

REPORT OF PROCEEDINGS BEFORE

**SELECT COMMITTEE ON ELECTORAL AND
POLITICAL PARTY FUNDING**

**INQUIRY INTO ELECTORAL AND POLITICAL PARTY
FUNDING**

At Sydney on Monday 3 March 2008

The Committee met at 9.30 a.m.

PRESENT

Reverend the Hon. F. J. Nile (Chair)

The Hon. R. L. Brown
The Hon. A. R. Fazio
The Hon. J. A. Gardiner
The Hon. D. T. Harwin
The Hon. M. S. Veitch

CHAIR: I am pleased to welcome everyone to the Select Committee on Electoral and Political Party Funding's inquiry into electoral and political funding. This is the first hearing of what will be a thorough and wide-ranging inquiry into the issues concerning electoral and political funding and donations in this State. The Committee welcomes the opportunity to examine an issue of such importance to the people of New South Wales. Before we commence I will make some comments about procedural matters.

In accordance with the Legislative Council's guidelines for the broadcast of proceedings, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photos. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation they place on anything that is said before the Committee. The guidelines for the broadcast of proceedings are available from the Secretariat.

As for adverse mention, Committee hearings are not intended to provide a forum for people to make adverse reflections about specific individuals. Protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of individuals unless it is essential to address the terms of reference. Delivery of messages: Any messages from attendees in the public gallery should be delivered through the Chamber and support staff or the Committee clerks. Mobile phones: I remind everyone to please turn off their mobile phones now.

I now welcome our first witnesses from the Election Funding Authority of New South Wales, Mr Colin Barry and Mr Trevor Follett. I understand that you have agreed to appear before the Committee again in our final hearing after we have had evidence from other witnesses. As key inquiry participants, thank you for your willingness to engage with our inquiry.

MR COLIN ANTHONY BARRY, Chair, Election Funding Authority of New South Wales, Level 25, 201 Kent Street, Sydney, and

TREVOR ALAN FOLLETT, Secretary, Election Funding authority of New South Wales, Level 25, 201 Kent Street, Sydney, affirmed and examined:

CHAIR: Mr Barry, I understand that you have an opening statement.

Mr BARRY: Yes. We would like to do a small presentation to the Committee on the Election Funding Authority, with your agreement. We think it is important that we set out how the authority is constituted and how it goes about its business and put some facts and figures before you so hopefully we are all starting from a common starting point. Are you happy with that?

CHAIR: Yes, thank you.

Mr BARRY: I will ask the secretary to go through the presentation. It will only take about 10 or 15 minutes but if you have any questions perhaps we could do the questions at the end of the small presentation.

CHAIR: Thank you.

Mr FOLLETT: Thank you for the opportunity to present to you today. The structure of the Election Funding Authority is in two parts. The authority itself has the New South Wales Electoral Commissioner as the chair and two members of the authority, firstly the nominee of the Premier and the nominee of the Leader of the Opposition. The nominee of the Premier is Stephen Lewis and the nominee of the Leader of the Opposition is Ted Pickering. Stephen and Ted were both reappointed in November 2007 for a four-year term. The administrative staff consist of two clerical offices and myself as secretary. My role as secretary is a joint role with my other role as Director of Finance and Administration for the New South Wales Electoral Commission.

The legislation that governs our operations is the Election Funding Act 1981. This Act prescribes a scheme of public funding. It sets out disclosure obligations for parties, candidates, groups and political donors. The Act sets out the funding and disclosure responsibilities for both State and local government elections. We have three funds. The formulas for the constituency fund and the central fund are calculated together and the amounts are split one-third to the central fund and two-thirds to the constituency fund. The fund basis is set on a consumer price indexed amount which is at \$2.69 for the last State general election—that is \$2.69 per elector.

The third fund, the political education fund, is a fund set up for party education of the electorate. This slide here set out what the maximum entitlements are under those funds and how much is paid against each of those funds. In total, 95.4 per cent of the available funds are paid out. The political donation fund is an annual payment. It runs every year for four years. With each claim that we are presented with for payment we are presented with an audit certificate as well. In terms of disclosure obligations, we receive declarations of political donations, declarations of political expenditure and claims for public funding.

I am handing around the chart which details how the disclosure periods are set out. These are quite complex. We talk about a four-year period, but there are quite a few different variations to that model. Local government and State government four-year periods overlap. This causes an element of confusion. By-elections result in a different disclosure period and we may have different disclosure periods for donors compared to candidates in that instance. For groups, the commencement of their period is on nomination day so they have a very short disclosure period. In all, I guess the point to make from this is that there are multiple disclosure periods and it causes quite a bit of confusion.

Political donors are required to disclose donations, services which they have provided, any gifts they may have provided, any moneys they may have paid at fund-raising activities or purchases at those activities. There are varying thresholds. This table sets out what needs to be disclosed depending on what the entity is and how much the amount of the donation was. For instance, if you are a candidate who had received \$800 from a donor you go down under candidate there and across

from the \$200 to \$1000 category and you would see that the name, address and the amount are required to be disclosed. If you were the donor who had made that \$800 donation you would not be required to disclose that until your total donations had reached \$1,500. You can see that from going down the donor column and again across from the \$200 to \$1000 category, no disclosure required in that box.

Reading through some of the submissions that have been supplied to the Committee, we know that there has been quite a bit of comment about the delay in getting information around disclosures into the public environment. This chart sets out some of the process steps that are involved in getting the information published. Election day was in March. The full year disclosure period runs up to 23 April and it is 31 days after the end of the election. The dates that are set in the Election Funding Authority Act for returning that information to the Election Funding Authority apply as 120 days after the date of the return of the writ. The return of the writ date, 5 May, plus 120 days, made it 30 August. So, no-one has to supply a declaration to be Election Funding Authority under the current legislation until 30 August 2007.

The legislation also allows for extensions to be requested. We received 118 requests for extension from candidates. The longest extension that was allocated was one month to 30 September. From that date the Election Funding Authority admin function processes those declarations. There is a number of communications that we may need to have with candidates' parties, and donors who have supplied information to us we will correspond with them and get responses to that and then enter that information into our database. From there we make files available to the public. Again, under the legislation, there are details of public access. Public access is via office hours in our office and making hardcopy files available to the public. In addition to this, recently we have set up an Election Funding Authority website and we have published to that summary reports of the information from the declarations.

Next is a chart to show the timing of when declarations are received by us. You will note on the donor line that the majority of declarations were received in October. The due date is 30 August. However, we do not believe it is widely understood in the community what the responsibilities are and the large number in October were really from us writing to donors and reminding them of their obligations and receiving responses from them. In terms of compliance, we have 948 compliance matters at this stage. Party, party agent, group and candidate files will be referred to the Crown Solicitor for action. The political donors will be referred this week. The listing of political donors we have been able to produce from a new database where we have been able to do matching between the declarations that have been provided to us by the parties and the candidates against declarations provided to us, or not provided to us in the case of these ones, by the political donors.

This next slide sets out the value and the number of donations and the number of donors that we received. As I mentioned, we have two databases: one from the party and candidate declarations and one from the political donor declarations. You will see there is a mismatch between them. Those donors—the gap between them—are the ones that have been referred to the Crown Solicitor this week. In our submission to the Committee we have listed three key suggestions of what we would like to see change around. First, annual returns; second, electronic filing; and thirdly, a political donor identification system. In terms of annual declarations, we have issues at the moment around what constitutes a reporting period.

Keeping records for four years: we get a lot of comment that this is onerous. We would question the value of the information due to its age, given it is a four-year period and people having to go back and try to find the records for that period, and from an admin processing point of view it gives us a very big peak in terms of processing. We see benefits from moving to an annual declaration of improved transparency and an increased opportunity for public scrutiny. We think it will simplify compliance and make it easier to understand. It should ease the reporting burden and for us it will smooth the processing peak. It would also make us consistent with most other reporting regimes—the ATO, ASIC and the Australian Electoral Commission.

Our second recommendation on electronic filing: we currently rely on a very paper-based system. The donors complete a paper form; they sign it and they mail it to us and then we start our process from there. It is double-handled, effectively. The donor is completing all that information and in some cases will use spreadsheets or extracts from their accounting systems and will then put that

information on to a form and send the form to us. We have data validation issues. On the paper forms people will write down aspects—that they may be outside the disclosure period. They may claim a receipt or an invoice for post the period. If we had electronic filing systems we would be able to tighten up on some of those fields.

It is fairly onerous to process a manual piece of paper. Some of the declarations are quite sizeable; they come to us in ring binders and there is a lot of paper behind it. The benefits of the recommendation we see: we would move to an online system, which would use common Web technologies; it would improve the efficiencies—it would only be entered once; it would allow frequent year-to-date snapshots of data that is in the system; we would be able to provide searchable fields, like name and post code; and, as part of that, we would incorporate into the search engine criteria that would allow the user to define the criteria of what they would like to see on their desktop.

Our third recommendation: a political donor identification system. Currently, we have issues matching names on declarations. For instance, the Rail, Bus and Tram Union may describe themselves as such, however, on the party declaration it may describe the organisation as the RBTU. S. Brown of P. O. Box 35, Paddington, NSW 2021, could that be Samantha Brown, Apartment 4, Ocean Street, Woollahra? We have two different sets of data coming at us. We do not know whether in many instances one is the same person or same organisation as the other. We would propose that we would link the identification of online donors to the electoral roll. This would be an instance where it is an individual and we would request that individual to provide such information online so that we could identify them from the electoral roll. With organisations we would request that they quote their ABN. We believe this would give more transparency: the ability for those who are looking at the information to identify who is behind various organisations. That concludes our presentation.

Mr BARRY: If I could just summarise. The authority recognises that the legislation contemplates an absolute operation of transparency. I need to state that I have been Electoral Commissioner since 1 July 2004. In that capacity I have been chair of the authority in that period. Mr Follett has been the secretary for the last two years. I think in that short time the authority has made some efforts to provide more up to date and timely information by way of developing a website. More work needs to be done in that area.

We also recognise that the complexity of the reporting period, as Mr Follett has outlined, together with the inexperience of some registered political parties creates some challenges. But, more importantly, we understand and appreciate that from the donor's point of view it is not always clear to people their obligation with respect to reporting to the Election Funding Authority. In the last couple of years we have made some efforts to improve in that area but we know that more work needs to be done.

Finally, since I have been chair of the authority it has operated with absolute impartiality. My two other member colleagues have always acted with total impartiality—professional. Never, in the time that I have been chair of the authority, has it been necessary for a vote on any matter. You will appreciate that the legislation very much governs the way the authority operates. It is very much process and there are very rarely times when matters require extensive deliberation other than, can I say, referring matters that may need to be considered by the Crown Solicitor for potential prosecution.

CHAIR: Thank you very much for that presentation. Just to clarify what you just said and the submission you have made, do you see it as part of your role as chairman to make recommendations to the Government on how to improve the scheme where you feel there are some problems? Do you do that annually as a practice or do you not do it?

Mr BARRY: The authority has not in the past made recommendations of its own initiative to the Government other than prior to the amendments that were made to the Parliamentary Electorates and Elections Act in 2006. We did identify one matter of concern regarding the authority's ability to demand information from certain people who are operating in the political advertising environment, and the government listened to what we had to say and did take up the initiative. So, yes, the authority, where it sees significant weaknesses in the administration, under my chair has raised those matters with the Government and the Government on that occasion accepted the recommendation of the authority and made some amendments and Parliament passed that amendment.

CHAIR: One of the major problems in reforming the system is that we have a Commonwealth system and a State system. How do you feel that can be resolved? If there was a ban on developer donations in this State and there was no ban in the Commonwealth level what problems would that create? Could people forward donations through the Commonwealth, so to speak, where, say, even a Commonwealth National Party headquarters could send a large donation to the State branch, which, in fact, is made up of a lot of small donations that have come in, but that large donation shows, correctly, that it has been donated by X party head office in Canberra to the State branch and the name of the donor is there of that particular National Party, but obviously it does not show the origin of the donation? How do we get around that, I suppose you could say, concealment of the real donor or donors?

Mr BARRY: The Committee will appreciate that I appear as the chair of the authority. Of course, members are all aware that I am also the Electoral Commissioner. I make my presentation to the Committee as chair of the Election Funding Authority. I realise that members may ask me questions on the basis that I have been in electoral administration for 20 years. I am of course happy to answer any of those questions, but they do not necessarily represent the views of the authority. Is it acceptable for me to answer that question on the basis of my experience as the Electoral Commissioner?

CHAIR: Yes.

Mr BARRY: I support a national solution to funding and disclosure partly because of the reasons raised and partly because it is duplication on the part of political parties that operate across state borders to have to report federally and to States in myriad different disclosure periods.

CHAIR: In your submission you made a recommendation for annual reporting, which is obviously a big improvement on a four-year reporting period. There have been some suggestions that it should be every six months. Is that practical? What would that achieve?

Mr BARRY: I will ask Mr Follett to comment on the practicalities and how a reporting regime may work.

Mr FOLLETT: We would like to utilise technology a little more and to set it up as a web-enabled system where donors could have continuous disclosure to the Electoral Funding Authority of donations that they have made. That would enable the database to populate and fill up over a year. While we have referred to annual returns, it would be possible at any point during the year to say what we have had disclosed to us. We could prepare reports on year-to-date basis or any other basis requested during the year. We referred to "annual" to have a reconciliation process at the end of the year. If there were to be reconciliations more frequently, a six-monthly reconciliation could be done.

CHAIR: The concern in the public mind is to know what donations have been made prior to the election date. We obviously have a great system operating after the election. Is it feasible to have all donations made public prior to the election date, which would probably mean having a cut-off date for donations a month before the election so that the authority could do the administration?

Mr FOLLETT: If we were to employ an electronic means of collecting the data, it would be a very fast turnaround. Most of the lag at the moment is set by the legislation allowing a considerable period before the paperwork is filed with the authority—in fact, it is five months after the election. The focus could change to continuous disclosure to the authority and then closing off a period before the election and making that information available before the election.

The Hon. DON HARWIN: I will direct my questions to you, Mr Barry, and you can handle them as you feel is most appropriate. What are you saying would be the arrangements with your suggestion about annual disclosure with regard to how soon the information would be on the web?

Mr BARRY: It would be a little like a tax return or an Australian Securities and Investments Commission return. The parties would have to provide the authority with information as at 30 June. We have not turned our minds to how long it would take to have that information available on the web. However, I think—subject to any views Mr Follett might have—it would largely be dependent

upon the timeliness of the parties in providing information to the website. I would hope that we could achieve disclosure within perhaps 60 days.

