Dr PETER PHELPS: —that they have a right to collectivise.

The Hon. JOHN TINGLE: We are talking about scale—a \$1 donation as against a \$1 million donation. A \$1 donation multiplied many times through clubs and associations is not the same as a \$1 million donation from one particular group.

The Hon. Dr PETER PHELPS: That is exactly right. That is the model we are working towards; that is, where individual democracy is returned to the political process in this State rather than having large donations from—

The Hon. STEVE WHAN: I am not sure that we need the Hon. Dr Peter Phelps' opinion.

The Hon. JOHN TINGLE: I do not agree that this is returning power to the individual because it limits the power that it says it is providing in terms of the cap.

The Hon. Dr PETER PHELPS: You said that these changes are cynical, devious and discriminatory.

The Hon. JOHN TINGLE: Yes.

The Hon. Dr PETER PHELPS: When caps were placed on third-party donation expenditure in Canada, was that cynical, devious and discriminatory?

The Hon. JOHN TINGLE: I have no idea. I have never been to Canada and I do not know. I cannot say whether it was or was not.

The Hon. Dr PETER PHELPS: When caps were placed on third-party donations and expenditure in the United Kingdom, was that also cynical, devious and discriminatory?

The Hon. JOHN TINGLE: It could well have been.

The Hon. Dr PETER PHELPS: When New Zealand imposed caps on third-party donations to political parties and campaigning, was that also cynical, devious and discriminatory?

The Hon. JOHN TINGLE: It could well have been, but I have no personal knowledge of it so I cannot say.

The Hon. Dr PETER PHELPS: When the United States put caps on donations to political parties and limited caps on third-party expenditure, was that also cynical, devious and discriminatory?

The Hon. JOHN TINGLE: In the United States, probably.

The Hon. Dr PETER PHELPS: So everyone is marching out of step except us?

The Hon. JOHN TINGLE: Yes.

The Hon. JENNIFER GARDINER: You said, "If it ain't broke, don't fix it." Are you saying that the 2010 Act should not be amended?

The Hon. JOHN TINGLE: No. The 2010 Act has been made worse.

The Hon. JENNIFER GARDINER: Is that because of the administrative complexity?

The Hon. JOHN TINGLE: Yes, and for the reasons I stated in my opening comments. It has become complicated. You and I have sat through many of these debates and we know that the more complicated legislation is made the harder it is to enforce accurately. We both know that. Every person in this room knows that when you make it complicated it is much harder to keep track of it and to ensure that it works and works fairly.

The Hon. JENNIFER GARDINER: The Shooters and Fishers Party gets \$160,000 from the administration fund.

The Hon. JOHN TINGLE: Yes, it gets \$80,000 twice.

The Hon. JENNIFER GARDINER: You are proposing that the political education fund be reinstated. What would you do with the administration fund?

The Hon. JOHN TINGLE: The administration fund is a rather different thing and it is there for a different purpose. I see that staying put and the political education fund standing alongside it.

The Hon. JENNIFER GARDINER: Could not some of the administration fund be allocated to political education from a party point of view?

The Hon. JOHN TINGLE: It could be, but I do not know. As I said, I am not intimately connected with the way that the party runs its finances. I am retired and I am at a distance. I see no reason that the two things cannot be run side by side. If the administration fund were merged it could become a pool. However, spending levels would have to be set for each of the pools—and certainly for the political education fund.

The Hon. JENNIFER GARDINER: Do you agree that in going back to previous iterations of the legislation the reason the Parliament advanced under the former Government, under various Premiers and now under the new Premier is that it goes to the fundamental question of actual or perceived corruption—

The Hon. JOHN TINGLE: Yes.

The Hon. JENNIFER GARDINER:—and that this bill is another iteration of that in trying to make the political playing field level in New South Wales? Whilst that may be a complex process, nevertheless, it is a good objective and the previous iterations of the legislation meant that New South Wales politics was perceived as being—

The Hon. JOHN TINGLE: Corrupt.

The Hon. JENNIFER GARDINER: —pretty filthy?

The Hon. JOHN TINGLE: Yes. If I believed and was convinced that this legislation will achieve what it is said it will achieve I would agree absolutely with what you say. However, I do not because it is so complex and many of the limitations are artificial and would be very hard to enforce. I do not think it is an improvement on what we have. Instead of introducing this legislation the Parliament should have given the Electoral Commissioner greater powers and more staff and resources to adequately police and enforce disclosure and to undertake investigations. That has not been done. We are dealing with the effect, not with the cause.

The Hon. Dr PETER PHELPS: Given that this bill will ultimately result in the Act looking very comparable to the Canadian legislation, and Canada appears to have no problems administering its legislation, are you saying that Australians are more stupid than Canadians?

The Hon. JOHN TINGLE: I am saying that what happens in Canada does not necessarily have any relationship to what happens in Australia, or at least I hope it does not.

CHAIR: Thank you for appearing before the Committee today and for your candid evidence and opinions.

(The witness withdrew)

(Luncheon adjournment)

DAVID BAYNTON AVERY, Honorary Secretary, Hunter District Hunting Club Incorporated, affirmed and examined:

CHAIR: I welcome our next witness, Mr David Avery. Are you conversant with the terms of reference for this inquiry?

Mr AVERY: I have read the terms of reference, yes.

CHAIR: If at any stage during the giving of your evidence you should consider that evidence or documents you may wish to tender should be heard or seen only by the Committee for reasons of confidence or whatever, could you please indicate that fact and the Committee will consider your request?

Mr AVERY: Yes.

CHAIR: Would you like to begin by making a short opening statement? I point out that we have read your submission and thank you for it. There really is no need to repeat that evidence. We probably will get more out of questioning you than spending a lot of time on that.

Mr AVERY: If you are all familiar with what we have written, I am happy to move to questions.

CHAIR: I appreciate that and now ask the Labor Party to ask questions.

The Hon. STEVE WHAN: Thank you for taking the time to attend today. As the Chair said, we have read your submission. Would you like to outline for the Committee why the Hunter District Hunting Club felt it was so important to make a submission to this inquiry? What impact do you feel the proposed legislation will have on your ability to represent your members?

Mr AVERY: I guess from the perspective of firearm owners and hunters and collectors the last decades have been something of a fraught process for all of us. We have seen a succession of legislation implemented that, to our view and to the view of our members, was based on issues rather than a common sense approach. It was media driven in lots of ways. It was prejudicial to what our members feel were their rights to carry on their normal business. Over the years the Hunter club itself came about because of legislation. The shooters of our particular area found themselves needing to organise. I do not know if you know much about shooters—you probably do not—but they are a very individualist group of people and they find it very difficult to organise anything. So during a long period of time we have organised ourselves into hunting clubs to meet legislative requirements. Following on from that, the purpose of the club is to manage the sport and the activities of its members, but also to protect the interests of those members to actually be able to carry out their sport and activities. More and more it became obvious that the major political parties had something of a deaf ear.

In my part of the world that was not necessarily the case, but in other parts of the world it was. We are a very strong Labor Party area and have been for a long time. In fact, our ex members were patrons of the various shooting clubs. But it was not enough. They were being rolled in caucus and they were being rolled on the floor. It became necessary for us to actually invest time and effort in the then Shooters Party in our own representation. We are not alone. Going beyond that, issues-driven politics affects a large number of people. What seems at first to be relatively straight forward—"Let's stop people shooting. Okay, that's number one. Let's stop people fishing. That's number two"—each loop of this has created a deal of resentment. I heard the word "resentment" used I think by Mr Phelps. It has created a group of people who are dissatisfied with the way they have been portrayed, firstly, and they do not believe they have been portrayed honestly or accurately. So they move into groups to find out how best they can support their position and redress the balance. From our perspective as a club looking after our members that interest is in having members in Parliament, and that is what a Parliament is for.

The Hon. STEVE WHAN: So you were formed originally mostly as a lobby organisation or representative organisation rather than as a sporting club?

Mr AVERY: No. We are not a lobby organisation in any way, shape or form. In fact, our members would find that somewhat odd. The organisation itself exists to promote its own club activities. It is a sporting club. The membership comes from all parts of the political spectrum. We would have many members who are

members of major parties. However, in protecting their rights they have joined this club and their expectation is that the club will act to protect their rights to shoot.

The Hon. STEVE WHAN: What political and campaign activity do you engage in? Do you give donations directly to parties such as the Shooters and Fishers Party? If so, what type of donations are they?

Mr AVERY: Individual members may work for various parties. That has happened. We do not as a club officially say we are going to work for this or that party. That does not happen. We have given money to the Shooters and Fishers Party.