Mr FOLLETT: Sixty days would be okay to do. When we are talking about what processing we do, we can split that into the declarations we receive from parties and candidates stating not only donations but also spend. Quite a bit of work is going on in a different environment at the same time. If we could draw a line and split that activity and talk only about the donations, they are a lot more simple in that we need only a name, address, amount and the date the donation was received. There are not too many fields to complete per line item. We could build a system around that to provide part of the information fairly quickly after an election date or after the end of the year.

The Hon. DON HARWIN: On page 14 of your presentation you refer to frequent year-to-date snapshots of data. Can you clarify what you mean by that term? Is that year-to-date snapshots in terms of being available to the public?

Mr FOLLETT: We talk about having an annual period that would commence on 1 July and finish on 30 June to align with the financial year. The data would be constantly added to the system so we could at any point do a snapshot of what is in there. That is simply to provide a mechanism so that should it be decided that a report is needed during the financial year we would have a system that could achieve that outcome. We have not set when any snapshot should happen; we are saying that we could provide a system that if others decided there needed to be disclosure more often than once every 12 months, and certainly around an election event, we could achieve that.

The Hon. DON HARWIN: Have you acquired the information technology and the software that is required to implement this system?

Mr FOLLETT: No, we have not acquired it. We have built a back office database. We have the engine that could be behind a web front end. That engine currently collects data from physical forms by manual keying in by perhaps 12 temporary staff during an election period. Instead of having staff within the office, we would like that keyed in at source by the donors—that is, by political parties in their office in their time. We have not acquired anything as yet.

The Hon. DON HARWIN: So the capacity to do that is not funded yet?

Mr FOLLETT: Correct.

The Hon. DON HARWIN: With the sort of system you are envisaging, which would enable snapshots to be taken and electronic filing by stakeholders, would there be any barrier to having the sort of approach, for example, taken in various Canadian jurisdictions that have real-time disclosure where there is lodgement and then the details of the donations are made public? There are differing periods, but in most cases they are less than 30 days. Are you talking about so-called real-time disclosure with that technology?

Mr FOLLETT: This system would allow for that. We would be collecting on a continuous basis and publishing on dates determined by others.

Mr BARRY: The authority's submission recommended an annual disclosure period in moving forward from the four-year, backwards-looking disclosure period. Once that is built, we can do snapshots of the state of disclosures and returns at any point. It is a policy matter as to how often that information would be published.

The Hon. DON HARWIN: So if the Legislature required real-time disclosure, that sort of system would already be in place and would be able to do that?

Mr BARRY: It would.

CHAIR: You have 916 political donors who are non-compliant; that is, they have not reported to the authority but their name appeared in party documents. That is how you have identified those people. How do you identify other people not on the party list who may have made donations or,

as has been reported, donations in kind where an office is supplied to a candidate and no mention is made to the authority? Do you have any investigation ability?

Mr BARRY: We can deal only with what we get from the party, candidate and donor returns. We have no evidence of anything that has transpired outside that environment. We would need evidence. It would be a possible offence for a candidate to accept gifts and not to disclose them. We would refer any such matter to the police for investigation. The authority does not undertake its own investigations; we would refer those matters to the police to investigate. If there were prima facie evidence of a breach of the Act, we would refer it to the Crown Solicitor for possible prosecution.

CHAIR: It is probably not your role to make recommendations on policy, for example, about whether there should be a cap on donations. I understand Victoria has a cap of \$50,000 on donations from people who have a gaming licence. Have you given any thought about whether there should be a cap on donations from gambling, liquor or tobacco sources or, particularly, developers?

Mr BARRY: I realise that that is an area to which this Committee will no doubt turn its attention. You are quite right, as chair of the authority, I do not think it is appropriate for me to express a view on the appropriateness of that. However, I strongly recommend that members take careful note of what Professor Hughes has said in his submission to the Committee. Professor Hughes is a longstanding electoral commentator and the inaugural Commonwealth Electoral Commissioner. He is well regarded internationally on these matters. I implore members to take considerable note of his submission.

CHAIR: What particular point?

Mr BARRY: On the matter of dealing with excluding groups from donations. Professor Hughes expresses a view on it and I think that that view is one to which the Committee would want to give careful consideration.

CHAIR: Does he favour or oppose the caps?

Mr BARRY: I think he points out the weaknesses in capping or limiting people donating.

The Hon. AMANDA FAZIO: You were formerly the Electoral Commissioner in Victoria, which did have caps on donations. Was your experience in Victoria that those caps were workable?

Mr BARRY: I only administered that legislation for one election, and the organisations that were capped were in a very narrow, prescribed class of organisation. From memory, they were gambling organisations that had been issued with a licence by the State. They were very clearly defined line-in-the-sand groups, and prima facie it was easier to administer. The concern was always about the organisations that might be behind those groups that had been so licensed. But, as I said, I only administered it for one election and it did not cause any difficulties.

The Hon. ROBERT BROWN: Mr Barry, in your submission you made today, which you showed on the screen, I note that the administrative functions are described as having two clerical officers. Is that your standing establishment? I note that Mr Follett mentioned a figure of 12 or 13 temporaries. Could you explain what is the standing work staff establishment and what does that change to at times of doing the current paper-based disclosure?

Mr BARRY: The authority has Trevor Follett as the official secretary, and I think Trevor's time would be about point three. As well, we have one full-time officer and one full-time junior person. At the time after the election, as Trevor mentioned, 180,000 records have to be processed, so we would employ casual staff to come in and do that work. So it is very much peaks and troughs.

The Hon. ROBERT BROWN: You say that you have built the back end for some future system should it happen. With regard to the front end, or the Web end, of an online disclosure system, firstly do you have any rough ideas as to what sort of capital expenditure would be required? Secondly, would there be a need to alter the full-time staff establishment, and if so what sort of savings would you see in the temporary staff establishment?

Mr BARRY: We have not turned our mind to what would be the cost of building the front end. What we have at the moment is a database. We do not have any idea of what the cost of the front end would be. I think Trevor could comment better about the casuals.

Mr FOLLETT: At an election time we would employ maybe a dozen casuals after the election. They could be employed for, at the most, about six months. Some would be there for a period of maybe only a month. We basically have a bell curve which matches the receipt of the declarations. They are external agency staff, so they are not part of our own staff.

The Hon. ROBERT BROWN: In relation to an online system, the Hon. Don Harwin asked how quickly the data could be made available online. The objective there, I guess, from the public's viewpoint would be that they have information just before an election. So, even though it might be annual data, it could be updated on a quarterly or six monthly basis, say in December, which still gives people plenty of time to consider what is there before an election. You mentioned that you would require some sort of donor identification. That would be almost mandatory for validation purposes, would it not? If you have online access to a Web system and people putting data into your database, it would be almost mandatory that there be some sort of validation system, such as a PIN number or an identifier number?

Mr BARRY: We would have the electoral roll operating in the background. If the law provided that you had to be on the electoral roll for New South Wales before you could donate, when the donor came into the system to put in their particulars it would automatically search the electoral roll to establish that they are on the roll.

The Hon. ROBERT BROWN: So there would be no further data entry required?

Mr BARRY: No.

CHAIR: What if it is a company which is not on the database?

Mr BARRY: We would propose that they have to use their ABN. You could then link to the ASIC site and you could see who the owners or directors of the company are.

The Hon. AMANDA FAZIO: Under your proposal, a permanent resident who was not a citizen would not be able to donate, and somebody who lived in, say, Queensland would not be able to donate to New South Wales?

Mr BARRY: There are two parts to that. In the absence of a national scheme, a person outside New South Wales would not be able to donate and only people who are on the New South Wales electoral roll would be able to donate. The underlying principle being that people who are eligible to vote, participate and stand as candidates in the process should be those who can donate money to candidates and political parties.

The Hon. AMANDA FAZIO: That would not apply to businesses. If you are saying that you want to match corporations or organisations by their ABN, organisations from interstate would be able to donate?

Mr BARRY: Correct, they would.

CHAIR: The national office of that party could forward donations to the State branch?

Mr BARRY: Yes.

CHAIR: I posed this question earlier but I am not sure whether you gave an answer to it. If there were a half a million dollar donation from a national office to the State branch, do you ever make inquiries as to the origin of that money, as to the individual donors? Obviously it would have to be donated by one or more persons.

Mr BARRY: At the moment, when a party lodges a return we look to see that there is a donor declaration matching that. As Trevor pointed out, we have 900-plus missing donor declarations.

At face value, the registered parties have done the right thing and told us who they have collected money from, but the donors, whether they be individuals or organisations, have yet to respond to our letters requesting that they complete a donor declaration. So in that regard we do follow them up.

CHAIR: But if it is a lump sum and it simply shows it is from X political party office in Canberra as the donor name, you would have no other name to follow up, would you? Would you say, "Could you give us a list of the people who contributed the money that has been forwarded through the national body?"

Mr FOLLETT: Every donor declaration needs to state where the funding has come from, if the funding has not come from their own bank account. All that information is entered into our database. That list of donors whom we do not have a match on is the list of non-declared donations. We do not differentiate between any name on that list; the whole list is referred to the Crown Solicitor's office for follow-up.

The Hon. DON HARWIN: I think this is what the Chair is getting at. If the national office of a political party said, "Yes, the money is coming out of our bank account", and it goes into the bank account of the State branch or division, does that not entirely satisfy what you have just said?

Mr BARRY: We might have to take that question on notice and get back to you on it. I think the question is: If a political party that is operating in New South Wales and at a national level, if the national body provides an amount of money to the State part of the party—

The Hon. DON HARWIN: And signs the donor declaration you are talking about.

Mr BARRY: —how is that accounted for. Can we take that on notice?

CHAIR: Yes. Apparently this has been happening for some time. Whether you have ever questioned the national donor, asking them to supply the origin of the money, where it came from in the first place, whether it was from one person or six people. Will you take that on notice?

Mr BARRY: We will.

The Hon. AMANDA FAZIO: That also raises the issue of third-party donations and how you track the donors involved. Do you have any comments to make on that, or would you like to answer that on notice also?

Mr BARRY: When you say third-party donations, what is often very helpful is to give us an example of what you mean. Is this the question: If an organisation XYZ collects money and donates a sum of money to a registered party, where did XYZ get that money from?

The Hon. AMANDA FAZIO: Yes. There are organisations related to political parties whose primary aim is to fundraise for those parties. Yet, if the donation comes from that fundraising body, how do you know who put that money in?

Mr BARRY: I think we need to take the question on notice and get back to you about how all of that works.

The Hon. JENNIFER GARDINER: Mr Barry, with regard to the missing donations, are they with the Crown Solicitor for advice at the moment?

Mr BARRY: In the past the authority never had a database. It is only in the last 12 months that we have been able to see the missing donations for donor declarations. The first challenge for the authority was: What obligation does the authority have to take these matters further? We have sought legal advice from the Crown Solicitor. The Crown Solicitor has come back to us only last week with written advice about what the authority's obligation is. We will be referring those matters to the Crown Solicitor for him to take them to the next step.

The Hon. JENNIFER GARDINER: So it will go back to the Crown Solicitor?

Mr BARRY: Yes.

The Hon. JENNIFER GARDINER: Later today we will be hearing from the Democratic Audit of Australia, which has submitted that the Election Funding Authority should be abolished and its role incorporated into the New South Wales Electoral Commission. As you point out in your submission, the Act which set up the authority is an Act that goes back to 1981 and the election funding and disclosure legislation in this State has not been substantially reviewed in a quarter of a century since then.

Do you wish to comment on what are the merits and demerits of having a separate funding authority, noting for example that the Australian Electoral Commission has its disclosure and donations matters dealt with under the aegis of the Australian Electoral Commission? Are there any other jurisdictions where there is a separate authority, and do you think that perhaps there would be some advantage in simply having one body that deals with managing election campaigns and conducting the elections, and having the funding arrangements under that authority as well?

Mr BARRY: I think it is worth remembering that New South Wales was the first jurisdiction in Australia to have public funding and disclosure. In many respects it was pioneering legislation at the time. I said earlier that I support a national solution to funding and disclosure because I think that in this day and age the staff that is required to police the disclosure part is a different type of staff from what an electoral commission would necessarily have. There is a lot of emphasis on accounting and a lot of emphasis on investigation that, quite frankly, electoral commissions of their own right do not necessarily have. It would enable expert staff to be employed purely for that purpose of running the disclosure and funding regime.

Having said that, I do not think it would be appropriate for the funding and disclosure legislation to be assigned to the New South Wales Electoral Commission. For one thing, whilst the New South Wales Electoral Commission is a body corporate it has one member only and that is the Electoral Commissioner. I do not think it would be in the public interest to have one person effectively dealing with all of this. I think it is much better to have a national solution to the regime. If that does not happen, I really do not have a view on any other model the New South Wales other than I do not think it should go to the Electoral Commission for those reasons.

The Hon. MICHAEL VEITCH: What are your thoughts on the merits, or even disadvantages, on mirroring the Commonwealth's electoral funding requirements? Some changes are proposed there, and a number of political parties in their submissions have talked about the benefits of mirroring the Commonwealth arrangements, but what are your thoughts on that?

Mr BARRY: Are you talking about the disclosure or the funding?

The Hon. MICHAEL VEITCH: The disclosure.

Mr BARRY: The one thing I do support is the annual return. I must say I am not fully conversant with the Commonwealth provisions but certainly in that regard I support an annual return as distinct from the four-year.

CHAIR: The Commonwealth brought in the \$10,000 level for disclosure whereas the State is \$1,500?

Mr BARRY: On that matter I have no view. That is really a matter of judgement for the Minister and for the Parliament as to what the appropriate level is.

The Hon. MICHAEL VEITCH: On another matter, a number of political parties have also mentioned in their submissions the difficulties of consolidating their returns for lodgement. With your proposal for an electronic process, would you allow the registered political parties one point of access to make their electronic lodgement or do you see that filtering down to respective political party units?

Mr FOLLETT: Currently we get questions about the branches and parties as to whether they are separate entities and we have always said no, there is only one entity and that is the registered political party and that is who we expect the return to come from.

The Hon. MICHAEL VEITCH: Returning to the third-party donation process, can you talk me through the current arrangements for accounting? I will give you an example. If you sold a diary, for example, and the proceeds from the sale of that diary are disbursed to a political party. A person prepares, manufactures and distributes the diary but they then donate the proceeds of the sale to a respective political party. How is that accounted under the current arrangements?