The Hon. STEVE WHAN: Do you conduct campaigns as well or do you simply seek to lobby where that is appropriate?

Mr AVERY: We lobby where appropriate. We do not conduct campaigns. If you own a firearm you are your own campaign. Over the last 10 or 15 years you have had to become your own campaign.

The Hon. STEVE WHAN: What aspects of this bill do you feel will impact on your ability to represent your members?

Mr AVERY: From my reading of it, the bill prevents organisations such as ours from making donations to political parties—plain and simple. I noted in the submission that it is important to recognise what is a Parliament in the first place. Parliament is not the preserve of a people; it is the preserve of groups of people who come together to govern a State and they are in Parliament based on the strength or the proportional strength of their representation. From our point of view, this bill denies a whole range of groups the ability to have their representatives in Parliament. As such, it is a bill that is undemocratic, obviously, at the very base.

The Hon. STEVE WHAN: So you feel it denies your right to be involved or engage in the political process?

Mr AVERY: Absolutely.

The Hon. STEVE WHAN: You are a membership-based organisation so do you also provide your funds towards the Sporting Shooters Association et cetera? Is your group a member of the Sporting Shooters Association?

Mr AVERY: No.

The Hon. STEVE WHAN: Are you independent?

Mr AVERY: It is independent. We are not affiliated with a party. We are not affiliated with anyone else. We are our own organisation.

The Hon. STEVE WHAN: So you would not provide other funds to other campaigns?

Mr AVERY: The only other funds we provide are to the Children's Cancer Centre at Newcastle hospital.

The Hon. STEVE WHAN: I do not think they are proposing to stop you doing that.

Mr AVERY: They are not, no.

The Hon. PETER PRIMROSE: Some people may ask: Why could not individual members of your organisation simply contribute, make a political donation, as an individual as opposed to doing it collectively as a club. Can you comment on that?

Mr AVERY: Yes. It is a really good argument. If you want to draw it to its logical conclusion: why do we have political parties at all? The Afghan Parliament, for instance, has barred political party representation.

The Hon. PETER PRIMROSE: That is one that has not been mentioned yet.

Mr AVERY: It is the case. People work in organisations. I do not want to take up too much time on it, but we do not tend to work best when we work individually. You are talking about the political representation of the State of New South Wales. The State of New South Wales has a community that is probably bigger than almost the entirety of the south Pacific of millions of people. An individual by themselves with their \$1 or \$2 is utterly irrelevant, and people know this. This is why they come together in groups. My group has at least 3,500 ongoing members. The membership has been over 4,000 at various times. The SSA people will probably tell you the memberships spike at different times, depending on what is in the newspaper. So in some ways we are driven by media. The idea that people cannot operate in groups is anathema to me and I think to many other people. It is why political parties exist: individuals do not want to face that battle on their own. They want to organise. That is why trade unions exist. To me it is an impossibility; an individual will never do it.

The Hon. PETER PRIMROSE: If individuals were to make appropriate donations and were the only entity in society able to do so how do you think your members would deal with the paperwork requirements?

Mr AVERY: I do not know. We could probably form a foundation and donate to that. This is about public funding or funding generally for elections. Throughout the last 15 years major organisations have either masked or worked to control that. They have created foundations and done all manner of things to collect funding and then funnel it through. I do not believe that any organisation or group would actually be able or possible to implement an individual donation system. It would all be done by another third party or somebody else set up specifically to do that.

The Hon. PETER PRIMROSE: If the individuals were required themselves to complete paperwork, how do you believe your members would cope as individuals dealing with the paperwork, which, presumably, would be required by the electoral legislation?

Mr AVERY: Most people would not. It would be an imposition that would be beyond most of them. But, assuming that they all did, there is another issue to this. When you create something—I have been a bureaucrat for 30 years—you get this funnel effect. You have a million people completing a piece of paper, which arrives on two desks. I went to a place once and we were filling out returns for something and I asked the guy at the desk what happens with all these pieces of paper he had. He put a ruler up against it and he said, "When they get as high as that I put them in the back room in a box." When you create a blizzard of paper it becomes unable to be dealt with. You cannot do it. I have seen nominations systems in different countries where you had to have 50,000 signatures before you could stand for Parliament and people wheeled them in on trolleys. Of course, in the middle of the pile there is always a ream of paper that was just stuck there to make the pile look bigger because there were no names on it. It becomes unworkable. You are creating rules and complexities that no-one can comply with. Worse than that, you cannot deal with it. Somebody told me years ago that one of the things of law making was to not pass laws that you cannot implement or enforce. You make the law look stupid. When you create laws that require a container load of paper from every small club or organisation around town it is going to collapse.

CHAIR: To paraphrase you, you made the statement that this legislation would deny groups such as yours the right to be involved in the political process. Is it correct to say that in that statement you are equating involvement in a political process with making campaign donations?

Mr AVERY: Making a campaign donation is very much a political process. It is being part of it. Supporting your representatives or the people who will represent you for outcomes for your benefit is the political process.

CHAIR: Yes, but you have reversed my question. Your statement was that by prohibiting your organisation from making campaign donations this legislation would be denying your organisation the right to be involved in the political process. Therefore, is it not correct to say that you are saying that the only form of engagement in a political process is via campaign donations?

Mr AVERY: No, far from it but it is a valid engagement in the political process. There are numerous other ways. We have people who work on booths for different parties. We have all manner of other engagements but as a club itself we do not officially have that engagement.

CHAIR: You could have other engagements. If this legislation were to pass in its current form, is it correct to say that you could have other engagements with the political process? You are not really being denied the right to be engaged in a political process, you are just losing one avenue that you have traditionally used. But

is it not correct to say there are other ways that a club such as yours could engage collectively with the political process?

Mr AVERY: There is always something, I would imagine. To say that that is black and white would not be correct. However, it remains the case that this is our preferred option and it is the best option for clubs such as ours. Anything else is sort of disingenuous in a way and does not help us at all.

CHAIR: Why is it the best option? Is handing over a cheque for \$100,000, I believe it was last year, a superior engagement in the political process than, for example, spending that \$100,000 as would be legal under this legislation on running a campaign in the Hunter raising issues relating to the matters of concern to your members, that is, gun control issues?

Mr AVERY: It is a matter of effective use of money. Most of those other options are not nearly as effective. Do not forget money is the lifeblood of politics or we would not be here. Our representatives need funding to run a campaign.

CHAIR: I think you might have got the exact reason why we are here, because some of us believe that money should not be lifeblood of politics but votes and voters should be. You are saying that for you it is more effective to give \$100,000—I am not picking on any particular political party—

The Hon. ROBERT BORSAK: I suspect you are actually.

CHAIR: No, I am not. The Committee has heard the same line from the Sporting Shooters Association, and I am sure other clubs also feel the same way—

The Hon. ROBERT BORSAK: There are about 400 in the State.

CHAIR: The only effective way to engage with politics is by handing over a cheque to a party that most closely matches your political views?

Mr AVERY: That is correct. We have all been through a long process, as I mentioned before, over decades of dealing with this issue and we have all been to endless meeting and have had advertising and lobby campaigns and ultimately the most effective way for us to represent and protect the rights of our members is to have our own members of Parliament.

CHAIR: Was there ever a time in an election when those of you that hold the views of the Shooters and Fishers Party and the Hunter District Hunting Club Inc. that you spent, not in association, what was then the Shooters Party now the Shooters and Fishers Party on campaigning?

Mr AVERY: We have never spent that sort of money.

CHAIR: You have made an assertion that the most effective way to spend the \$400,000, which is what you and the Sporting Shooters Association spent in the last election—I am talking generally and collectively—

Mr AVERY: I can only speak about the hunting club.

CHAIR: Sure, but as there has never been a \$400,000 campaign run through an election that was not associated with the Shooters or the Shooters and Fishers, how do you know it is more effective to hand over a cheque than to run that kind of campaign and what is called a third-party campaigner?

Mr AVERY: That is our belief. At the end of the day it is our club's and the club's committees' role to decide what is the best way to do it. We believe supporting the Shooters and Fishers Party is the best way to look after our members.

CHAIR: That is your belief but you do not have evidence to support that belief?

Mr AVERY: We have an enormous amount of evidence over the past 20 years—

The Hon. ROBERT BORSAK: They do have evidence: they got a 40 per cent increase in our vote.

CHAIR: The witness can answer my questions and the Hon. Robert Borsak will have an opportunity to ask questions.

Mr AVERY: From our point of view the evidence is our history of trying all these other things. We have had endless amounts of lobbying.

CHAIR: But you have admitted you have never tried spending \$100,000 together with the Sporting Shooters Association of Australia (New South Wales) Inc. spending \$300,000 on a co-ordinated campaign?

Mr AVERY: I believe the Sporting Shooters Association has spent that amount of money, or something like that in previous elections, way back. I remember an enormous campaign undertaken by the Sporting Shooters against the Unsworth Labor Government at the time. It has been done. We are now in a different period.

CHAIR: You talked about issues-driven politics and I am unclear about what you mean. Will you explain what you mean by "issues-driven politics"?

Mr AVERY: There are numerous events but from our point of view probably Port Arthur was the one that stands out immediately for shooters. There are others. There are calls now after all the drive-by shootings in Sydney for something to be done. Legal parties have been responsive to that. There are water issues with the rivers. There are fishing reserves that are being put in place around the country. There are numbers of these things which have led to interactions with groups of people in clubs and all number of things. It has created political parties being responsive to something without necessarily having a principle attached to it. Like drivers licences, shooting is something that needs to be regulated, not obliterated, if you want to call it that. Most people in their rational moments will tell us that they can sit down and work out something constructively that is based on fact and what really does or does not happen.

From the perspective of our members that is something that has not happened. They have been driven by media cyclones, by strident calls for outright prohibitions and the rest of it. Both parties have caved in at various times, from our perspective, on these issues. No-one has as yet devised something that says for all time this is how this should work: go along, get a licence, be accredited, do whatever you need to do and then that is the end of it. Then if some lunatic does something, deal with it on what it is, not on necessarily attacking all and sundry.

The Hon. ROBERT BORSAK: I refer to donations directly by members. Given the demographic of the 4,000 members in that club do you think most could afford or would be prepared to make direct donations to a party?

Mr AVERY: I would suspect not. I suspect many are, in fact, already members of parties. They are certainly members of unions. It is a working class area and they are mostly working class people. I would not expect them to do much beyond what they do now, which is to look to the club to do that for them.

The Hon. ROBERT BORSAK: I have had the privilege of attending a couple of your general meetings. Do you think that the members generally do understand the electoral process? Do they understand what is being proposed in this legislation?

Mr AVERY: Do they understand the election process, to a degree, yes. Do they understand the complexities of public funding, electoral funding and disclosure laws, no; and I doubt there are very many people who do. They understand if you go and vote who they vote for. I mean in my area they know upper House and lower House. They know what they are doing to a point.

The Hon. ROBERT BORSAK: Do you say that a key function of the club is to advocate for its members? What is the mechanism by which the club arrives at a decision to devote money towards a particular party or campaign?

Mr AVERY: We have yearly elections to the committee. The club members make their views known to committee members and then we have a committee meeting and that has to be voted on and whatever is the vote is what happens. It is a very democratic process. If anyone has been involved with a club, I can assure you, no-one is shy about what they want to happen.

The Hon. ROBERT BORSAK: Would the club be prepared to run direct campaigns in the future as a third-party campaigner? I know you have said it has not happened in the past.

Mr AVERY: I suspect not. I think most clubs would retire from that. At the end of the day we are a sporting club, not a political club. A third-party campaign assumes that there are a number of the public willing to do that. As I said, the club itself has numerous people from the whole political spectrum there. Whether they would want to be involved in these sorts of campaigns is, I suspect, not the case. Like most people, we have our representatives to do that for us and that is what we look to.

The Hon. ROBERT BORSAK: You mentioned briefly about how shooters and hunters are portrayed in the media and how perhaps the decision-making from parties in government from time to time has been perhaps to some degree media driven. Have you had direct feedback in relation to that from your members?

Mr AVERY: It is a fairly continuing feedback from our members. They are becoming a little bit, possibly, overdone even. Every time there is a media report of something or somebody writes in the media about something there is always a blow back from our membership. They want to know why, how come, here we go again—it is an attitude.

The Hon. ROBERT BORSAK: Have you had feedback from your members on the recent spate of criminal-related shootings in and around Sydney?

Mr AVERY: Not yet but it will happen.

The Hon. ROBERT BORSAK: And the portrayal by the media and certain positions being taken publicly by certain politicians?

Mr AVERY: No, not yet but I can expect it next week.

The Hon. ROBERT BORSAK: Do you have a meeting next week?

Mr AVERY: No, we come and go. We are in a hiatus at the moment. The range reopens in the first week of February so there will be a backlog of business.

The Hon. ROBERT BORSAK: It seems that the mismatch or the inaccurate portrayal of legitimate legal shooters in the minds of the public, some would argue being done deliberately by the media and perhaps some politicians, is one of the major beefs of shooters in clubs such as yours?

Mr AVERY: They do. There is a great feeling of almost persecution in large numbers of them: the feeling that whenever they are going to be talked to it is going to be a sham process. They are not going to be dealt with either honestly or with integrity. Issues will not be looked at. That is the way they feel.

The Hon. ROBERT BORSAK: They seek to redress this by participating, if you like, through donation, attending on election day at booths, et cetera, as their contribution to the political process to try to lift that burden?

Mr AVERY: That would be a fairly accurate summation. They want to take part but they are only prepared to take part by and large through the clubs, through the groups. Many of them work on booths, but we have 3,500 members. The number who worked on booths would be a fraction of that.

The Hon. ROBERT BORSAK: Do you think, certainly with your club and in your part of the State, that shooters and hunters in your part of the State are more orientating themselves, from a voting point of view, towards their sport now rather than just their old political affiliations?

Mr AVERY: Very much. It goes back a fair way. Cessnock has been a Labor area since the beginning of the State Government in New South Wales. But during the Unsworth era they voted a Labor member out and put in a Liberal member of Parliament. It was on the basis of firearms legislation at that time. My area has one of the highest ownership of firearms around the country. It is what people do in Cessnock. It is the sport they like. When the Shooters Party came along, I think the vote there has been growing year by year.

The Hon. ROBERT BORSAK: I wish it was every year. It is once every four years now.

The Hon. TREVOR KHAN: I am trying to work out how your organisation sits, say, as against the Sporting Shooters Association. You are an entirely separate organisation from the Sporting Shooters Association?

Mr AVERY: Yes.

The Hon. TREVOR KHAN: Do I take it, then, in that respect the process by which one gets a firearms licence in New South Wales is, firstly, you have completed a firearms licence qualification of some sort?

Mr AVERY: Yes.

The Hon. TREVOR KHAN: And there is a further requirement for a licence, and that is that you have to be a member of a shooting club of some sort? Is that an additional requirement for your licence?

Mr AVERY: No. If I recall correctly, you do not have to be a member of a club but it is better if you are part of an organised club because you shoot regularly. Some people who own land have firearms based on the ownership of land or their use for vermin control.

The Hon. TREVOR KHAN: Who undertakes these certificates of competence?

Mr AVERY: It is a two-stage thing. You first have to apply to the Firearms Registry, where they do checks on your criminal background to see if you are or are not a fit person to have a firearm. Then you come to people like me, because I do the accreditation tests, and you have to pass the practical and theoretical examinations to see if you are safe to be let loose.

The Hon. TREVOR KHAN: How you operate in the Hunter Valley as against the Sporting Shooters Association? Do I take it you are two entirely independent organisations running parallel or, in a sense, competitively against each other?

Mr AVERY: Yes. The Hunter District Hunting Club is relatively new. It was formed as a local organisation to help out local people and to form clubs to become an umbrella for all of our local people. Yes, we are independent, and I suppose in some ways we could be called competitors with the Sporting Shooters Association.

The Hon. TREVOR KHAN: You are running and looking for membership from the same group of people, is that right?

Mr AVERY: Yes.

The Hon. TREVOR KHAN: You are a relatively new organisation. Were you in existence in 2007?

Mr AVERY: I think we were, yes. I am the new secretary. I spent the last few years in Afghanistan.

The Hon. TREVOR KHAN: Do you know whether a contribution was made at the 2007 election by your organisation?

Mr AVERY: No, I do not know.

The Hon. TREVOR KHAN: Was a contribution made by your organisation for the 2011 campaign?

Mr AVERY: Yes.

The Hon. TREVOR KHAN: How much was that?

Mr AVERY: Again, I was in Afghanistan at the time but I believe it was \$100,000.

The Hon. ROBERT BORSAK: It is on the public record.