Mr FOLLETT: It is a gift. It is a donation.

The Hon. MICHAEL VEITCH: But you have no way of recording who purchased it? I mean one individual or one organisation could purchase a truckload of these diaries?

Mr FOLLETT: It they are providing the proceeds of that sale across then there is a value against that. That is a cash amount that is going to the party or candidate and that would be declared as that amount of money. If they are giving it away, or providing the party or candidate with goods or services—printing, for instance—at either no cost or a discount cost, then that has to be put on the declaration. That provision exists currently. It is up to the person who completes the declaration to put his or her own value against what that service or gift is worth.

The Hon. AMANDA FAZIO: I just want to ask a couple of questions about issues you have raised in your submission. On page 2 you state: "The Act also needs to be clarified in relation to how GST amounts are to be treated. As the approach currently taken by parties, groups, candidates and donors are inconsistent." Do you think that is because people are not sure of what to do or do you think that people are trying to minimise their donations by declaring the GST-free amount?

Mr FOLLETT: To give an example of what you are talking about. If a party or candidate holds a function, when they sell an entry ticket to that function they may say, "This is a dinner and the price for attending the dinner is \$5,000." The party or candidate will likely put that in their accounting system as \$4,500 for themselves and \$500 to be passed to the Australian Taxation Office. They will then submit a return to us stating they received \$4,500. Meanwhile when you ask the political donor who went to the function, and paid the fee to go, "How much did you pay?" they will say, "\$5,000". So we have this mismatch between the values that have been declared on the political donor declarations compared to the party and candidate declarations.

The Hon. AMANDA FAZIO: You do not see that as being used in an attempt to circumvent full disclosure but rather it is simply a matter of people not being sure of what their legislative requirements are?

Mr FOLLETT: I think it is a matter of interpretation; that is not set out in the Electoral Funding Act.

The Hon. AMANDA FAZIO: At the moment there is a two-stage process: you register as a political party to contest elections and then you register as a political party under the Election Funding Act. You were saying that you think it would be easier if people were automatically registered for both in one process. Are there many parties who register to run candidates and do not register under the Election Funding Act?

Mr BARRY: It is a little bit confusing because the truth of the matter is a party has to make a disclosure anyway, irrespective of whether they register. So they do not get out of the Election Funding Authority responsibility by just choosing not to register. All that happens effectively is that if they chose not to register with the Election Funding Authority in the event they were eligible for funding they would not get it. It seems to us that it is unnecessary bureaucratic red tape. On that same thing, once a party becomes a registered political party for a State election in my view that should be it. Clearly it can nominate candidates and it should have full entitlements under the Election Funding Act. I think this goes back to what Jenny Gardiner said before; this legislation was written back in 1981. To my knowledge back in 1981 there probably were not independent members in the Legislative Assembly—

The Hon. DON HARWIN: Oh yes.

Mr BARRY: There were?

The Hon. DON HARWIN: Yes.

Mr BARRY: But there might be the same number—

The Hon. DON HARWIN: Not as many, yes.

Mr BARRY: —political minor parties. 1981 is a long time ago and consequently a lot of these concepts were fairly new and they have not really been modernised or brought into how things work in the modern day.

The Hon. AMANDA FAZIO: In relation to electronic filing, are you confident that adequate security can be built into the system? Because you can just see some bunch of crazed hackers in the run-up to an election trying to distort the donation record of parties for political advantage? Are you confident that you could have a system that would survive such endeavours?

Mr BARRY: I think it would be possible for a donor to log on to the system and put in that they gave a political party half a million dollars—remember, they have got to be on the roll?

The Hon. AMANDA FAZIO: Yes.

Mr BARRY: But the other thing is that the political parties should be able to see what is being put in by donors associated with it and this would not be going on to the public website. What Trevor has outlined is really a web interface to the database. So a registered party should be able to go in and see what donors are saying they have given to a party and, of course, the donors would be able to go in and put in whatever information they have. You are quite right; we do not want to have people putting in fraudulent things.

The Hon. AMANDA FAZIO: The last question I have at this stage is, in your submission on page 3 you say, "It would be simpler if it were automatic then any reimbursement for endorsed candidates by a registered political party could be made directly to the registered agent." Now I must admit bias, being a former party official for the Labor Party; I think we should get back all the money and the candidates should not. Could you outline the efficiencies that would be achieved if that were to be the case: instead of sending money out to 93 lower House candidates it all went back to the party?

Mr BARRY: Trevor can probably explain the complexities in it at the moment.

Mr FOLLETT: To deal with 93 individuals is a reasonable overhead compared to dealing with one. Candidates at the moment, where a party endorses them, will quite often sign a form that says I am happy for you to send my money to the party. So we are really just eliminating that step, which is quite largely current practice.

The Hon. MICHAEL VEITCH: You are saying the majority of political parties actually do that now?

Mr FOLLETT: Correct.

The Hon. AMANDA FAZIO: Very sensible.

CHAIR: Mr Follett, in your presentation you spoke about the 916 political donors who were in your category of non-compliance. All their names and addresses were on the party list—that is how you identified them? They are not actually concealed?

Mr FOLLETT: All their names and addresses are on the party accounts, yes.

CHAIR: You know the names and addresses and you know the amounts?

Mr FOLLETT: Correct.

CHAIR: That is the only way you would have picked up that. They have not put in their individual form?

Mr FOLLETT: That is correct, yes.

CHAIR: Do you have any explanation as to why it is such a large number? Do you think it is simply that they do not understand the system? They are not trying to conceal the donation as it has already been disclosed to you?

Mr FOLLETT: It has been declared to us by the party or candidate; not declared to us by the donor. At the time the donation was made by the donor to the party, the party would have issued a receipt to that donor and the party has kept track or a record of those receipts. At the end of the four-year period the party files with us a listing of all donations they have received. The Election Funding Act requires the political donor to also make a declaration in the same instance and it is those 918 that have not done that. Yes, at the time they gave the donation they would have received a receipt but they have not declared that donation to the Election Funding Authority.

The Hon. DON HARWIN: Have those missing 918 had a warning letter from you?

Mr FOLLETT: Yes, they have.

The Hon. DON HARWIN: And that was prior to—

Mr FOLLETT: Correct. Everyone has had a letter from myself.

CHAIR: It might make it simpler if you had a duplicate receipt so when they get the receipt there is a second sheet that they could simply sign and mail back to you in one action?

Mr FOLLETT: That would be one way but currently the Election Funding Act requires a declaration by the political donor to us.

CHAIR: Or you could have a declaration attached to the receipt then? The party could supply that?

Mr FOLLETT: The party could supply that, yes. If we move to an online way, we would ask the party to inform the donor to go online and make that declaration there.

The Hon. AMANDA FAZIO: I know in a lot of international jurisdictions, including the United Kingdom and the United States, they actually have bans on people from overseas, on foreign donations going into election campaigns. Can you tell us what the extent is of foreign donations—because they are not banned here—to the New South Wales election campaigns?

Mr FOLLETT: I do not have the exact numbers here. However, it is in the order of around \$400,000 that we have declarations from overseas entities or persons.

The Hon. AMANDA FAZIO: Would you be able to take that on notice and get that information for the Committee?

Mr FOLLETT: Yes.

The Hon. JENNIFER GARDINER: And the time frame in which that \$400,00 was received? Is that in the last year or for this election in 2007?

Mr FOLLETT: We can provide that, yes.

The Hon. AMANDA FAZIO: At the moment there is much comment that we should have caps donations and some people are saying we should have caps on spending. You mentioned that with the Victorian experience people with gaming licences are limited to donating only up to \$50,000 and that you would not really know who was behind the companies that held a gaming licence. If

donation caps were put in place with the requirement to identify donors through the Australian business number of each donor, it is quite common for one entrepreneur to own 40 or 50 companies—some of them shelf companies—all of which would have an Australian business number. In effect, people could get around the donations caps by having multiple companies?

Mr BARRY: Quite so.

The Hon. AMANDA FAZIO: The only disclosure that would come out of that would be when people did company searches on the Australian business number, is that how it would work?

Mr BARRY: Yes.

The Hon. DON HARWIN: So, in other words, if you were trying to regulate that area in relation to corporations, the only way of being certain would be to take away the right for all corporations and organisations to give money at all and limit donations to just individuals on the electoral roll?

Mr BARRY: Correct.

The Hon. AMANDA FAZIO: Then you would have a handful of very wealthy individuals perhaps having more to say than you would like.

The Hon. DON HARWIN: Which is why you would then have to put caps on the amount individuals could donate.

CHAIR: Mr Follett, in your written submission you comment that the Electoral Funding Association recently requested a demonstration copy of the software provided to campaigns by the New York Campaign Finance Board. Have you received the copy at this stage? Do you think it would work in New South Wales? Do you have any idea of the costs in implementing that system?

Mr FOLLETT: No, we have not received it. When we were doing a little bit of research that was one that came to our attention. We thought we would write away and seek a copy of that. At this stage we have not got any access to that or any costings.

CHAIR: You still are anticipating that you will receive it in due course?

Mr FOLLETT: Yes.

CHAIR: We have not had any discussions on the political education fund. Could you outline the objectives of the fund and whether you believe the fund is meeting its objectives?

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

The Hon. AMANDA FAZIO: What is the threshold for registered political parties to receive funding from the political education fund?

Mr BARRY: That is quite a complex formula.

The Hon. AMANDA FAZIO: I tried to have a look at it and I could not work it out, so I thought maybe you could tell me.

Mr BARRY: First of all, the party must stand candidates in the Legislative Council election and it is based on a calculation of a formula of votes received at the Legislative Assembly election. I can see some Committee members looking a little bit questioning; it is not straightforward but Trevor might be able to outline it.

The Hon. AMANDA FAZIO: Could you just tell us and maybe we will get a better feel for who gets the money now?

Mr BARRY: I cannot off the top of my head.

Mr FOLLETT: Political education?

CHAIR: It is all the parties that nominate candidates in the lower House that also have candidates for the Legislative Council, that is what you just said.

Mr BARRY: I think it is the other way round. In order to be eligible you have to stand candidates in the Legislative Council.

CHAIR: But it is based on the funding of the Assembly vote?

Mr BARRY: But it is based on an outcome of the Assembly.

CHAIR: So, if you had no Assembly candidates, you would get no funding?

Mr BARRY: If you have no Council candidates you get no funding and, yes, if you have no Assembly candidates.

The Hon. ROBERT BROWN: The very simple answer to the question by the Hon. Amanda Fazio is that there is only one political party that does not receive any funding from the electoral education fund.

CHAIR: Do you want Mr Barry to answer the question?

The Hon. ROBERT BROWN: I do not believe he necessarily wanted to say, Mr Chairman.

Mr FOLLETT: The question asked was which parties have received money from the political education fund and the amounts?

The Hon. AMANDA FAZIO: No, I just wanted to know which parties received funding. I was not fussed about how much.

Mr BARRY: Which parties? Okay. The Australian Labor Party; the Country Labor Party—this is in the annual report for the year ended 30 June 2007—Liberal Party of Australia, New South Wales Division; Christian Democratic Party; National Party of Australia; and the Greens.

CHAIR: Which registered party does not get funding? Would there be a number of parties?

Mr BARRY: There are 6 parties that do, so there will be in the order of the 11 or 12 parties that do not.

CHAIR: And which are registered parties?

Mr BARRY: Yes.

The Hon. AMANDA FAZIO: And that funding increases when Australia Post puts up the stamp value?

Mr BARRY: Yes, it is set at 50¢ per elector and it adjusts if the price of a stamp goes up.

CHAIR: Do you have any views on whether that system based on the stamp value is a simple way of determining the amount or should it be based on some other formula?

Mr BARRY: I think if it is within the Committee's terms of reference, it might be something that you have a look at. You ask me is it meeting its objectives. It may well be something that the Committee turns its mind to as to whether it is meeting its objectives: really, what was the purpose of

in setting it up in the first place and have things moved on? I guess one of the things would be that in the first instance it was all about enabling political parties to have almost like a participation fund so that they could communicate with their members. I just wonder whether in this day and age that basing it on a postage stamp is probably an appropriate way.

The Hon. AMANDA FAZIO: It was probably pre-internet when it was set up?

Mr BARRY: I think it would have been.

CHAIR: It could be assumed that the term "political education" meant there was some education material being sent out on how the preference system or the voting system worked?

Mr BARRY: "Political education" as defined in the Act is extremely broad. It is more defined in what it is not than what it is. There are certain things you cannot spend the money on but, by and large, it is a fairly broad definition of how parties can use that money.

CHAIR: In your answer about stamps and the internet are you implying that perhaps its use-by date has now passed?

Mr BARRY: I think that is something the Committee might want to turn its mind to, whether that fund is achieving its purpose. I do not have any particular view on it other than it is probably time we review it.

The Hon. DON HARWIN: Mr Barry, one of the statements you make on page 1 of your submission is in relation to the role the Election Funding Authority has over Local Government matters where you say the system designed for one purpose—State elections—was now being applied to another, that is, Local Government elections, and that that was not originally contemplated. On page 2 you then talk about the difficulty that presents with time frames. Are there any other practical difficulties in the way the regime is being applied to Local Government that you think also needs attention and possible reform?

Mr BARRY: At a State election we have around about 950, 970 candidates. At the 2004 Local Government elections, if you take into account the deferred elections, there were over 5,000 candidates. Each of these people has an obligation to report to the Election Funding Authority. You can see the challenge we have in getting something like 17 registered political parties to fulfil their obligations. There are 130 parties registered under the Local Government Act. Many of these parties are single-issue local organisations; they do not have any infrastructure. I think you can see the challenge we will face after the Local Government elections in September in getting 130 of these small entities and the 5,000 candidates to comply, let alone the myriad donors who will be behind those candidates—who will be donating money to those candidates.

So even though we have had some challenges after the State election, I think it is going to be very clear that we are going to have considerable challenges after the Local Government election. Putting that as the canvas on which we have to work, the difficulty again for us is that these disclosure periods go back four years. So with the little registered single-issue political party for Local Government with no infrastructure that has to report to us on all its fundraising and donations back four years, I think you can imagine what the quality of some of that information is going to be.

The Hon. AMANDA FAZIO: A lot more Independents seem to run at Local Government level and they have to put in returns for their donations as well. Do you find that the quality of information you are getting from those people is less because they do not have any party structure or group helping?