The Hon. TREVOR KHAN: I take it yours was \$100,000? I think we heard earlier the Sydney Sporting Shooters Association made a \$100,000 contribution and there was, what, \$300,000 by the Sporting Shooters Association? They are the three contributions we now know of?

Mr AVERY: If that is correct, that is correct.

The Hon. ROBERT BORSAK: Point of order: They are all on the public record. They are not the only ones you now know of.

The Hon. TREVOR KHAN: You were given the courtesy of silence.

CHAIR: You have taken a point of order?

The Hon. ROBERT BORSAK: Yes. What he said was "that we now know of".

CHAIR: The Hon. Trevor Khan has the right to say that. The witness should answer the question in the way that he sees is appropriate.

Mr AVERY: We gave \$100,000.

The Hon. TREVOR KHAN: Was there any in-kind donation over and above that?

Mr AVERY: No. I mean, there may have been voluntary labour but that is not—

The Hon. Dr PETER PHELPS: You said your membership is all along the political spectrum. How do you explain your donation to one particular party when you might have a member of the Hunter District Hunting Club and, for argument's sake, Clarrie the coalminer from Cardiff might place a premium on the socialist ideal and the belief that the Labor Party should be the party that dominates State politics? How do you explain to Clarrie the coalminer from Cardiff the fact that you are donating money to a political party which does not represent his overarching political interests?

Mr AVERY: Given that Clarrie probably voted for the Shooters Party in the upper House and the ALP in the lower House, that would be our expectation, and that would be the way our membership tends to work. They are astute enough to know, and it is part of the reason why we would not necessarily support the contest of lower House seats. I do not know, we would have to go back to that, but most of our members are astute enough to realise that their sporting representatives are in the upper House and not the lower House. They bet each way.

The Hon. Dr PETER PHELPS: I will just take that point: They are astute enough to understand that. What would stop you, then, from simply saying to them, "We believe under the new legislation we are not allowed to donate directly to a political party; however, we believe you should donate to a political party even if you are a member of another political party or support another party. This political party best represents the interests of Hunter district hunters"?

Mr AVERY: It is unanswerable in a way. Whatever happens, we will take note of what it is when it is and craft a policy accordingly. We would look to continue to support the people who support us, which is the Shooters and Fishers Party. Most of our members have a rifle and they all go fishing. We would be looking to continue that link. Whether we do it individually—I do not believe individually will ever work.

The Hon. Dr PETER PHELPS: It is not materially stopping you, as an organisation, supporting Shooters and Fishers, because you could write out to all of your members saying that we recommend that you donate to this party; we recommend that you support this party in the upper House. It is not materially affecting your ability to campaign on issues, is it?

Mr AVERY: Yes, I think it would materially affect us. The history of things where you try to get individuals motivated to go and do something is always fraught. It is better to work through organisations. Having said that, that is the sort of thing we have to face when we come to it. We would then sit down and work our way around whatever we have to do.

The Hon. Dr PETER PHELPS: I am not sure about this. Shooters are clearly motivated to take part in the political debate but you say they are not motivated enough to make an individual donation to a political party. I am not sure how you reconcile those two.

Mr AVERY: Many of them may will be that motivated but I think it is a matter of efficiency and practicality. For us it is much more practical to work through the group. The same reason that political parties exist: it is better to work through the group than individually.

The Hon. Dr PETER PHELPS: You have roughly 4,000 members who donate \$100,000. It roughly works out about \$25 per member, would that be right?

Mr AVERY: Yes.

The Hon. Dr PETER PHELPS: How much is, say, a 20-round box of store-bought .308 ammunition?

Mr AVERY: If you buy them through the club, \$26.

The Hon. Dr PETER PHELPS: Essentially, what you are saying is that people cannot be motivated enough to give up one box of store-bought ammunition to donate money to the political process?

Mr AVERY: Not exactly. What I have said is that the most efficient way to undertake that support rather than sending out letters to people and trying to process these things—remember we are a small committee. If we had to write out to 3,500 people, collect all that money, process all those forms and then post them on to somebody else—

The Hon. Dr PETER PHELPS: No, you would not have to do that because under the proposed legislation you could not do that. You would write out to them and say you have examined the various political parties' policy options and we believe you should donate money to this political party. No administrative process is required in that because presumably you write out to your members at least on an annual basis anyway for the announcement of the annual general meeting, and, presumably, on a much more regular basis for various activities that a club undertakes?

Mr AVERY: We would prefer not to do it that way. At the end of the day we might invest in a lawyer to see what we could do.

(The witness withdrew)

(Short adjournment)

GRAEME DAVID ORR, Democratic Audit of Australia, affirmed and examined:

CHAIR: Welcome to the inquiry on the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2022. Are you conversant with the terms of reference of this inquiry?

Dr ORR: I have read them. The written submission was made on behalf of Democratic Audit of Australia but to the extent that I am appearing today I probably can only speak from my background because I cannot clear my statements with the other members of the audit.

CHAIR: If at any stage during questioning there is certain evidence you wish to give or certain documents you wish to tender to the Committee and you feel that that evidence or those documents should be heard or seen only by the Committee would you please indicate that fact and the Committee will consider your request. First I thank you for your submission, which is highly germane. Would you like to make a short opening statement? I should tell you that the Committee has read your submission with interest so there is little point in repeating what is contained in it.

Dr ORR: I will keep my opening statement short in the spirit of what was a short bill. I would also like to thank the Committee not just for the invitation but for stumping up the airfares. There is a better resourced Parliament four hours south-west of here that does not always do that. The submission of the Democratic Audit says two things: the first primarily is the aggregation rule about expenditure. When you twin that with a ban on organisational donations to parties it is a significant incursion to freedom of association and it seems to me as a constitutional lawyer that it is clearly unconstitutional. I focused the submission on that freedom of political association point because I know that some other submissions and academic colleagues may forget that the High Court has ruled that there is a freedom of political association as well as communication.

On the other hand the Democratic Audit is quite sanguine about banning organisational donations particularly to parties and candidates. We recognise that there are arguments for and against that. One argument for it is that you require trade unions, corporations and others to have the courage of their convictions—in other words, to campaign directly under their own name, in which case they are much more accountable to their shareholders and members rather than giving money to parties to effectively campaign. So we do not think that is constitutionally suspect and it is ultimately a matter for Parliament.

Finally, as numerous later submissions have pointed out, banning organisational donations to third parties or limiting them does open a certain can of worms. I think the way through that Gordian knot is probably to remember that the title of the Act is the Election Funding et cetera legislation; it is not legislation about political campaigning generally. So whilst you might ban or limit organisational donations to parties which are essentially electioneering machines, it is a categorically different thing to intrude too far on third party fundraising year in, year out.

I note that one of the unions—I think it is United Voice—submitted that really what needs to be done is for the law to be clarified for interest groups particularly so that it only affects that idea of electioneering in the six-month period. I certainly would see some merit in that to ensure that you leave third parties clearly free to campaign on issue advertising for 3.5 years of the parliamentary cycle and then maybe you only regulate what they use donations for in that final six months of the true election campaign period. In effect you end up with something like a Queensland system where you have separate accounts, and donations cannot go into those accounts if they are going to be used for electioneering. I know that will not address all the complaints of, say, Andrew Norton or even some of the trade unions but it is a much clearer position to take.

The Hon. STEVE WHAN: I refer to the advice about the banning of organisational contributions contained in your submission. Overall you said you think it is acceptable but you said:

... smaller contributions in the form of a reasonable membership fee, set to cover the administrative costs of a membership-based organisation, *are* intimately tied to the freedom of political association. As a moral principle such membership fees ought not be banned, and as a matter of constitutional law probably cannot be. The Bill should be amended to permit organisational membership fees at a reasonable level to cover the administrative cost of servicing members.

The question is: What is a reasonable level? In your opinion is a level which is set quite low likely to encounter the same problem as a ban? How would you suggest determining what that reasonable level is?

Dr ORR: Can I start by saying at the moment the Act is not entirely clear. You have got this idea of political donations and what that means is fuzzy. I see The Greens have a proposal for calculating what reasonable affiliation membership fees might be. You have to decide whether you are essentially wanting to ban or limit contributions from trade unions and corporations altogether or whether you simply want to staunch and limit them flowing into electioneering accounts. That is the first question I think that really needs to be clarified.

The Hon. STEVE WHAN: The law at the moment says that the affiliation fees from trade unions can only be used for administrative purposes. On the reasonable side of that there is a suggestion from The Greens that affiliation fees be capped or set at a certain level per capita with a maximum. When you consider that unions have vastly varying numbers of members do you think that would be a fair outcome?