Mr BARRY: Notwithstanding the fact that we are going to be running candidate information sessions around New South Wales—in fact, commencing in May this year—when we will provide written manuals and material for people, the truth of the matter is that there are a lot of people who do not understand and are quite surprised when they stand for Local Government that within a couple of days of nominating they then have the Election Funding Authority sending them material saying, "By the way, here's your obligation now under the Election Funding Act": they get a receipt book and so forth and so they are very confused.

Having said that, Local Government elections I think is one of the biggest challenges because it is an area where we know some people have been setting themselves up and acting as intermediaries between candidates and the voting public raising money and supporting candidates and there has been less than full and open disclosure. So, returning to Mr Harwin's question, the Local Government applying the Election Funding Act verbatim and then saying, "Oh yes, but you would exclude this clause and this clause" makes it very difficult for people to understand their obligations because the Act was never written with Local Government in mind. I think it is something that the Committee hopefully might turn its mind to: how should Local Government be treated. I know that in some submissions there have been recommendations for Local Government candidates being funded. So I think that whole area of how Local Government works is something I hope the Committee can turn its mind to.

The Hon. DON HARWIN: I am sure we will, but we will be interested also in knowing what suggestions you might make as to how well we could adjust the State regime as it applies to Local Government. We have heard from you, obviously, about the volume and—given the multiplicity of small independent actors in the process—the quality of the information. We would all be very conscious of the current difficulties that surround Local Government and the role of money in Local Government elections. The public expectation almost would be that we would be increasing the rigour of accountability and transparency coming out of the process for the State and equally I would have thought for Local Government elections. So, therefore, is there anything specific that we should be doing for Local Government?

Mr BARRY: Mr Harwin, we have not come prepared with any solution, or option I should say, for local government. If the Committee requests something from us, of course we would happily provide the Committee with some things to consider.

CHAIR: We might follow that up at the next hearing with what Mr Harwin has raised already.

The Hon. ROBERT BROWN: Coming back to the State election, I want to ask about expenditure claims. Did a high percentage of the total returns that were made comply fully in providing the background data and information you needed to verify the audit or did you have a large number of referrals and have to go back to the party agents and say, "Give us X, Y and Z"?

Mr FOLLETT: There is quite a bit of correspondence between us and the party agents requesting further information. Receipts may be given to us that are not applicable to the claims that are made; they may be outside the date period. We would correspond with the party agents on those administrative type issues. Following that correspondence those issues are resolved very easily.

The Hon. ROBERT BROWN: Is a large component of staff time taken up in the return period, or is it, say, 5 per cent or 10 per cent?

Mr FOLLETT: I would say dealing with the expenditure side is larger than dealing with the donations. The donations are fairly straightforward; we are looking at fairly succinct fields of data entry. The other side is a lot more complex.

The Hon. ROBERT BROWN: Would you be forthcoming with any suggestions as to how the requirements could be made more clear and is there anything else you could do to assist parties and candidates to comply fully in the first instance rather than having to rework the data? Do you feel you have done enough?

Mr BARRY: One of the challenges is that the New South Wales scheme is a reimbursement scheme, unlike the Commonwealth scheme, which is an entitlement scheme, and unlike the Victorian scheme, which is an entitlement scheme. Consequently an enormous amount of work goes into getting all the necessary supporting documentation to validate the reimbursement. Having said that, as Trevor has pointed out, certainly what the political parties spend on advertising is greater than what they are entitled to under the reimbursement.

Picking up on what Ms Fazio was saying before, in many respects if the parties were the ones who were making the claim a lot of this processing work would disappear because the amount of money that a political party spends on its campaign is greater than the sum of its candidates' entitlements. For example, when I was electoral commissioner in Victoria, there was often only one invoice from certainly the larger parties to write out a cheque for the reimbursement, whereas here we spend a considerable amount of time dealing with each party's 40, 50 or 93 individual candidates, trying to get in the individual returns, yet the sum of the party's expenditure is greater.

The Hon. ROBERT BROWN: Does that suggest a solution to the problem of the volume of documentation?

Mr BARRY: It would if the funding regime was adjusted along those lines.

The Hon. JENNIFER GARDINER: So that it was entitlement instead of reimbursement?

Mr BARRY: There are two options: one is an entitlement scheme but the other one, picking up on what Ms Fazio was saying earlier, is that the party should make the claim rather than the candidates. If we were dealing with the party, it would make processing a lot simpler.

CHAIR: One of the problems we have found in some other States is that people can actually make a profit out of the election. A system is needed where the entitlement would never exceed the amount of expenditure.

Mr BARRY: That is one of the downsides to the entitlement scheme.

CHAIR: It would not affect the major parties—Labor, Liberal, Nationals, etc—but it would have some impact on the minor parties or independent candidates.

Mr BARRY: I think making a profit is a rather unique occurrence.

The Hon. AMANDA FAZIO: Mr Barry, one of the submissions we have received says that the disclosure returns that are submitted to the Election Funding Authority should be signed off by an auditor. Apart from being a great boon to the accountancy industry, is there any necessity for that? Have you found that the disclosure returns are not correct? I thought it was more a matter of chasing returns that had not been submitted.

Mr BARRY: Trevor, I am sure, will have some views on that. As a principle I think it would put quite an onerous burden on people to have to get an audit certificate for something that might amount to \$1,600 and I am not sure what the auditor would be certifying to.

Mr FOLLETT: We receive audit declarations from parties, candidates and groups when they submit their declarations, but to extend an audit requirement to political donors would be fairly onerous. The value of the donations is fairly small in many cases. The cost of receiving an audit certificate would be disproportionate to the value of many donations.

The Hon. MICHAEL VEITCH: Of course, the risk with that, as you were saying earlier, Mr Barry, is that if the state arrangements were replicated to local government, having been a rural government councillor myself for 12 years, that onerous financial burden would negate the opportunity for many local activists to participate, particularly in rural areas. That just reinforces your statement about being careful about replicating what we have at a state level to local government.

Mr BARRY: Correct.

CHAIR: We probably need some amendments to the Electoral Act that deal with local government separately from the State requirements.

Mr BARRY: The local government area is one that I think needs careful consideration. Firstly, there is no funding; it is the disclosure. There are solutions; it is not impossible. We need to bear in mind, as I said before, there are 970-odd candidates compared to 5,000. That is a lot of people to deal with, particularly if we were applying annual returns.

CHAIR: Or six-monthly returns.

The Hon. DON HARWIN: Mr Follett, could I take you back to the audit certificate matter? How much comfort does an audit certificate provide you with?

Mr FOLLETT: I think it gives us another level of comfort from dealing purely with the parties or candidates. A third party comes in and reviews the documentation we have been provided with. The Act sets out the declaration or the words that the auditor must provide, so it gives us an additional level of comfort compared with not having it.

The Hon. DON HARWIN: Even so it is still very difficult to give those words of comfort without some sort of degree of qualification, is it not? Given the four-year thresholds, is it not very difficult to be certain that you have complied?

Mr FOLLETT: I am sure the auditor would have an easier job if it was a shorter time frame than a four-year period. We get a lot of complaints that company accounts and tax accounts have been filed and company records have been sent to storage and then the Election Funding Authority comes along and requests four years' worth of invoices—and we want to see originals of those invoices—and the auditor needs to sign off on that, so it is a fairly heavy burden on the organisation to provide that information to the auditor.

The Hon. JENNIFER GARDINER: It would also be costly if there were quite frequent reporting periods. If the suggested annual reporting period went to six-monthly or quarterly, the auditors would be doing pretty well, would they not?

Mr FOLLETT: The auditors would have to look at it more frequently. Hopefully they would be looking at less volume.

The Hon. ROBERT BROWN: Unfortunately audit certificate prices do not come down.

The Hon. DON HARWIN: They are at five-figure sums already to do the audits that you specify.

Mr FOLLETT: The audits that the Act specifies.

The Hon. DON HARWIN: Yes, I am sorry, the audits that the Act specifies. I imagine that the Labor Party has the same experience there—several multiples of five figures.

CHAIR: Mr Barry, we have talked about the feasibility of caps on donations. If New South Wales had caps on expenditure by the parties or the candidates, which New Zealand has apparently, would that reduce some of the pressure on parties in collecting donations or being influenced by donations?

Mr BARRY: Mr Chair, again I preface what I am going to say by pointing out that these are my personal views, not the views of the Election Funding Authority. I refer you to the very good submission from Professor Hughes in which he points out that if you limit expenses for candidates and campaigns you run the risk of encouraging others to operate in such a way that the party avoids operating within that cap. I think Professor Hughes is probably right. Once you limit by legislation what a participant in the process can do, people with fertile minds will almost certainly look to conceal and to avoid complying. I think what Professor Hughes is saying makes a lot of sense.

CHAIR: Third party organisations that are not registered political parties could be used to contribute.

Mr BARRY: It is not as simple. I think what Professor Hughes is saying is that this is not a simple matter. It would need to be very carefully thought out as to whether it would encourage less than open and full disclosure and encourage political parties and candidates to operate in a mode of concealment. Just to finish my comment on that, there used to be a provision in the Victorian Act prior

to 2002 that imposed a limit on Legislative Assembly and Legislative Council candidates. It was honoured in the breach more than it was in compliance, but it was very narrowly constructed.

In fact, it related to what candidates themselves spent. It did not matter what a party spent supporting a candidate. Again, I come back to what Professor Hughes said. He is laying down some very good principles. We want a system where we have absolute transparency and for people to operate in that environment. There should be severe penalties for breaches but it should not put lots of restrictions on people because otherwise they will operate in the mode of concealment. That is what I think Professor Hughes is saying in his submission and I think that makes a lot of sense.

CHAIR: A couple of times you made remarks about the Act being since 1981 but, either the commission or the funding authority, you have not seen it in your role to recommend changes to the Act. You see your role as more administration rather than initiating changes or improvements.

Mr BARRY: As I mentioned, I have only been the chair of this—I have only seen one State election through as chair, and I will only be seeing one State election through as chair of the authority for local government. My very nature is that I certainly will not—the authority is required to report to Parliament on its operation and administration, and it certainly would not be my disposition not to be putting in front of Parliament issues that need to be reformed. Having said that, of course it is ultimately the Minister who has to bring forward the legislation, and I have to say that when I did make recommendations prior to 2006 about some reforms, the Minister certainly did bring those recommendations to the Parliament.

CHAIR: I suppose the other way improvements have been made is when the Parliament establishes a committee to look at electoral matters and to review the Act, which has happened a number of times over the years now.

Mr BARRY: That would be something for the Government to consider.

CHAIR: So that process perhaps has been working through those electoral committee inquiries.

Mr BARRY: The electoral matters committee has met twice, once to review the March 2003 State election and it had a terms of reference to look at enrolment prior to the 2004 election. It is now just being constituted and has a terms of reference to look at the 2007 State election. I am not aware that within its terms of reference the election funding Act or provisions, authority, is within those terms of reference.

The Hon. AMANDA FAZIO: I found it valuable that you put forward three recommendations in your submission and you highlighted those again in your power point presentation you gave at the commencement of today's hearing in relation to basically matters that would cut across both State elections and local government elections. The Chair said we would revisit the issue of what potential reforms might be available to assist in ensuring transparency and compliance in relation to local government donations. I was wondering if you might take that issue on notice and perhaps before we hear from you again if you might be able to get back to us with some ideas so that we can frame our questions around those. I am sure that for all the major parties that run candidates or whose members run as Independents the whole issue of managing donations in local government is one that the public has great concern about at the moment and it is one that I would not like to see slip by us in this inquiry.

Mr BARRY: Yes.

The Hon. JENNIFER GARDINER: Mr Barry, you mentioned that changing the Acts would be a matter for the Minister. Has the Minister been in touch recently in relation to suggested reforms that we have heard a lot about in the public domain?

Mr BARRY: No. The Minister in this case is the Premier. No, the Premier had not consulted me with those matters; to some extent; nor do I expect it. Since he made his announcement on Thursday officers in the Department of Premier and Cabinet have been in contact with me and have sought some input from me on how to give effect to the announcements he made on Thursday. As I

understand, with the leave of this Committee, he proposes to make a submission to this Committee. So they have consulted with me over the weekend about what some of the practical implications could be of giving effect to some of the announcements he made.

CHAIR: In your submission to the Committee today you have put these three key suggestions, which you also call recommendations—annual declarations, electronic filing, political donor identification system. Is there anything else you would like us to consider as a Committee?

Mr BARRY: Not at this stage. There were a couple of things we said we would take on notice, and I think it makes some sense that, when we get to see the submission from the Premier, it will be very helpful to perhaps talk about how those things might be given effect to.

The Hon. DON HARWIN: When elections New South Wales received significant budget supplementation after the Council on the Cost and Quality of Government review—I cannot remember if that was 2004-05 or 2005-06; I think it might have been the latter, but regardless of which it was—was any of the funding and the new staff positions able to assist the Election Funding Authority in its work?

Mr BARRY: The short answer to that is yes. Because of the restructuring of the Electoral Commission, previously it was very unclear to me, when I came into the position of Electoral Commissioner, who was running and administering the Election Funding Authority provisions. But as I mentioned, we now have the director of finance and administration, Mr Follett, has .3 of his time on election funding. We now have two positions which are permanently assigned to election funding. I think in terms of that structure that is probably about right.

The Hon. DON HARWIN: So you would consider that an appropriate level of resourcing.

Mr BARRY: I think so, bearing in mind that there is a need for temporary staff to give effect to these provisions at the time of the State election and local government election. If we are moving forward into a web-based system where parties, candidates and donors can log on and do things in a web-based environment, then it is different. I do not think we will be looking for an increase in staff so much; it would be more a capital budget.

The Hon. DON HARWIN: Is there a qualitative difference between how the Australian Electoral Commission handles its responsibilities in relation to the disclosure of donations and expenditure and how you deal with it in terms of actual processes and the amount of staff that the Australian Electoral Commission has to handle the actual operations and activities it undertakes?

Mr BARRY: As I said before, I do not have any involvement in the administration of the Commonwealth provisions, but I understand that the Australian Electoral Commission, the legislation is fundamentally different and consequently it has a role of going to the registered political parties each year and, my understanding is, sitting down with various people and doing almost a desktop audit. The way this authority is constituted, and its business is set out in legislation, does not contemplate that arrangement.

The Hon. DON HARWIN: Do you have knowledge of what level of resourcing the Australian Electoral Commission has for its auditing role?

Mr BARRY: No, I do not.

The Hon. DON HARWIN: Could you perhaps undertake—

Mr BARRY: Yes, I can find out.

The Hon. DON HARWIN: —to find out and provide that information to the Committee?

Mr BARRY: Yes.

The Hon. DON HARWIN: Do you believe that the Election Funding Authority should have that role?

Mr BARRY: First of all, what I think I need to do is, with your agreement, find out exactly what they do, and I can make a further submission to you on the pros and cons of that. I think one of the things that—you might recall from the beginning I said I think there needs to be a national solution to funding and disclosure. Part of the reason for that, you might remember I drew to your attention the fact that by and largely my organisation is an electoral commission. We are an event manager. If you are going to get into things like desktop auditing, delving into the finances, investigating, then that is a different world of operation and I think that it requires specialist expertise.

I will make some inquiries of the Australian Electoral Commission about its staffing, how much money it spends on funding and disclosure, and I will draw to your attention some differences in the legislative obligations of the two organisations. But I would have to say from my point of view I do not favour a regime where the Election Funding Authority, in the absence of a national solution, is a compliance investigator. I mean, we do not have the resources. We do not have the expertise. It is an interesting issue about the Election Funding Authority. The truth of the matter is that in my view whilst it is under the chair of the Electoral Commissioner, to some extent it could equally be under the chair of the Auditor General because all we really do is process returns, approved allocation of funds and check compliance on returns.

The Hon. DON HARWIN: Thank you for that offer. That would be very helpful. There is just one other area where I would like to explore the differences between the mode of operation of the Australian Electoral Commission and you, and it is largely again as a result of the different legislative provisions. There are different definitions, for example, the definition of a political contribution is different at the State and Federal levels. In terms of the disclosure threshold, there is transaction-based reporting at the Federal level where it is done on a different basis at a State level.

I wonder if you could also—obviously you will need to take this on notice at this stage of the hearing—areas where our Act, which predated the federal legislation by a few years—where our Act is in fact perhaps not as good as the Federal provisions, whether you could offer a view on perhaps whether there is a better approach at a Federal level that we as a Committee should be looking at on some of those sorts of issues in terms of technical matters but important matters which drive the stakeholders in the process absolutely up the wall because they are sometimes required to disclose on a totally different basis at the State and Federal levels and is not just the four-year period or the one-year period that causes the difficulties.

Mr BARRY: I think I understand your question, and I wonder if I could put it back to the Committee in this way. To some extent what you are asking me is to draw to your attention some of the inconsistencies, differences between the Federal provisions and the State provisions in how they affect a party. To some extent, I do not know that because I do not administer both. I actually think that, for the Committee's benefit, you might get better information out of political parties than you would out of me because I only see one side of the coin.

The Hon. DON HARWIN: Are you asking us for a list of areas which we find difficult and suggesting—

Mr BARRY: I do not know that I need the list. I think it is probably the Committee—

The Hon. DON HARWIN: We have a list of areas which I think need to be addressed. Would it be helpful or would you be able to comment on the relevant provisions at the State and Federal levels and provide a view on which you think work well and which do not?

Mr BARRY: If you give me the list and the differences, if the question is can I respond to the Committee with what I think would be the preferable outcome—

The Hon. DON HARWIN: Yes.

Mr BARRY: Yes, I am happy to do that.

CHAIR: Mr Barry, I understand that when the AEC does the audit it is more on how efficient the organisation is. That seems to be the way they conduct their investigation rather than

trying to see if there has been non-compliance; they track their system all the way through to see if it is efficient. That is the impression I have had. So, it could be of value to you that that auditing process goes on because it benefits the State system as well.

Mr BARRY: I think it is very important to remember that all of our business processes at the Election Funding Authority go back to the legislation. If it was the Government's and the Parliament's intention that we undertake that role in a similar way to what the Australian Electoral Commission does in order to fulfil its obligation, that is a completely different way of operation and that would require changes to the Act and would require reconsidering of the funding structure for the authority. I think that is probably what Mr Harwin is getting at.

CHAIR: But it could be that the Commonwealth audit is sufficient; that there is just one on the national level.

Mr BARRY: This comes back to my original view and that is that there needs to be a national solution. For example, in Victoria the disclosure to satisfy the Victorian Electoral Act is the disclosure that is provided to the Commonwealth.

The Hon. AMANDA FAZIO: So that way donors would only need to make basically the one return?

Mr BARRY: What the Victorian legislation did was effectively make the Commonwealth scheme the Victorian scheme, with the exception of the funding. However, it does not apply at local government.

The Hon. DON HARWIN: Do they have a separate system for disclosure in Victoria for local government?

Mr BARRY: Not when I was down there—whether it has been introduced now.

CHAIR: Thank you very much for giving us the benefit of your knowledge and experience both in the current roles and other roles. The questions you have taken on notice, The Committee has asked that, where possible, the questions you have taken on notice be replied to within 21 days. There are some questions we submitted to you earlier that we have not covered today. If you could look at some of those we would appreciate your response to any of those questions. We will identify those and send them to you.

(The witnesses withdrew)

(Short adjournment)

ANITA TANG, Director, Health Strategies, Cancer Council of New South Wales, 153 Dowling Street, Woolloomooloo, affirmed and examined:

CHAIR: Thank you very much for agreeing to come and give evidence to our inquiry. Do you wish to make a brief opening statement?

Ms TANG: I will, if I may. I would just like to thank the Committee firstly for inviting us to provide a submission and to come today to speak in more detail to our submission. Firstly, I will just reiterate why the Cancer Council of New South Wales is interested in this. It is predominantly because we recognise the importance of public policy decisions as part of the armoury of defeating cancer. We recognise that the biggest gains in cancer control in the future are not necessarily in medical or scientific breakthroughs alone. There are many important decisions that parliaments and governments make that are important for cancer control.

As a community organisation we think it is important that we and other organisations like us are able to participate fully in discussions about public policy. Our interest in this inquiry is to ensure that we have the best processes and the best environment to promote access to informing public policy in New South Wales. In particular I think the sorts of issues that we deal with at the Cancer Council are matters often about public health and there is no active constituency promoting prevention strategies or public health issues, and where there is an active constituency in the debates that we have often encountered around public health those active constituencies are coming from corporations whose interests are often in conflict with the public good that our policies are promoting.

Our concern is that the current system of political funding does not do enough to redress the imbalance that sometimes occurs in relation to who is able to participate in debate and who is able to influence public policy. Our ideal is that policymaking in New South Wales would be based on an open and accessible process and where public policies are based on sound evidence, taking into account community standards as well as the practical issues around policy. We think there are opportunities in looking at the electoral and political funding system in New South Wales to make reforms that will make this a more level playing field.

Broadly, our concerns, as outlined in our submission, fall under three key themes: the issue of protecting against perceived or actual bias in policymaking; unequal access to policy makers; and improving accountability and transparency. The final thing I would say in our opening is that we would be blunt about the fact that our evidence today will be fairly restricted. We do not see ourselves as experts in the mechanics or the detail of electoral funding; we come here to bring to the Committee the perspective of a community organisation who is actively engaged in public policy formation and who has a strong interest in seeing evidence-based public policy.

CHAIR: In your submission you indicated a concern about the apparent influence of political donations on public policy, especially in matters restricting smoking in public places. Could you reiterate your concerns about the apparent link between this legislation and political donations?

Ms TANG: The issue that we have used as an example of our concerns is the policy debate that has been occurring over the last 10 to 15 years around smoke-free environments and the legislation that brings that into effect. Many of you will be aware—in fact, I am aware some of the honourable members sat on the tobacco inquiry that was held by this Parliament last year—that in New South Wales we have had smoke-free environment legislation since 2000, and that legislation essentially recognises the public good of creating smoke-free enclosed places so that people are not being exposed to second-hand smoke.

At the time the Act was put into place in 2000 it covered just about every enclosed workplace and public place and declared those to be smoke-free. The exemptions under the Act at that time though were given to pubs and clubs and there was always a question as to why a particular sector was treated differently. Over the more recent years the focus has been strongly on trying to remove that exemption for pubs and clubs from the Smoke-Free Environment Act, and it became clear during the debate over the last few years that there has been unequal access to policy makers between the industry bodies and the public health or community organisations. It is also clear in the final wash-up of the policy decision around smoke-free pubs and clubs that the definition that was finally formulated

and endorsed was exactly the same one that the AHA, which is the peak industry body, had been advocating for some time.

Our concern is that the final policy decision is in conflict with all the evidence about the dangers of second-hand smoke; it is in conflict with what we know about community standards and expectations for smoke-free environment; it was certainly in conflict with all the recommendations of the health groups who formed a coalition on this issue; and it is also in conflict with the guidelines issued by the National Occupational Health and Safety Commission. In our submission we outlined the fact that some of the vested interests in this policy matter make large political donations. Obviously we cannot say for certain that that is what influenced the final decision, but clearly there is a risk here of the perception as well as any reality that might exist. I think for a strong democracy we want a citizenry that is not sceptical or cynical about the way decisions are made, and I think that is an example that highlights some of the potential areas for reform in the political and electoral funding system.

CHAIR: Because of that example you quoted do you support some restrictions on donations, particularly from, say, the tobacco industry, and you just raised the hotel industry, the AHA?

Ms TANG: We have certainly strongly supported the moves that have been made by some political parties to voluntarily prohibit donations from certain sources, and we know that some parties have banned donations from the tobacco industry. We think that sends a very important message to the community and to the parties that recognises that there are some industries that are inherently unethical and there are some industries where there is an unavoidable conflict between the interests of the industry and the interests of public good, and I think tobacco is a prime example of that.

Tobacco serves no good purpose in society. It is the only consumer good that kills people if you use it the way the manufacturers intend it to be used. I think it does get a bit more complex about other industries so I will go into that. One of the issues around the current way the bans are dealt with is that it is voluntarily by party, so it does not create a level playing field in that sense. I think the other reason for banning or restricting sources of donations is to address that issue I have raised about the perception risk that lies in the public. I think the more that our Parliament can do to assure the public that policies are not being influenced by vested interests, that can only be good for our democracy.

In terms of restricting the sources, there are obviously two options. One is a total ban on any corporation making donations, which is obviously the simplest to enforce and implement and does not get you into debates around which sort of corporations are acceptable and which are not. But the other option is to regulate permissible donors. If we were to consider regulating permissible donors I think it should be by some sort of criteria, and the sort of criteria that might make sense would be where the corporation had their business interest tied up with government decision making, where the corporation's shareholder value can only increase by creating harm, and the tobacco industry, I think, falls into that criteria, or perhaps where it is their business interest that is likely to or will be seeking new government contracts or whose financial well-being relies on a particular policy decision being made.

So, I think there are some options there and I think either banning or restricting by some sort of criteria would be a very helpful move. One of the things that is challenging though in trying to restrict the source of political donations is an issue that we have raised in our submission, which is where a corporation that is not banned or restricted has such close ties to a banned source of donations, that the same effect is being held, and the example we have provided is the Australian Hotels Association, which is a large donor and which may not, depending on how the Committee recommends, end up being a banned source of contributions but may actually be getting a lot of money from the tobacco industry, which is a banned source. So I think there is a challenge in crafting any reforms to address that. With the permission of the Chair I have a document I would like to table that illustrates that.

Document tabled.

This is a journal article from the Australian and New Zealand Journal of Public Health that explores the links between the hospitality industry in Australia and the tobacco industry. In some cases it is outright sponsorship from the tobacco industry to the hotel associations and other times it is

something that is listed by the hotel associations as a partnership, the exact nature of which is not necessarily clear. So I think there is a challenge, if the Parliament thought it was appropriate, to restrict the sources of political donations to ensure that the question of donations that are funnelled through third parties is somehow also captured so that the policy intent of your reforms are not undone in that way.

CHAIR: Would you have any specific evidence of donations from the tobacco industry to the hotel industry as such? It would be more from these partnership type projects, which are designed to conceal perhaps the influence?

Ms TANG: We have not done an investigation of that nature ourselves. Some of this information is sourced from material that is on a website at a particular time and which may not be there in the future. We could not speculate as to the current situation. I raise it because I think it is an issue that needs to be taken into account in thinking about how to craft any particular reforms.

The Hon. DON HARWIN: Would your preferred position be to completely ban donations from corporate entities and other organisations and to limit them to individuals?

Ms TANG: From a policy implementation perspective, that would appear to be the simplest and most straightforward approach. The dilemma raised by choosing to ban certain types of corporations is the debate that needs to ensue about which corporations are eligible and which are not and whether that might change over time. From an implementation and feasibility perspective, a total ban is the simplest approach. However, if that were not tenable for whatever reason, I would certainly urge that some thought be given to banning sources of certain contributions.

The Hon. DON HARWIN: Your submission advocates, does it not, supplementing the Electoral Funding Authority to give it a role in enforcing political funding? Would you like to expand on your experience of the authority and what has led the Cancer Council to that conclusion?

Ms TANG: As I said, we are not experts in the mechanics or the details of electoral funding. If we believe that it is important to safeguard the system and to have a strong regulatory system, there should be provision for good enforcement and monitoring. A good regulatory system is only as good as the provisions for enforcement and monitoring. Others will be able to comment on the Electoral Funding Authority. We would want to ensure that there are systems for safeguarding the accuracy and completeness of disclosures in the final recommendation. Perhaps there should be something regarding following up on any failure to report and some thought should be given to dealing with the potential of having money funnelled through allowable sources of contributions that might come from non-allowable sources. One option—I think it was touched on this morning—is whether there should be some certification or auditing of returns, even if it were random, to increase the threshold of risk to parties and donors if they do not fully comply.

The Hon. DON HARWIN: Your submission refers to legislation being introduced relating to retiring members of Parliament. Can you expand on that?

Ms TANG: That issue has been raised as a concern in the public arena for some time. Again, it is not strictly about financial contributions but giving the public some assurance that there was no undue or inappropriate influence on policy making when a politician was in office and had decision-making roles.

CHAIR: You mentioned the hotels. Are you concerned about pressure from clubs and hotels about smoke-free areas?

Ms TANG: Yes. We know that clubs and hotel bodies opposed legislation relating to smoke-free areas and that they took a very strong stance on a particular form of regulation to determine where smoking would or would not be allowed once the amendments were passed. We also know that the final definition was exactly the same as the one that the hotels and clubs had been advocating. Both the industry groups were strongly opposed to the policy change.

The Hon. MICHAEL VEITCH: On page five of the submission you talk about increasing penalties for breaches. Do you have any suggestion about what the penalties should be and how they should be applied to donors and recipients?