Dr ORR: Traditionally it would be proportionate to your membership. There has to be some sort of calculation if you are going to go down that path of having some sort of multiplier to do it. The problem is—and this is where I disagree with my colleague Dr Joo-Cheong Tham from the University of Melbourne, who put in a late submission—if you do not treat trade union contributions similarly to corporate contributions it does not pass the fairness test that the person in the street might have. We are certainly not in favour of anything or any aspect of any legislation that would in effect force trade unions to disaffiliate from the Australian Labor Party and that is what we see the problem is with the double whammy of the aggregation rule linked with the expenditure—sorry, the contributions rule. But if you asked me to come up with a dollar figure for what would be a fair figure—

The Hon. STEVE WHAN: I am not asking you to come up with a dollar figure. Essentially what you are saying is that the banning of such membership fees could probably not be sustained but they need to be at a reasonable level. Would you believe they would be at a reasonable level if, for instance, one union had a maximum because of a cap of 11 cents per member and another union had \$3 per member?

Dr ORR: It starts to look a little bit like Parliament intruding into the affairs of the associations and over time different unions and their memberships are going to change. I would put it this way: If you have one rule for the goose it is a rule for the gander and then you can have corporate membership of the Liberal Party or other parties. You are going to have to say what limit you are going to set for that membership fee to make it a membership fee and not, in effect, a political contribution to campaigning or anything other than administrative activities. In Queensland they skirted around the question by allowing limitless donation contributions, whether it be from Mr Palmer or the Transport Workers Union [TWU], as long as they do not end up in the campaign account. That is a neat solution in terms of clarity of legislation but it does not address the question of the perception of corruption or undue influence within the parties in Queensland.

The Hon. STEVE WHAN: On another aspect of the legislation, you mentioned before the need to separate out the third-party campaigning in that campaign period and you mention in your submission that the purpose of swaying electoral choice must be objectively determined. Do you believe it is a concern if this legislation puts in place a system which essentially stops some third-party campaigners who have a structure where they are a peak body and cannot get contributions from their member organisations to conduct campaigns but it does not prevent other third-party organisations from campaigning, for instance, high-wealth individuals or corporations?

Dr ORR: You could probably take that a point further. Mr Norton's submission deals with the idea of creating a class of donor-reliant campaigners versus those vested interest corporations or unions who may be campaigning under their own name but using so-called treasury funds. I take the force of that point but culturally speaking it seems to me we do not have in Australia the American style system of front groups. The average citizen and the political parties themselves can take into account that a campaign by a particular corporation or trade union is going to be discounted somewhat because of the fact that it is spending its own money directly under its own brand and name. That is different from using a conduit or some other trust to do that campaigning.

The Hon. STEVE WHAN: What I am saying is that there are a number of organisations with the structure of a peak body with organisations beneath it—for instance, the Your Rights at Work Campaign run by the union movement as a whole and Unions NSW, but using contributions from other unions. Those organisations fear that they would not be able to receive those contributions, therefore, they would not be able to run a campaign like that. Do you feel there is a distinction between those organisations which have as their members other bodies and individuals, whether it be unions or corporations or individuals, and those who could spend that sort of money because they have it?

Dr ORR: Obviously, the larger unions could run their own campaigns and those campaigns would be complementary rather than channelled through a single voice or body. One benefit of that is that you have those individual organisations responsible to their shareholders and members for their expenditure and they are seen to be clearly responsible for that expenditure. When you see the advertisement you see it is authorised by union *x* or corporation *y* and you do not have to wait until after the election to find out that there was a transfer of money into some trust fund or other peak body.

The Hon. PETER PRIMROSE: In relation to suggestions that there could be an appeal to the High Court on various aspects of this proposed legislation, what do you think would be a likely outcome of an appeal on various points?

Dr ORR: Predicting what the High Court will do is always a bit of mug's game! But I think we have had long enough with the current Chief Justice and the court to know that whilst they are not activists they are strong on principles. I do not agree with the concerns of some of my academic colleagues about freedom of political communication directly. The primary problem with this bill is what I call the "double whammy" of marrying the aggregation point or rule with the limit on contributions or banning of contributions and how that affects trade unions or Labor parties. If you put those two things together you have something that clearly breaches freedom of political association. If you take them apart and do one or the other it becomes constitutionally less suspect. I do not think Parliament should be unduly shy of passing laws it thinks are best in principle and seeing what the court does, but I think you should be shy of doing something that effectively goads the court or requires the court to advance or develop a further limitation on parliamentary sovereignty, and that aspect of the bill I think does go over that line.

The Hon. AMANDA FAZIO: When you were talking earlier you said that, in effect, the affiliation of unions to the ALP is akin to membership and why not allow other organisations or political parties to have corporate membership? Do you believe it is the role of this sort of legislation to prescribe for political parties what categories of membership they can have? That is a concern I have.

Dr ORR: No. That goes to the question of freedom of political association, which is not just a collective freedom of parties but it is also the freedom of individual bodies and organisations to meld together into collectives like parties. The difficulty is drawing the line between what you classify as political contributions, donations, money that is not for consideration from membership, helping to run the organisation versus surplus money which is washing around the system for electioneering and other political expenditure.

The Hon. AMANDA FAZIO: Effectively, affiliation fees of trade unions to the Labor Party are a form or category of membership. The Labor Party has individual members divided into a range of categories and we have union members who are affiliated entities. That is the real issue I have. I do not believe it is appropriate for this legislation to be, in effect, saying to the Labor Party, no, you can only have individual membership; you cannot have organisations as members.

Dr ORR: Once the previous Labor Government went down the track of regulating political donations in more ways than disclosure it opened up the question that if you leave it purely to the parties to decide how much they set their membership fees at—and the membership fees or affiliation fees can be unlimited—then effectively it is a backdoor to circumventing any donation limits you might have for the purpose of political equality and integrity.

The Hon. TREVOR KHAN: That is not the answer you wanted.

Dr ORR: I am saying it is a question of degree.

The Hon. AMANDA FAZIO: Surely it is up to the organisation to determine what its scale of fees is? If you are looking at putting caps on donations—and some people say put caps on expenditure as well, which is what we have now—what business is it of a government to legislate and say the Australian Labor Party cannot have concessional members who pay \$10 a year, life members who have free membership after 40 years and affiliated unions as members that then pay a certain amount per head or union member that they affiliate for?

Dr ORR: You may as well say: What business is it of the legislation to say that of the effective cost of charging \$10,000 at fundraising dinners, is it a political contribution or a fee or service for access? It seems to me it is a question of degree and you must at some point, once you go down the path of regulating political

contributions, raise the valid question of whether union affiliation fees are essentially a backdoor mechanism to make political donations and to buy influence. You could say, no, those moneys have to be channelled into a separate account that cannot be used for certain types of expenditure, for example, electoral expenditure in the six-month period prior to an election. That is the Queensland model.

The Hon. AMANDA FAZIO: Given that unions have been affiliating to the Labor Party since the Labor Party was formed, it is clearly not a backdoor method of channelling funds into the Labor Party. It is the continuation of a party structure that has been in existence for over 100 years. Why should it be captured by this legislation?

Dr ORR: Because this legislation did not exist 100 years ago. One hundred years ago we had laws limiting expenditure. I personally think we are better off attacking the question of expenditure and just have maybe a donation limit that the average person in the street would say, "Yes, a donation over \$50,000 per year to any political party or cause has the appearance of being problematic." But that is not the path that the New South Wales previous Parliament went down and it does not seem to be a path that the current Government really wants to go down to simply try and have laws limiting political expenditure across the board. I guess I am working with the paradigm we have got, and once you say you are going to limit political donations you have got the question of what to do with membership or affiliation fees and why unions are going to be treated differently from corporate membership within the Labor Party itself, for example.

The Hon. STEVE WHAN: I guess it comes back a bit to the discussion we had before about what is reasonable, and if you are looking at affiliation fees and you are saying it is okay for an individual on the electoral roll to donate \$1,000 or \$2,000 to an individual candidate and then you are saying that the contribution in membership fees from a union can only be in the manner of less than a dollar or something like that, how do you work out what is going to be reasonable when you go down those sorts of tracks?

Dr ORR: One thing that some countries have thought of doing or are trying to do is to say you have a check-box system where you say to the members of the organisation, "Do you want to pay an extra levy or do you want some of your union dues to be going into a political contribution fund?" and thereby ensuring membership control but at the risk of allegations that now you are interfering with the internal freedom of an industrial association, a political association like a trade union. It does seem to me that simply saying you are allowing it to be up to the executive of the trade union to decide that we are going to affiliate at a certain rate in consultation with the ALP rule-makers is a backdoor method to political donations and contributions.