Ms TANG: We do not make a recommendation on a particular penalty level. Again, that level of detail is beyond our expertise as the Cancer Council. Our main suggestion is that the penalties should be high enough to act as a deterrent to both the donor and the party. The issue of penalties comes back to enforcement and monitoring. There is no point setting a high penalty unless we know there is a reasonable perception on the part of those involved in the transactions that they will be caught if they breach the rules, otherwise it is abstract. The issue of penalties is closely linked to decisions about monitoring and enforcement.

In relation to whether it applies to both donors and recipients, in fairness, the penalties should be applied to the party to the transaction that breached its part of the responsibility. For example, if a donor is channelling money from a prohibited source and the political party or candidate accepts the funds in good faith, it would be unfair to penalise them. The penalty should be applied to the donor. However, if the penalty is imposed because of a failure to disclose according to the threshold, obviously it is the reporting party that should be penalised.

CHAIR: You refer to capping donations and individual entities. Do you mean an individual person or a corporation?

Ms TANG: We put that figure in as an example. The aim would be to set the cap at a level that precludes corporations from outbidding each other or excessively purchasing influence, if that is what is happening. It should also be at a level that reduces the extent of perceived bias in the community. The cap should be cumulative; that is, not on a single donation. We want to avoid a loophole where corporations or individuals can make lots of small donations which all fall below a threshold but which over a year add up to a sizeable amount. The cap should be cumulative on a financial-year basis, because that makes sense in accounting terms. I imagine it would also make more sense if there were a different cap for corporations versus individuals, obviously the cap could be higher for corporations.

CHAIR: You suggested \$1,000 for individuals. What do you suggest for corporations?

Ms TANG: We are not in a position to suggest an amount. It would be useful to learn from other jurisdictions that have looked at caps to see what criteria they have used.

CHAIR: Would that exclude those that have an interest in tobacco and so on?

Ms TANG: If there were a decision to prohibit certain sources of donations, obviously those corporations would not be allowed to contribute anything. The allowable sources would have a cumulative cap.

The Hon. AMANDA FAZIO: The council has recommended that political parties should be required to disclose the identity of those who subscribe to fundraisers held in the form of dinners or other events involving access to politicians. I can see what the council is getting at. Alternatively, politicians are also invited to be guest speakers at functions held by charitable organisations at which people can buy a table to gain access. Is the council suggesting that politicians be banned from going to fundraising dinners of any sort?

Ms TANG: No, that was not the intention. We know that organisations and individuals can purchase a ticket to attend an event that is hosted by a political party as a fundraiser. Often the cost of the ticket is clearly much more than the cost of the meal and the other things being served. It is potentially a loophole if more and more opportunities to influence are channelled through purchasing tickets to those events as opposed to an outright political contribution. It is not as transparent as it could be as to who attends those events.

CHAIR: So you are not talking about the politician but the organisations buying the table.

Ms TANG: That is correct. One option might be that it is treated in the same way as a donation for reporting purposes. If a corporation buys a table at a dinner with different members of Parliament or political parties, that should be disclosed.

The Hon. AMANDA FAZIO: One of the other recommendations is that measures should be introduced to expose any entities behind donor bodies to prevent donations being channelled through front organisations. Do you have any examples of that?

Ms TANG: The document I have just tabled is the example. Political parties may have banned accepting donations from the tobacco industry, but the tobacco industry funds or provides sponsorship money to other bodies such as the Butt Littering Trust or the Australian Hotels Association. That is an indirect donation; they have a confluence of interest. In effect, the tobacco industry is still able to reach political parties even though its donations are not accepted.

The Hon. AMANDA FAZIO: The submission refers to the Smoke-free Environment Act and states that the council believes that influence was brought to delay the introduction of certain elements. It states that these delays were inconsistent with community expectations and demands. I find myself in a difficult situation. I do not smoke and I do not like hanging around people who do. However, as long as it is legal, I have a problem with vilifying smokers too much. Are you 100 per cent certain that the delays in introducing this legislation were a direct result of influence on the Government through donations by either the alcohol lobby or indirectly by the smoking lobby? Could it have been the result of finding some way not to ban smokers from all parts of licensed premises? I find it a difficult argument to reconcile. How can you be sure that it was due to one cause and not another?

Ms TANG: I will reiterate a few facts. The Smoke-free Environment Act 2000 dealt with banning smoking in nearly all public enclosed places and enclosed workplaces, but pubs and clubs were exempt. In addition, the final regulation defining where people could smoke within licensed venues was the exact definition advocated by the hospitality industry. I am not tabling any direct evidence, but that could reinforce any perception held by the public or other interest groups about that possibility. It also contributes to any cynicism or scepticism in the community about how these decisions are made. Given that Parliament saw fit to protect people from second-hand smoke in all other enclosed public places and workplaces, it seems an anomaly that a certain sector was exempt for so long.

The Hon. MICHAEL VEITCH: I refer back to the fundraising dinners. This raises a critical point. As a politician I might be invited to a not-for-profit or non-government organisation fundraising dinner to deliver a speech. I have no control over whether the organisation donates those funds or a proportion of those funds to a political party. That is exactly what happens in some cases. At some stage towards the end of the year, the organisation will donate a proportion of its surplus funds to political endeavours. If we are were looking to regulate that, how would we do so?

Ms TANG: It partly depends on whether it is decided to ban donations from any corporate source.

The Hon. MICHAEL VEITCH: Including non-government organisations?

Ms TANG: I do not know whether that is up for discussion.

The Hon. DON HARWIN: Presumably it would have to apply to corporations and all organisations. That would be non-government organisations, trade unions and so on.

The Hon. MICHAEL VEITCH: That is correct.

Ms TANG: Yes. If it did not, and the non-government organisation were an allowable source, presumably that should be disclosed.

The Hon. JENNIFER GARDINER: Is it fair to say in summary that the Cancer Council would prefer a complete prohibition on corporate donations with a concomitant increase in public funding of political parties for election campaigns?

Ms TANG: We certainly recognise that that is the implication if such a ban on donations from all corporate entities were imposed. We acknowledge in the submission that if that implication makes it unfeasible then the next best solution is to restrict donations in some way. I guess our bottom line is that we want to see an environment where public policy is subject to discussion and scrutiny, but in a way where the ability to pay or donate is not a determining factor in the access to participation. We would like to see reforms that make things much more transparent. I will come back to the reporting question.

We need to find a balance so that the reforms make it less likely, less feasible and less attractive for corporate interests to try to participate in policy debates via political donations, so that it evens out the playing field between organisations like ourselves, who are acting in the public and community interest, against those who have deeper pockets. On the issue of reporting, I think more regular reporting is important, but we need to put reporting and disclosure into context because in many ways by the time you report and disclose it is after the fact. So I do not think that addressing the reporting and disclosure provisions alone will bring about sufficient change.

The Hon. JENNIFER GARDINER: A lot of the political party fundraising dinners are not the sorts of functions where you have corporate donors buying a table for, say, \$100,000; they are simply volunteers in a political party putting together a routine fundraiser throughout the three or four-year political cycle. The tickets for a really expensive dinner might be \$75. So the more reporting burden you put on volunteers, because they are the people supporting their chosen political party—do you agree that there could be some distinction between the types of events that require a more detailed and perhaps onerous administrative burden?

Ms TANG: That is a very good point. Our concerns do not relate so much to those more grassroots-type events. I imagine that, as you will probably debate issues around thresholds for reporting, there should be some form of scale on the amount of money involved in them.

The Hon. DON HARWIN: At a Federal level, they really do not have any requirements in relation to fundraising dinners. I presume from your evidence that you would be against the more transaction reporting style of approach but would prefer the existing approach we have with further refinements?

Ms TANG: I am sorry, I am not sure I understand the comparison.

The Hon. DON HARWIN: I will not take it any further.

CHAIR: In your submission you spoke about quarterly reports rather than annual or six-monthly reports.

Ms TANG: Yes, and I note that the funding authority is recommending annual disclosure. I reiterate that disclosure reporting is a secondary safeguard to address the issues we are concerned about. It contributes a lot to transparency, but because it occurs after the fact it may not fully deal with the concerns around influence. I think annual reporting is obviously a vast improvement on the current situation. Perhaps if it was annual but following on some of the other recommendations made by the Election Funding Authority, I think the idea of having electronic submissions so that members of the public can get timely access to it rather than waiting for it to be processed by the Election Funding Authority, and in a searchable form, would improve the transparency and accountability so significantly that annual reporting might be sufficient.

I think there has been a lot of discussion around whether or not during an election year it should be more frequent, and I think that makes sense, if it were possible. The main advantage from our perspective when we suggested quarterly reporting is that often we are wanting to track specific policy debates, a particular piece of legislation, so annual reporting might not be frequent enough. But we also accept the reality of workload and not diverting too many resources into frequent reporting if it is better used elsewhere.

CHAIR: You are suggesting that if it were possible through electronic records, as donations are made they are recorded at the Election Funding Authority and they are made public the next day?

Ms TANG: That is right. That would be fine; that would be an enormously transparent system.

CHAIR: And have a cut-off date prior to the election itself, perhaps where donations cannot be made in the last week on 24 hours?

Ms TANG: Yes. I think electronic lodgement and real-time reporting would be a vast improvement.

The Hon. ROBERT BROWN: Looking at your recommendations, you make one basic recommendation and then you make a group of recommendations that appear to be second best. With regard to your principal recommendation, that we should get rid of corporate donations altogether, does the Cancer Council have an idea of the sort of costs involved for taxpayers? Do you understand how much there is in the political donation pool each four years?

Ms TANG: I would not know how much it would cost to move to a totally public-funded system.

The Hon. ROBERT BROWN: We heard from for Election Funding Authority this morning that, whereas there are something like, say, 900 candidates in the State election, there can be up to 5,000 candidates in the local government elections. Do you believe that the same sort of scenario should apply to both local government and State elections, or were your recommendations made in reference to State elections?

Ms TANG: Our recommendations and our observations in this area have been restricted to the State Government.

The Hon. AMANDA FAZIO: One of your recommendations is that legislation should be introduced to prevent the two-year employment of retiring MPs. The way your recommendation currently reads, it would seem to preclude retiring MPs being involved in not-for-profit or charitable organisations whereby people often go on a board or do lobbying—almost like pro bono lobbying; they might get their expenses paid for by the organisation but they are not paid a lobbying fee. Is that what you envisage there, or are you really talking about profit organisations?

Ms TANG: We were thinking mainly of profit-based organisations because our understanding is that the community concern would be around those arrangements where a retiring politician takes up a well-paid role in a private entity that relates to the portfolio they may have just vacated.

The Hon. JENNIFER GARDINER: So you are really talking about Ministers? That is usually how the debate flows in the public arena—not just parliamentarians in general.

Ms TANG: Yes. I think that is where it is most acutely concerned.

The Hon. MICHAEL VEITCH: You are proposing that that legislation would apply to Ministers, as opposed to MPs?

Ms TANG: We have made it broader. For the discussion, I think that is something that could be considered—in other words, at what threshold would you cut that off.

CHAIR: To clarify the issue of public funding so that the Cancer Council does not come out as if it is the main body now arguing for increased public funding, public funding at the moment is a very high amount, into the millions of dollars, and it could be argued that the existing public funding is sufficient, otherwise we are only perhaps giving more advertising income to the newspapers and television stations. You would not be advocating automatically that the donation amount be now met by the public funding?

Ms TANG: I would have to say that we do not have a firm position on that. We recognize, though, that the implications of making certain policy decisions may involve extra public funding,

which is why we have expressed our submission but we recognize that it may not be possible to have a total prohibition on donations because the implications on public funding may be too onerous and may not be the best use of taxpayers' funds, in which case the second best would be to tighten up the regulatory system considerably in terms of restricting either the number, type or amount of donations and having much higher levels of transparency and accountability.

The Hon. AMANDA FAZIO: Some of the other submissions we have received talk about putting restrictions on the amount of government advertising, because they say government advertising equates to de-facto political party advertising. But a large number of advertising campaigns that are run by governments relate to things like saving water or stopping smoking. Do you have any idea of the value of the anti-cancer campaigns that are run, say, by the New South Wales Government each year?

Ms TANG: The Cancer Institute is responsible for all the mass media advertising around cancer control at the moment, and I think it would be in excess of—I would have to take that on notice to make sure I give you the right figure. I would also say in relation to that general point that we have restricted ourselves, in the submission and in our comments, to the issue of funding and donations, rather than the election and campaigning side of it, where we do not have many observations to make.

CHAIR: In summary, what would you like to see our Committee recommend as a top priority?

Ms TANG: Because we are not experts in the mechanics of it, I would like to reiterate what we would see as an outcome, rather than the detail of what the reforms might look like. I think an outcome from this inquiry would be to recommend reforms to the system that would make it less likely, or feasible or attractive, for corporate interests to seek to purchase influence and a system that gives the community confidence that that is not a risk. I think in this area perception is as important as reality. I think the views of the public about how robust our democracy is and how our public policy decisions are made is incredibly important.

In some cases it is about how the public perceives it, and the more reassurance we can provide the public that these decisions are made on the basis of evidence, community expectations, et cetera, the better. In the process of doing all our work around smoke-free pubs and clubs, some of you may have seen the *Stateline* program in March 2006 in which the now infamous words of John Thorpe of the AHA were along the lines of "Democracy isn't cheap" when he was challenged on the question of the AHA donations. What we would really like to see out of this inquiry is recommendations that show that democracy and public policies are not for sale.

The Hon. ROBERT BROWN: Mr Chair, may I ask the witness a point of clarification?

CHAIR: Yes.

The Hon. ROBERT BROWN: In your closing statement you said the words "all corporations". Do you mean all incorporated bodies, or were you implying corporations for profit, such as the AHA, the tobacco industry, and those sorts of organisations, or all incorporated bodies, including non-government organisations?

Ms TANG: Our primary concern is obviously corporations that are for profit or where their primary interest is not the general public good. But I accept that in working out the logistics of making a reform work it might be easier to say "all entities".

The Hon. ROBERT BROWN: Is the Cancer Council an incorporated body?

Ms TANG: We are a company limited by guarantee—and we do not currently make any political donations, obviously.

The Hon. DON HARWIN: So you would be caught?

Ms TANG: That is fine, because we do not currently make any donations.

The Hon. DON HARWIN: The AHA, if it was not incorporated, would not be caught?

Ms TANG: Yes, and that is why the mechanics of it need some close examination.

(The witness withdrew)

(Luncheon adjournment)

MARIAN SAWER, Leader, Democratic Audit of Australia, sworn and examined: and

NORMAN JOHN PATRICK KELLY, Member, Democratic Audit of Australia, affirmed and examined:

CHAIR: Professor Sawer, do you wish to make an opening statement?

Professor SAWER: Yes, I have an opening statement that also answers the first question sent to us.

CHAIR: Mr Kelly, do you have an opening statement as well?

Mr KELLY: No.

CHAIR: If either of you wish to give any evidence that should be heard in private by the Committee, you have the right to request the Committee to go into camera. We will begin with your opening statement, Professor.

Professor SAWER: The Democratic Audit of Australia is very pleased to be able to participate in this very important and timely inquiry. The Democratic Audit of Australia conducts an audit of the health of Australian democracy, using the audit framework developed by the International Institute of Democracy and Electoral Assistance in Stockholm. This is a multi-lateral body of which Australia was a founding member. Our audit has been underway since 2002 and has been funded by the Australian Research Council. We provide regular updates on democratic developments in Australia across all nine jurisdictions. We publish referee discussion papers on issues of democratic importance and also large audit reports such as this one on political finance in Australia—we have copies of this report for the Committee.

The four values that inform our audit are: political equality, popular control of government, civil liberties/human rights, and the quality of public debate, which is the deliberative democracy value. The first of our values—political equality—flows into a related value, which is a level playing field for electoral competition. This means, in turn, that there should be an equitable basis for the funding of political parties so that they are competing on an equal basis in elections. All parties and candidates need resources to communicate with the electorate. Currently in Australia public funding is provided on a reasonably equitable basis between electoral contenders but private funding is not. Public funding itself can be made more equitable to prevent barriers to new entrants into the political system.

Our auspicing body in Stockholm, the International Institute of Democracy and Electoral Assistance, is very concerned over the issue of party finance. The institute sees it as a key challenge for the future of democracy. Political parties are central to the operation of representative democracy but there is a deepening distrust of political parties and of politicians, much of it stemming from perceptions of where their money comes from. Five years ago the International Institute of Democracy and Electoral Assistance did a handbook on the funding of political parties and election campaigns, which provided a detailed comparison of the regulation of political finance. Australia was very much at the laissez faire end of the spectrum of democracies and the regulation of such finance. Particularly the lack of caps on expenditure or restrictions on the source or level of donations meant that Australia stood out from comparable democracies.

In the view of the Democratic Audit of Australia, Australia has not taken seriously enough the way that private money in electoral politics does two things: firstly, undermining the fundamental principle of political equality and the level playing field for electoral competition and, secondly, undermining public confidence in democratic, political institutions, particularly political parties. We are a research project and not an advocacy group. We seek to inform debate over democracy by providing accurate information, not only about the nine jurisdictions in Australia but also about three comparable democracies, which are Canada, New Zealand and the United Kingdom. There is a lot of comparative information in our audit, provided in our reports and on our website.

If I could just finish with our ideal, I suppose, in terms of political finance. Our ideal might be that found in Sweden where no regulation is required and political parties voluntarily agree to refrain from private money where there is public funding for them to communicate with the electorate. Other countries regulate to achieve that goal, that parties or candidates will receive public funding but on condition that they need to refrain from accessing private money in total or in part. But in Australia norms have developed among political elites concerning the role of private money that are not shared by the general electorate. This is something that is very interesting and which I think is shown clearly in the Australian election study. There are different norms at the political elite level and at the electoral level concerning the role of private money. We have discussed that in our audit report on corruption.

Given our particular political culture, we think that regulation is required, that political parties will not voluntarily agree to refrain from private money and that, perhaps, models such as that in Canada would be desirable where corporate and union donations are banned and individual contributions limited to \$1,000. This includes the candidates themselves cannot put more than \$1,000 into their campaign—a Malcolm Turnbull type provision. Quite a number of countries ban corporate and union donation and in 2003 some 23 democracies did that. But if we do not have a complete ban probably then what is desirable is much tighter regulation of the size and source of donations, immediate disclosure of donations to the Electoral Commission and also that company donations are approved by shareholders such as in the United Kingdom.

CHAIR: You refer to Sweden as an example where there is no private funding or donations?

Professor SAWER: No, there is public funding but at the time it was introduced the political parties entered into a voluntary agreement that they would refrain from accepting private money.

CHAIR: Are you indicating that you would favour that model if it were humanly possible to introduce it?

Professor SAWER: Yes, what I have set out is an ideal but it is an ideal that I feel is not compatible with Australian political culture.

CHAIR: How would we handle then donations from developers and corporate bodies? Are you saying there would be a cap on those?

Professor SAWER: Yes, we believe it is important to have a cap and also to have source restrictions so that there would be restrictions on accepting money from certain classes of donor, such as developers or those who have a direct interest in public decisions, such as Government contractors and so on. We do believe it is very important to have overall caps both on expenditure and on donations to get away from the kind of arms race we have at the moment, where all parties or candidates that cannot raise large amounts of money are likely to be squeezed out of electoral competition and large parties are likely to become dependent on drumming up very large donations.

CHAIR: Would you indicate what that cap should be or do you feel it should be left to the Committee?

Professor SAWER: I think my colleague may wish to comment on this.

Mr KELLY: In looking at that question, I looked around to try to come to a comparator democracy and probably one of the better ones is New Zealand, given its size and its system of capping expenditure. At the last election in 2005—New South Wales has an electoral population of about 50 percent more than New Zealand—it had a cap of \$1 million per party plus \$20,000 per electorate candidate. For a party contesting every seat in the country—they have 69 electorates—that came to \$2.38 million. That amount is not directly comparable because New Zealand also prohibits electronic advertising beyond what is provided by the State as a form of public funding.

The State provides money to the parties so that they can actually enter into electronic advertising on television and radio. That money is allocated on a proportional basis using a range of criteria. To look at that aspect, at the last election the pool of money for electoral advertising was \$3.2 million. Looking at those different factors, and the difference in size of the overall electorate, I would

estimate that you would be looking at an upper limit of about \$4 million to \$5 million per party as a cap. To recommend a particular level would take further work because, of course, they have a single House and that brings into play different aspects but they also have proportional representation which better reflects, if you like, the vote of the people. That is a rough ballpark, if you like, or semi-educated ballpark figure.

CHAIR: So you do not envisage a cap on the actual donation from a corporate body?

Mr KELLY: In addition to that I believe there should be a cap on individual donations so that certain donors do not have an overt influence because of their support of a particular party. But when you have an expenditure cap, it actually takes some of the heat out, if you like, of the importance of caps on individual donors because once that party raises a certain amount of money it cannot go beyond that level of money to actually spend on the campaign.

The Hon. ROBERT BROWN: Was that \$4 million to \$5 million you just mentioned in relation to expenditure cap or donation cap?

Mr KELLY: Expenditure cap.

The Hon. DON HARWIN: Are you happy to take questions on some of the recommendations in this report as well?

Professor SAWER: We are happy to take questions. It says at the front of the report that the views expressed are not necessarily those of the Democratic Audit but of our commissioned audit.

The Hon. DON HARWIN: I believe we are lucky to have Dr Joo-Cheong Tham speak to us later. I shall start at the bottom of your submission and move back. You make comments about the Election Funding Authority structure and, in particular, the fact that there are partisan appointments sitting alongside the electoral commissioner and a perception that the authority therefore is under a form of "political control and direction". You then suggest that it undermines the perception of independence. Is this just your perception or can you provide actual evidence that that sort of political control and direction has emerged and has been a problem?

Mr KELLY: Modern electoral administration guards against having partisan or political appointments to electoral management bodies. In making those statements, we have no evidence that the Election Funding Authority is suffering from partisan behaviour. From the comments I have received from people involved with the authority, I would suggest that that is definitely not the case. Those appointed members I believe probably are acting with the utmost integrity in the pursuit of their work. However, the question then has to be asked: Why is there a need to have partisan appointments to the authority? If you look around Australia in the appointment of commissioners to election commissions, most jurisdictions have a requirement that prohibit political appointments, and that is for good reason. That is to avoid creating partisan bias in the commissions, but also it is about promoting commissions as being independent agencies and dealing with that possible perception. So, it seems anomalous, and I am not aware of any other election management bodies in Australia that have partisan appointments.

The Hon. DON HARWIN: What about the argument that every appointment of a government is ultimately the appointment of a party in government and therefore is some sort of partisan appointment? Is it not the case, therefore, that just simply having a nominee of the Premier and a nominee of the Leader of the Opposition ensures that the system is kept honest by having equal and opposing influences being brought to bear, so to speak? Perhaps, if anything, there may be an argument that some of the minor parties should have representation as well?

Mr KELLY: I think when you look at the purpose of the authority you have to see what is the value in actually having that partisan knowledge or influence as part of the authority. I am not an expert on the Act but, really, there is not anything there that could not be done by appointed experts outside of party appointments. There are good mechanisms, going back to the electoral commissions, where you can have senior appointments where there is a need for consultation between the parties prior to that appointment, and where you have a parliamentary committee process to actually recommend appointments to those sorts of agencies. I think the more we move away from political

appointments, the greater the integrity. As I said, I do not have any concern about the integrity of this authority, but you have greater integrity and confidence in the system if the authority not only is acting in an unbiased way but is seen to be as such.

Professor SAWER: May I add to what Mr Kelly has said. I think in a number of countries there has been an attempt to remove partisanship from electoral administration by having representatives of different political parties on electoral management bodies, but historically Australia has achieved non-partisan electoral administration by not having party representatives involved in our electoral management bodies, except in this New South Wales case. Electoral officials from all over the world come to look at the Australian electoral administration; it is regarded as best practice. We are seen as having achieved non-partisan electoral administration.

The Hon. DON HARWIN: Can you identify any problems with the actual operations of the Election Funding Authority as a result of its current composition?

Professor SAWER: I have not done the kind of study of the Election Funding Authority my colleague has done and I would expect it is more in terms of removing any perception that the situation is manipulated for the benefit of major parties or whatever.

The Hon. DON HARWIN: I come now to sources of donations. In Dr Larkin's submission he recommends that the following practice should be adopted, that is, donations should not be permitted from those likely to benefit directly from government decisions. What actual test would we have to legislate to ensure that principle was enshrined in our legislation?

Professor SAWER: Because of the complexities, we are suggesting that probably the easiest route is that adopted by Canada and many other democracies of simply having a ban on corporate and union donations to political parties rather than having all that messy kind of situation to which I think you are referring in deciding just who will directly benefit from government decisions.

The Hon. DON HARWIN: So effectively you would see that as a rather unsatisfactory but better than nothing fallback sort of position?

Professor SAWER: Yes, more as a fallback position. As I said in my opening statement, there is probably a cascading series of ways of regulating political finance from the ideal down through what is perhaps possible.

The Hon. DON HARWIN: One thing you certainly raised in your opening statement, and which is referred to in the report issued by the Democratic Audit, concerns the level playing field. The report in part says, "The quality level playing field rationale fears that large-scale spending means that elections can be bought." The document then expands on the perceived problem. Do you see a virtue in trying to create a parity of spending between political parties in elections?

Professor SAWER: We believe that the principle of level playing field for electoral competition flows from the basic democratic principle of political equality. We believe that the way to achieve a level playing field is through ensuring that contenders are equitably funded to communicate with the electorate. In Australia we have such principles enshrined in our public funding legislation in different jurisdictions. It can be argued that those principles we have at present are biased against new entrants, new political parties. So, we would say that there are ways in which you can expand on our current principles for funding political parties so as to lessen that bias against new entrants. But we say that while public funding largely is distributed according to fairly equitable principles, private funding is not. Private funding goes disproportionately to some parties and not to others, and the way it is distributed does not reflect the support for those parties out in the community and the electorate. We feel that the level playing field requires more equitable distribution of funding.

The Hon. DON HARWIN: We have received a number of submissions that actually cast doubt on whether you effectively can regulate public spending. Given your knowledge, the work the Democratic Audit has done and the available literature, what do you say about those who say you cannot regulate political spending and you cannot cap expenditure? Is it your understanding that there is significant non-compliance with both the spirit and the letter of the legislation in Canada, New Zealand and the United Kingdom?

Professor SAWER: I think I will hand this question to my colleague, who has been thinking about this quite carefully, but I would just note in passing that most expenditure is on electronic advertising, so it is relatively easy to track.

Mr KELLY: I did a bit of a search and came up with about 25 countries that do actually place expenditure caps on their elections and you tend to think that for it to be so widespread it is quite feasible to actually put in place these sort of expenditure caps. I am not familiar with the levels of non-compliance in those countries.

The Hon. DON HARWIN: I suppose it would be allegations of non-compliance?

Mr KELLY: True, although if you have good investigative powers it may become confirmed or otherwise. You will have levels of non-compliance in all of these areas. You have levels of non-compliance as shown in the Election Funding Authority's annual report. That is mainly on minor details. If you are changing from a regime in which there is quite substantial funding and trying to pare that back to a smaller amount, parties that can exceed the cap will seek ways to do that to get around any new legislation.

It then becomes a case of the powers that are given to either the commission or the authority to investigate and be able to audit party records and crack down in that way. A lot comes down to having sufficient legislation to enforce any expenditure caps. If you continue with a regime of public funding, I think public funding is underutilised for its ability to have complementary regulation and requirements on political parties. Parties are receiving significant public funds and perhaps that ability to receive public funds should be balanced with stronger regulation of those parties.

The Hon. DON HARWIN: So you think a system of capping public political spending is certainly viable in Australia?

Mr KELLY: Yes.

Professor SAWER: After the last general election in New Zealand actions were brought against the two major parties for having overspent and thus breached the expenditure limit, the Labor Party through having used parliamentary allowances to send out some information, which would have taken it over the \$1 million cap, and I think the Nationals for failing in one electorate to add GST to the amount or something of that sort, so they also exceeded the expenditure.

CHAIR: What penalties applied in New Zealand when they went over the level of expenditure? Is there a fine?

Mr KELLY: I am not 100 per cent sure and I would have to check up on this, but I think the amount was then deducted from the next election cap or there was some sort of repayment.

CHAIR: The cap was reduced at the next election?

Mr KELLY: That is right, so they get penalised next time around.

CHAIR: Another grey area that often comes up in the period prior to an election is that if there is a limit on expenditure the government itself has an advantage if it is clever enough in promoting certain policies during that period. It is then a matter of asking whether this is electioneering or genuine public information. How have you dealt with that?