The Hon. STEVE WHAN: I am not arguing that if you are going to cap one area you cannot cap others, but it is how you determine what the reasonable level of that might be and on what do you base that judgement.

Dr ORR: Personally I think to a degree we get too tangled up with the question of the ALP and its trade union links.

The Hon. STEVE WHAN: That is fairly important to some of us.

Dr ORR: It is very important, particularly when you are in opposition, but research by Professor McMenamin shows that the Labor Party heavily relies on and even does better than the Liberal Party in corporate donations, especially in New South Wales, when it is in government. It is only when Labor does not look like it is winning that trade unions are a very important source of maintaining a pluralistic or at least dualistic system, not just in Australia but in New Zealand, the United Kingdom and so on.

CHAIR: Suppose the legislation went through as it is currently drafted and it was subject to a High Court challenge and the seven justices were inclined to say that challenge is correct, would that place at risk the changes that were made to the Act in 2009 banning developer donations and the changes that were made to the Act at the end of 2010, which banned donations from tobacco, alcohol and gambling and also imposed limits on expenditure and imposed limits on donations? Would those other changes be put at risk by a successful constitutional challenge?

Dr ORR: You have to break it down into which aspects of the legislation are being challenged because you do not just challenge a bill as a whole; you challenge particular provisions or sections. I focused on what I call the double whammy.

CHAIR: Suppose the double whammy were challenged—and as I understand it the double whammy is the aggregation rule and the affiliation fees ban that the bill proposes—and it was found to be unconstitutional, would that then put at risk those earlier changes?

Dr ORR: I do not want to tell you how to suck eggs, but what we would probably say of that kind of provision would be to have what we have talked about as a rule against coordinated expenditure, and we can give examples from America and other places.

CHAIR: I will get to that in a second because I do want to address that, but on the hypothetical case where the legislation goes through unamended—as it is—and the challenge on the double whammy is successful, the High Court sees it as an assault on the freedom of political association—

The Hon. TREVOR KHAN: It would strike down individual sections of the Act.

Dr ORR: That is right. The High Court never just strikes down a whole bill unless it thinks they are completely—

CHAIR: It would strike down sections of the Act but not the bill itself. So it could actually go deeper. You could actually find that there were other matters in the legislation that were also offensive?

Dr ORR: It depends on the plaintiffs and how they frame their challenge. But what you could have is a very strong declaration of an affiliated political association and then maybe there is a concern and people such as Professor Twomey start speculating that any limit on the amount of money you contribute to a political party, for example, is a limit on freedom of political association. I do not think that is likely. I do not think that is the way the High Court would go. Large donations to political parties are not acts of political association and certainly not acts of political communication in themselves. You would have to give me specific examples. For example, the limit on donations to \$5,000 or \$2,000 a year—I do not think that is suspect under either the current High Court position or any future High Court position.

CHAIR: What about the ban on specific industries from donating—developers, tobacco, alcohol, gambling for profit?

Dr ORR: Again, as long as the Parliament itself can state the reasons and facts and give the court something to work with, the court is not in the business of simply substituting its own beliefs about public policy. Certainly in cases like Rowe's case recently the court wants to see evidence-based legislation; it does not just want to see assertions, and if you have statements of concern about contributions by property developers, tobacco and so on, if you can reinforce that with submissions from the public and so on showing that we have concerns of integrity and so on then those provisions will be maintainable. If you do not have that kind of basis then they are not necessarily maintainable.

CHAIR: Can I ask you another question with respect to the aggregation rule? Your written submission suggests the aggregation rule is likely to, in consort with the ban on affiliation fees, not withstand a High Court challenge. You therefore recommended it not be enacted. Is there a halfway house on that? For example, one of the things The Greens have proposed in their submission has been that where a union, for example, specifically campaigns for the election of a candidate or for the election of the Labor Party then that is aggregated. Where it is campaigning on an issue which is not necessarily focused on getting a candidate elected do you think that kind of amendment would reduce the risk of the legislation?

Dr ORR: No. It might shore up somewhat the defensibility constitutionally, but I do not think it really attacks the problem. We know from the United States experience, for example, when you are talking about an election campaign, the idea that you can necessarily neatly separate issue advertising from direct electioneering is very problematic because of the nature of the hubbub of election campaigns.

The Hon. TREVOR KHAN: It would be naive to suggest otherwise.

CHAIR: I do not think you should lead the witness and put your words.

Dr ORR: The difficulty is that you cannot ask me as a lawyer to draft a bright-line definition that is going to get around that. I think what would make the aggregation rule defensible constitutionally is a coordinated communication rule, but then you are going to say to me look at what the super PACs are doing in

the United States and so on, even with their years of working out independent expenditures and coordinated communications.

CHAIR: So the coordination rule is that if union advertising was not done in coordination with the party then it should not be aggregated? For example, if the Finance Sector Union wrote to every voter in the seat of Balmain and said, "You really ought to vote for the Labor candidate", but it was not asked to do so by the Labor Party, you would say that should be treated as not Labor Party expenditure?

Dr ORR: I might say you would expect Balmain boys to do that. The idea that a trade union that is affiliated to the Labor Party is going to campaign against the Labor Party during an election campaign is reasonably unlikely, but they may raise issues against the Labor Party.

CHAIR: The ETU.

Dr ORR: Yes, it has happened: the tramways in 1992 in Victoria. But for the reasons that Dr Tham points out, the Bill is under-inclusive and over-inclusive. I think the thing that would make it proportionate and hence constitutionally valid would be to have an aggregation rule that only applies to coordinated communications. But I imagine the Liberal Party would say, "Hang on, everything the trade union does, if it is sympathetic or affiliated with the ALP, is, on the whole, going to be sympathetic to the ALP".

CHAIR: To that point can you describe to us what you mean by coordinated? What is a test for whether a decision made by a trade union was coordinated to the Labor Party or whether it was independent?

Dr ORR: If we borrow from the American jurisprudence, you have things like you cannot use the same advertising companies, you cannot have discussions internally about the matter, you cannot have people working within the two organisations simultaneously on the campaign—there are a whole lot of rules you can prescribe to decide what is a coordinated campaign, and they go to the questions of content and personnel. But if Colin Barry were here he might say, "Please don't throw at us a piece of legislation that is going to be very difficult for us to enforce if we have to somehow go inside smoky backrooms and so on".

The Hon. ROBERT BORSAK: In relation to caps on donations, I heard you say that you thought that caps on donations and expenditure would be defensible from a constitutional challenge point of view. Why do you think that is the case?

Dr ORR: Caps on donations to political parties particularly?

The Hon. ROBERT BORSAK: Yes.

Dr ORR: We know from Canadian and United States experience they are defensible if they are organisational, but even caps on individual donations—and they are two countries that have very explicit free-speech and political association guarantees in their constitutions and we do not—we just have the High Court kind of boundary riding, and I do not see any reason why, unless the bans are ridiculous. I remember advising a certain political party a couple of years ago when Premier Iemma was talking about maybe banning altogether private donations that the High Court would say that is a step too far: you cannot say to people that \$100 or \$500 a year from an individual is to be banned, because clearly small donations are acts of political participation, political association.

The Hon. ROBERT BORSAK: Regarding expenditure?

Dr ORR: Caps on expenditure? Again, it is a question of degree. If you go too low, and I think the British once had a rule something like you can only spend £5 as a third party on a constituency campaign and that was held to be unconstitutional, even though Britain does not have a written constitution as such. But if you are talking about the sorts of limits, the million-dollar limits in the 2010 bill, there is not a problem with that. We do not have a constitution, unlike the Americans, that says that free speech is the only value; we have a system where even the High Court accepts that you have to balance political equality, integrity, freedom and even what I call aesthetic questions, that politics is not just about money; it is about ideas and activism.

The Hon. ROBERT BORSAK: So what you are really saying is that, based on the precedents you are discussing, there is no precedent for any of this in Australia in terms of the setting of these limits or the fact that these limits can be set at all?

Dr ORR: We have the ACTV case in 1992 where all this started, to say that you cannot just, say, ban paid political election advertising on TV or radio; that is a step too far. But setting reasonable limits that permit third parties and others to run campaigns—but not campaigns that are unlimited or swamp the system—the High Court is not going to have a problem with that.

The Hon. ROBERT BORSAK: What you are saying is that you are not quite sure yet whether it is reasonable to say it should be set at \$1, which is clearly unreasonable, or whether it should be set at \$1.1 million?

Dr ORR: How long is a piece of string? That is why you need to legislate, not just on the basis of some kind of gut feeling; you need to be looking at the particular jurisdiction: what are the media markets like in this State, for example? Tasmania would be different from New South Wales in terms of setting these limits. But the High Court is going to give you a degree of latitude because they do not see their role as to write the legislation; they see their role as to be boundary writers.

The Hon. ROBERT BORSAK: You talk about aggregation and affiliation and the banning of both being the double whammy. The aggregation rule—you are talking there, I assume, as applying to all voluntary organisations, not just as represented by a community-based union or trade union?

Dr ORR: Absolutely, yes.

The Hon. ROBERT BORSAK: So if you are talking about a fishing club or something you are really talking about the same sort of thing?

Dr ORR: Or the old Country Party where it was formed by agricultural associations. It is the same principle.

The Hon. ROBERT BORSAK: The joint voices of the proletariat, for want of a better word?

Dr ORR: We have to pass a law that is in both form and effect, as far as possible under the rule of law, in principle equal across similar associations and organisations, yes.

The Hon. ROBERT BORSAK: I heard you discussing corporations as members of political parties, for example, if that was an allowed category. Would you not put corporations, being for-profit organisations, in the same area?

Dr ORR: There is currently nothing to stop a political party having a corporate membership, including for-profit corporations. Are you asking whether the Parliament should create a distinction—

The Hon. ROBERT BORSAK: Yes, that is where I am going.

Dr ORR: —between membership organisations and corporate organisations?

The Hon. ROBERT BORSAK: That is right.

Dr ORR: The Democratic Audit does not see the distinction. However, I understand the argument put by Dr Tham that there is a necessary distinction that member-controlled organisations are somehow inherently democratic and political in a way that shareholder-based organisations are not. However, there can be shareholder organisations that have mixed motives that are not just companies in the business sense.

The Hon. ROBERT BORSAK: Yes. Many clubs and hotel associations are shareholder-based organisations.

Dr ORR: That is right and under the Co-operatives Act they can have voting rules that are more democratic than the shareholder rules in private companies.

The Hon. ROBERT BORSAK: So we are getting down to the content of the constitutions of those organisations and their aims and objectives and articles of association. Is it not that Parliament is getting too far into the entrails of the organisations?

Dr ORR: And you want to avoid that both for the appearance of the "big brother" State interfering too much with the internal affairs of organisations, whether they be political parties or private bodies.

The Hon. ROBERT BORSAK: However they are constituted.

Dr ORR: That is correct. That is why the Democratic Audit's position is that it does not pass the fairness, man-in-the-street test to treat trade unions, the Wilderness Society or whatever body as distinct.

The Hon. ROBERT BORSAK: It does not matter who it is.

The Hon. TREVOR KHAN: I draw your attention to the third-party campaigner exercise. You made reference to them in terms of the six-month election period and outside that period. Do I take it that you would envisage in some way the potential to separate third-party campaigners to more explicitly limit their behaviour in respect of activities that they undertake or seek to undertake during the six-month election campaign period as opposed to outside that period?

Dr ORR: Yes, and the law currently does that by imposing caps on what they can spend on election communication during that period and also requiring them to deal with donations differently. It is a matter that probably needs some clarification. We have Andrew Norton from the old Centre for Independent Studies on the more conservative side and trade unions and others saying that one thing that is important to third parties, especially those that are not big or profitable organisations, they should not be unduly trammelled by legislation that is difficult to comply with. In effect, that creates two distinct categories—that is, those who can afford consultants and lawyers like me and those who cannot and who get caught up in red tape. The clearest way to do that, and the bright-light rule, would be to say that groups are limited in their electioneering that will be taken as political expenditure during the six-month period but outside that they are quite free.

The Hon. TREVOR KHAN: In a sense that is carte blanche in terms of what you do.

Dr ORR: That is right, including taking in whatever organisational, corporate or union donations by a peak body to run on what would effectively be issue advertising for three and a half years out of the four to influence the agenda. Then, you say that there is this period in which parties come first—the campaign period—which you define as six months. That period is shorter in Canada and longer in some other jurisdictions. You say that parties are front and centre in that period and they get some benefits from public funding as well as a monopoly in access to Parliament and privileged access to the media. However, for reasons of integrity and because of the appearance of corruption, parties will be limited in the sorts of organisational, corporate or even union donations they can receive. That would be one model.

The Hon. TREVOR KHAN: To be more explicit, I take it that parties would have a donations account, in the sense of explicit donations, into which, for instance, for that six months only individual contributions would be placed. However, outside that six-month period you would either not necessarily have to have a donations account at all or, alternatively, you would have a donations account that receives funds from all comers, apart from foreign citizens and the like.

Dr ORR: Yes, and I would imagine that that model would be much easier to implement and easier for third parties and lobby groups to deal with. However, some will still whinge and complain and say that they want to electioneer in that period. A third party can currently opt out of the system altogether by simply not spending more than \$2,000 in an election period and they will not be affected by the existing legislation or the new legislation. That is my understanding. There is a grey area at the moment about what "electoral expenditure" means and how we interpret the idea of expenditure on things that will influence and affect voting. You must also realise that six months is a fair period and certain types of advertising dealing with Federal-State issues will also impact on Commonwealth politics and the State can always be overridden in those areas by the Commonwealth Parliament. It is a complex game.

The Hon. Dr PETER PHELPS: Thank you for your great submission. It is probably the best submission from Democratic Audit that I have ever read.

Dr ORR: That could be a backhanded compliment. I have written a few before.

The Hon. Dr PETER PHELPS: I assume that you would accept Canada as being a fairly liberal judicial jurisdiction in the small "l" liberal sense. Are you aware of any instance in which the laws in Canada have been successfully challenged as being unconstitutional or an unfair infringement upon the human rights of individuals or organisations?

Dr ORR: I know of laws that relate to political association, but you have caught me on hop with laws relating specifically to political campaign finance.

The Hon. Dr PETER PHELPS: You can take that on notice.

Dr ORR: I can consult with overseas colleagues and let you know.

The Hon. Dr PETER PHELPS: Would you agree that the Anglophone jurisdictions—the United States, Canada, Great Britain and New Zealand—have all attempted to regulate and limit the power of what might be called "big money" in elections?

Dr ORR: In different ways. I certainly put the United States in a different category because of its strong adherence to the principle of the First Amendment above all others.

The Hon. Dr PETER PHELPS: In all of those jurisdictions there has been a trade-off between an absolute right to freedom of political speech and the desire not to create a situation where big money can buy elections and unduly influence the political process.

Dr ORR: Yes, and they have done it in different ways. Canada is the most highly regulated. The United Kingdom and New Zealand focus on expenditure caps rather than donation caps; the United States focuses on donation caps rather than expenditure caps.

The Hon. Dr PETER PHELPS: But overall the trend is away from a laissez faire system towards a more regulated system to prevent the moneyed elephants trampling all over electors.

Dr ORR: Absolutely, and I have written about this before. Colleagues and friends in the United States look at our system and say, "Wow! You guys are much more small "l" liberal in the classical sense than even we are." You must understand that there are different cultures at work: there is a much more associational culture in the United States, it is much more status-based in the United Kingdom and traditionally in Australia and it is different again in Canada. The New Democratic Party in Canada accepted that it could not receive contributions from trade unions because it was more fearful of corporate money.

The Hon. Dr PETER PHELPS: I refer to the issue of the possible High Court challenge on the basis of a restriction on individuals only. What is your assessment of the likelihood of that challenge being successful?

Dr ORR: If it is just a matter of principle I do not think there is a strong chance of success in Australia based on the Canadian and United States experience.

The Hon. Dr PETER PHELPS: Surely the High Court would look to the other Anglophone jurisdictions and say, "Well, that's fine, that's fine, that's fine."

Dr ORR: Unless you can show a situation where the flow of money is staunched completely. We have a reasonably generous system of public funding. So it has to be taken in the broader context of enabling campaigning at a reasonable level.

The Hon. Dr PETER PHELPS: I refer to third-party expenditure during campaigns. I think it is agreed by all parties that there are donation limits and expenditure limits. Does dealing with the problem of "smurfing"—that is, the creation of front organisations designed to circumvent the expenditure and donation limits—necessarily entail a degree of regulation about what third parties can do, especially during that final six-month campaign period? Is it not required by the fact that we have expenditure and donation caps?

Dr ORR: Yes. However, whether you have lighter-touch legislation which is harder to enforce and which tries to weed out front groups and so on, or heavier-touch legislation, is a matter for Parliament.

The Hon. Dr PETER PHELPS: I agree entirely with you in that regard. However, it necessarily follows that unless you want circumvention of donation and expenditure rules some sort of limitation must be placed on third parties. I am not saying that it should be heavy or light, but caps require regulation.

Dr ORR: We have that in the 2010 Act. The British model heavily limits third-party activity because it sees political parties—

The Hon. Dr PETER PHELPS: And New Zealand heavily regulates third-party activity.

Dr ORR: Yes, although the National Party has moved back from that so that third parties only register and disclose.

The Hon. Dr PETER PHELPS: That is because it has a particular interest—

Dr ORR: You might say that, but also because—

The Hon. Dr PETER PHELPS: —in benefiting itself.

Dr ORR: Yes, but even in Canada people are saying that no Canadian third party has come close to the expenditure limit. It is just part of the culture there. They have a culture where the focus is on a handful of peak bodies and the political parties. It is not like the American culture where smurfing and astroturfing are the real problem. We are half way in between. Ours is a party-centred system, but we have had examples in the past where people have been willing to game the system and have created front groups if they thought—

The Hon. Dr PETER PHELPS: I agree, but this is an important point. It has been implied that the Government has made an arbitrary get-third-party decision. I take the point about the problems of hypothecation of expenditure towards a political party by a third party. However, would you say that the existence of caps necessitates some sort of third-party regulation?

Dr ORR: Yes, and the question of political equality probably requires that. However, you must ensure—and Andrew Norton would tell you more about this—

The Hon. Dr PETER PHELPS: Rest assured, he already has.

Dr ORR: —that you are not intruding on the internal affairs of these mixed bodies. I would not have characterised this bill as "getting at" third parties.

The Hon. Dr PETER PHELPS: Some have.

Dr ORR: I would say that there is a strong suspicion that part of this bill is about getting at the Labor Party-trade union link.

The Hon. AMANDA FAZIO: It is true.

Dr ORR: I understand that that has been a difficulty even in the negotiations in Canberra about some kind of more regulated model.

The Hon. JENNIFER GARDINER: I refer to the fuzziness attached to the definition of "electoral expenditure". Is there a better definition or is this an endemic problem?

Dr ORR: It is probably endemic in that it is the nature of political speech that it is malleable and flows. The United States has spent years going through this kind of thing. Do you regulate only the things that refer to candidates? You end up saying that there must be a reasonably broad definition—which we have in section 87 (1)—but if we are going to apply it only in the six-month period we must have a trade-off. We say that this is the election period and there are certain priorities that focus on the parties. Outside that we end up with an open-slathe model where mining companies could do everything from social branding through to attacking the Government and so on.

The Hon. Dr PETER PHELPS: The Federal Act works that way too, does it not? It has this broad definition of likely to influence a vote?

Dr ORR: That is right, and you want to sit Colin Barry down and say, "Are you guys up to implementing that definition?" You can assist with that by simply saying, "Bright-line rule: within a six-month period we're going to treat issue advertising on political matters, at least as far as they relate to New South Wales politics and government, as being part of this regulated process"—remembering that you have constitutional limits on what you can do that would impact on the Commonwealth political sphere.

The Hon. JENNIFER GARDINER: Following up the Hon. Robert Borsak's question about getting into the entrails of political parties, is there not a trade-off in relation to the extent now of public funding more so than ever before?

Dr ORR: Public funding itself affects and channels the way political parties engage in activity. Is that your point?

The Hon. JENNIFER GARDINER: Accountability of political parties for what they are doing internally has to be more transparent than ever before?

Dr ORR: Since the famous Beazley speech in the early eighties it was intended to clean up and encourage parties to become less reliant particularly on corporate donations. It probably was never going to do that because as long as you have no caps on expenditure and the fear of being outbid, then parties are always going to want more money rather than less. I am a bit sceptical about the idea that public funding itself has hollowed out political parties. In our system with compulsory voting and so on, you still want members to get out there on polling day. There are still good reasons to have an active and engaged membership. I do not think you can blame public funding per se for what is a bowling alone a effect or a decline in public interest in organised, institutionalised, associationalised political activity.

CHAIR: You mentioned in your evidence really what you called a double whammy or double-headed attack. The other issue is that of restraint on third parties, particularly peak bodies of third-party organisations. For example, the Nature Conservation Council or the Council of Social Service of New South Wales that do not have members but have member organisations would find it difficult to engage. Do you think the High Court would take a view of the restraint on them receiving political donations or donations for campaign purposes?

Dr ORR: For electioneering purposes?

CHAIR: "Electioneering" is the word you use, but I mean more in raising issues during an election period?

Dr ORR: Yes. That is a difficult question. You could imagine some judges in the High Court saying, "Well, following from ACTV, elections are at the heart of a representative government therefore we should be extra sensitive about any regulations that affect the ability of a civil society to campaign on those matters during an election period and if a third party wants to influence voting it would be caught by the electoral expenditure definition." But I am saying that if you build a system that has a set of trade-offs in it that says for 3½ years you can have unlimited expenditure you have this benefit that political parties may not have about taking—

CHAIR: But Professor, that is not the way this legislation is written.

The Hon. Dr PETER PHELPS: But by the same token, there is the counterargument.

CHAIR: Let me finish the sentence. This legislation would impose that ban for the entire period.

Dr ORR: That is the effect of this legislation. Lawyers might argue about its interpretation. That is something that would be problematic and I think you would need to clarify, yes. I mean clarify to create that rule.

CHAIR: That is how the Electoral Commission has interpreted a third-party campaigner. Once you are a third-party campaigner you are forever; you do not escape it. In fact, it is a fault in the way we have written the legislation.

Dr ORR: It is backdated.

CHAIR: There is no way of becoming not a third-party campaigner once you become one. Once you are a third-party campaigner you cannot ever take money for political campaigning purposes.

Dr ORR: Sure, and then you can clarify the legislation by saying, "When we define electoral expenditure we only mean expenditure during that six-month period on particular things", which are those campaigns that, to an objective observer, are about affecting and influencing the vote.

CHAIR: So you would effectively mute those third-party organisations during an election in the sense that they could not use money from their constituent bodies during the election. So Unions NSW would have to be silent.

The Hon. Dr PETER PHELPS: But there is nothing to stop the individual members from banding together so you could have—

CHAIR: They do not have individual members.

The Hon. Dr PETER PHELPS: What, the Nature Conservation Council does not have individual members?

CHAIR: NCOSS does not have individual members.

The Hon. STEVE WHAN: No, they are organisational members.

The Hon. Dr PETER PHELPS: Yes, the organisational members could coordinate and then work towards a joint campaign.

The Hon. STEVE WHAN: That then becomes maybe somebody else.

The Hon. AMANDA FAZIO: A new third party.

The Hon. STEVE WHAN: They then concern a third-party campaign.

CHAIR: We are now arguing amongst ourselves, which is instructive for Professor Orr, but he was here to instruct us. Would you just briefly respond to that and to the Hon. Dr Peter Phelps' interjection and then we will release you?

Dr ORR: As Dr Phelps says, Unions NSW would be one of the lesser concerns because its constituent union bodies, whether it is the larger ones, can still engage in direct electioneering under their own name and label up to the expenditure cap. It is more the concern that Andrew Norton points out about those organisations that might be heavily reliant on, I do not know, smaller corporate contributions. Currently if the laws are that you are only allowed to take \$2,000 from a corporation in some ways I think we are arguing over a point of a needle. Going from \$2,000 or \$5,000 down to zero is not such a big deal. The main worry is about the big, large-scale contributions, whether it be a trade union affiliation fee of \$100,000 to the ALP every year or a donation of \$50,000 from a business to the Liberal Party. They are the things you should be worried about.

CHAIR: Thank you professor. We appreciate your coming all this way and sharing your expertise with us.

Dr ORR: It has been interesting. Thank you. Good luck.

CHAIR: You did take a question on notice. The Committee has resolved that answers to questions on notice be returned by Monday 30 January 2012. The secretariat will be in contact with you in relation to the question you have taken on notice.

Dr ORR: Yes, understood.

CHAIR: Thank you for cooperating with the Committee in that matter. We apologise for the short deadline, but we are on a short fuse too.

Dr ORR: I noticed that. It was over the silly season. At least, unlike the Queensland Parliament, you have had an open consultation process.

(The witness withdrew)

(The Committee adjourned at 3.51 p.m.)