Professor SAWER: I think the perception that government advertising may be used for partisan purposes is a major problem in Australia. We have not adopted clear enough guidelines concerning government advertising, such as have been adopted in Canada, New Zealand and the United Kingdom. It is very important to have those sorts of guidelines and to have them overseen carefully by Auditors-General so that there is not the perception that a spike in government advertising just before an election must be for partisan reasons.

The Hon. DON HARWIN: I think this document actually advocates the Ontario model, which is I think is federal ALP policy but has not yet made it into legislation. I am sure they have been busy.

Professor SAWER: With the Federal Accountability Act of 2006, Canada has moved further on government advertising by requiring that the public opinion research that underpins government advertising must be made publicly available within six months, so that is another safeguard as it were.

The Hon. ROBERT BROWN: It is not clear from the suggestions in your submission but what do you feel about the concept of doing away with private donations altogether and having political campaigns publicly funded? We have a mixture at the moment.

Professor SAWER: Yes. We have referred extensively to the Canadian model, which bans corporate and union donations and puts a limit of \$1,000 on individual donations. That includes the money put by candidates into their own campaigns.

The Hon. ROBERT BROWN: Are you aware of or do you have a feel for the total combined amount of private and public funding for political campaigns at the state level? Do you know roughly what the global amount would be for, say, the 2007 election?

Professor SAWER: I do not have those figures.

The Hon. ROBERT BROWN: Let us say it was \$50 million for a state election. If that were to be funded solely from public funding it would be a fair impost on the taxpayers of New South Wales. Similarly, if that was carried forward to the local government elections—I am not sure from your submission whether you are taking into account local government elections or just state elections—that could be a further impost. You say that the Canadian model, which limits certain types of bodies from donating, is the preferred model and you mention government contractors and developers and unions. Would you extend that to other non-government organisations and bodies that may be incorporated, so they could be called corporations?

Professor SAWER: Yes, in terms of money flowing through loopholes we think it is important that there be some restrictions on third parties in relation to donation caps. To go back to your initial statement about the cost of public funding, we believe this is a reason it is important to have overall expenditure caps—to stop the arms race which is driving up the cost of elections. We believe there is much to be said in favour of the kind of system in place in Canada, the United Kingdom and New Zealand for allocating electronic advertising time in accordance with an equitable principle or formula rather than having open slather and people being able to purchase as much as their bank accounts will allow.

The Hon. ROBERT BROWN: If public funding was then allocated on the basis of some measure of the popular support of a particular party would that not perhaps defeat the purpose of trying to get a level playing field for all possible entrants into the political scene? If a small party or a small group cannot attract private funding and it is limited in what it can attract from public funding it will still be underfunded if you want to look at a level playing field.

Professor SAWER: You are never going to get a perfect formula. Our current formulae are tied to votes in the last election. We believe that can be improved upon to reduce the bias against new small entrants but they have to have some measure of public support to merit expenditure from the public purse.

Mr KELLY: Can I just add to that? The New Zealand electronic advertising criteria are a good example of how that can be calculated. There was a pool of \$3.2 million from the last election. The Electoral Commission uses various criteria, including voting support at the previous election, voting at subsequent by-elections, size of membership of the party, and the number of candidates the party intends to stand at the next election. Opinion polling can be used to gauge the level of support. It is a way of providing relative support for new entrants.

The Hon. ROBERT BROWN: Just to come back to your comment about what the level of expenditure might be, if the expenditure per party was \$4 million or \$5 million, would you like to

offer a suggestion as to what percentage of that should be public and what percentage should be private?

Mr KELLY: Looking at the public funding for the previous election, which would have been—I do not have the figures with me—

Professor SAWER: While Norman is working out his response, I will mention some comparative data. In the 2004 federal election less than one-fifth of campaign expenditure was from public funding whereas in Canada four-fifths was from public funding, so there is a big difference.

Mr KELLY: If there are 4.5 million voters in New South Wales and you allow \$3 a vote for the combined two-House vote, that is \$13.5 million. It is then a case of apportioning that using various criteria.

CHAIR: Do you have the amount for the Canadian public funding?

Mr KELLY: Not with us.

CHAIR: Was it \$10 million, \$20 million or \$30 million?

Professor SAWER: I am sorry, we do not have the details of that and there are different kinds as well. Money is paid quarterly for party maintenance apart from the campaign reimbursements and so on, so there are two different kinds of payments.

CHAIR: Another area we have not talked about is the disclosure of donations. I think you are suggesting they should be concurrent with the donation—they should be registered as soon as the donation is made rather than annually.

Professor SAWER: We feel that with the wonders of new information technology it is very easy when someone banks a donation to also send details to the Electoral Commission, which can put it on a website within a few days.

The Hon. MICHAEL VEITCH: Following on from a question my colleague Robert Brown asked regarding government contractors, what is your definition of a government contractor?

Professor SAWER: We have not gone into a legal definition of a government contractor. I suppose it is someone who tenders for government work.

The Hon. MICHAEL VEITCH: Someone who is in receipt of government funds essentially? Does that not include most NGOs?

Mr KELLY: There are some definitions around that specify a proportion of an organisation's total income. If they receive 50 per cent or more of their total revenue from government sources they are regarded as a government contractor. That is one definition, if you like, but as Professor Sawyer said, when we get into defining the government contractors or developers or whatever, we are opening up the situation to creating loopholes for various ways to try to get around those sorts of laws. We feel that another advantage of prohibiting donations from non-individuals entirely is that if only individuals can donate it becomes a very efficient and easy way of checking donations against a physical person.

The Hon. MICHAEL VEITCH: The reason for my question is that it is obvious throughout a number of submissions that people are well versed in the recent media comment and are espousing terms such as "government organisations" or "government contractors" but no one has defined what that really means. It is important for this Committee. Where do we draw the line? Having previously been the chief executive officer of a not-for-profit organisation in this country that derives a significant amount of revenue from a range of government sources, I can see that most environmental groups would be gone because they are in receipt of government finances. I think we have to be clear about what the definitions are. My second question relates to how local government, New South Wales and the Commonwealth work together. I guess I am after your views on whether New South

Wales should mirror the Commonwealth arrangements, whatever they may be. Have you done much work on the impact on local government candidates?

Professor SAWER: Perhaps I will start and hand over to my colleague. We were not asked specifically to look at local government in the questions we were sent, but we believe there is great virtue in having consistent regulation between the Commonwealth and the States. We think a lower level of cap on donations would be appropriate for the local government level.

Mr KELLY: I would reiterate that. There is a clear ability for money to be channelled between divisions within political parties. That is why we would argue for a consistent approach to disclosure law across all jurisdictions. The current what I would call loophole in the Commonwealth legislation which allows people to donate to the various State and Territory divisions of the one party and have each of those divisions treated as a separate party, especially under the current disclosure threshold of \$10,500, allows significant amounts of money to be secretly given. So I think there is a good argument that you get a cohesive and consistent approach across jurisdictions because you can also have money going directly to the Western Australian division of a party and then that party simply donates back to New South Wales. With the will of the various jurisdictions, I think it would be quite easy to develop a national donation regime of disclosure.

The Hon. AMANDA FAZIO: You have been talking about how you would like to have a level playing field for political funding, that all parties should be adequately funded to communicate with the electorate and the current system has advised against new parties. Does that not ignore the fact that some parties will never be particularly popular because of the policies and platforms they espouse, that they will only ever be basically fringe players in the major political process? How does your philosophical stance deal with that situation?

Professor SAWER: We believe that the formula for distributing funding should reflect popular support, whether it is through votes cast for that party or through support as reflected in opinion polls and so on. We do not believe that you can just hand out money willy-nilly from the public purse. On the other hand we think that funding should not be on an inequitable basis, based on perceptions that this party will be in a position to grant favours or something of that kind. That is not a good basis for the funding of our democratic process.

CHAIR: To clarify another point, in your submission I think you were saying that not only should the donations go on the website of the Election Funding Authority but the donor should also make an announcement. Is it correct that somehow the donor should also disclose the donation?

Professor SAWER: Yes, the donor should disclose to the Electoral Commission, which would then publicise the donation on its website.

CHAIR: You did not mean a separate process where the donor would be making some announcement or be required to say that he had given \$50,000 to this party, to actually announce that to make it public.

Professor SAWER: I think the electoral management bodies are the best or the most appropriate body to do that except in some cases such as public companies. We see considerable merit in the United Kingdom practice of requiring companies to seek permission from their shareholders to make political donations and then they are required to disclose those donations in the annual reports. We believe there is some merit in that.

CHAIR: Unions also make donations. Is there any suggestion that their members should be consulted if they are making a donation to a political party?

Professor SAWER: Yes, that would be a parallel case.

CHAIR: Do you think that would be fair?

Professor SAWER: Indeed.

The Hon. JENNIFER GARDINER: You mentioned the Canadian system which has been in operation now for just over a full year. I guess the reforms in Canada had quite a convulsive history probably going back to the Quebec referendum and allegations that went to Crown bodies getting government contracts for advertising in that referendum campaign and there was a series of reforms subsequent to that. I am wondering if you have had an opportunity to get a sense of how the public has responded to the Canadian laws as they stand today and how the political parties have been able to adapt to the new regime.

Professor SAWER: The tightening up of the regulation for political finance in Canada, as you rightly suggest, flowed from enormous sponsorship scandals but it has come in in two main phasers, first under a Liberal government and then under a Conservative government. I have met with the House of Commons committee which deals with electoral matters subsequent to the first round of reforms. I must say that the representatives of the different parties on that committee had a very positive attitude towards them, that they were not expected as party representatives to be out there drumming up donations and so on, as they had been in the past, and this was a positive thing for political parties. I think it is interesting in Canada that the reforms have come from both sides of politics. For that reason, there is very broad-ranging support for it.

The Hon. AMANDA FAZIO: It was suggested this morning that there probably was not a need to have an Electoral Funding Authority in New South Wales because its role is really just to check and cross-match returns from registered political parties and from donors, and that that role could be undertaken just as easily by some sort of pre-existing audit office or something like that. What is your view on that?

Professor SAWER: I will give this to my colleague who has been examining this quite closely.

Mr KELLY: It is a task which should be able to be dealt with by the Electoral Commission. That is how it is done in other jurisdictions. I think it is good that you have that corporate knowledge of electoral administration in the one agency. In reality, from what I can see, basically it is an arm of the Electoral Commission anyway; all the administrative support is provided by the commission. If you look at the Australian Electoral Commission it is simply a division of the commission and I think it probably allows for cohesive, integrated administration across the board. I have not gone into the arguments that were put forward in Parliament when it was established back in 1981 but I think it was the first of its kind with public funding in Australia so there may have been a bit of being overly cautious in setting up a new regime. Definitely it is good to see a committee such as this now looking at it, looking at whether it is still viable, still worthwhile. I have not been able to find any argument to keep it separate.

CHAIR: You are advocating restrictions on donations. With all the studies that you have been doing in different countries, is there any one area of the source of donations which is causing more concern than others? For example, is it coming from the developer area where they want to have an influence on either local government decisions or even State government decisions that could affect their projects? Have you seen any pattern where that is a major concern?

Professor SAWER: If we are talking about particular classes of donors, the class of donors which are most commonly restricted from giving political donations are foreign interests. If we are looking across democracies, the most common ban is on foreign donations because for a whole number of reasons—I mean, these are donations coming from non-citizens living somewhere else, and if they come from an entity overseas, it is hard for Australian law to tap into just where that money is coming from. So there are a lot of reasons why you might think it is very important to ban foreign donations, and many democracies do. The 41 democracies looked at recently banned foreign donations, so that is probably the most common form of specific ban on donations to political parties. But then many democracies have bans on what are very loosely called government contractors—those who do business with government are banned from giving donations to political parties.

CHAIR: With a government contractor it may sound as if they are developing a building for the government but it may be developers who have no association with the government that are seeking approvals for a private project. Have you noticed any pattern?

Professor SAWER: A very hot topic. I think in the kind of literature we look at, there is this broad category of government contractors and that is not broken down. We cannot give you data on a separate category of developers.

Mr KELLY: And we tend to look at the national systems of other countries rather than sub national, which is where you will tend to find that influence or attempted influence such as development, which is usually done at a sub national level. So really it is a case of looking at what appears at a particular level of government and then looking at the type of donations that are coming into that. So if you look at the Federal level you would probably get more donations coming from companies that are affected by Federal legislation or industries that—there may be tax implications, et cetera. You go down to the State level and look at government contracts, if you like, that are handed out at the State level. Get down to the local government level and that is where developer donations are such a big thing because simply not only is that where that power resides in approving development but also the temptation I guess of attempting to influence decisions is perhaps easier because it probably costs less to actually influence decisions at the local government level.

CHAIR: Some of the other areas such as vested interests in the tobacco industry, the gambling industry, the liquor industry, a prohibition on those groups making political donations—do you have any views on that?

Professor SAWER: On bans on antisocial industries or—

CHAIR: Yes.

Professor SAWER: —unhealthy industries. Because we believe that it would be most healthy for our democracy to have an overall ban on corporate and union donations we have not really gone to specify these categories except in terms of government contractors.

Mr KELLY: On democratic principles, you do not say that donations should not be accepted from gambling or tobacco companies or whatever, because that is a democratic decision as to whether people support those industries or that behaviour. On democratic principles, it should be a uniform approach so that it is actually the people who decide what they want to support. So there are two aspects. It is that democratic principle that does not put a value judgement on certain types of industries or behaviour, but then there is also the practical issue of once you start applying a ban on certain areas such as developers, government contractors or certain industries, you are making a far more complex and difficult regime to actually enforce when you are trying to define and prevent those sectors from trying to shift the money around to other avenues. So there are those two areas.

The Hon. ROBERT BROWN: Just to follow on a little further, if for example it was not possible to limit certain classes of donation or reduce the ratio of private donation to public funding, do you believe that better information, more transparency of that information or timely information such as the advent of an online disclosure system would ameliorate some of those concerns?

Mr KELLY: Yes, definitely. The whole idea of a disclosure regime is to allow the voting public to make an informed decision at an election.

The Hon. ROBERT BROWN: And your recommendation in your submission is for quarterly disclosures, is it?

Mr KELLY: We see that as a definite improvement, but, once again, it becomes a case of how can we best inform the public prior to an election? That is probably drawn from the experience in the United Kingdom where they have quarterly disclosure but then they increase it to weekly disclosure during the election campaign period. But, as Professor Sawyer said before, there is no reason why it could not be simultaneous with banking the money. New Zealand has a system where donations above \$20,000 have to be reported within 10 working days to the Electoral Commission.

The Hon. ROBERT BROWN: The Election Funding Authority in their submission earlier indicated that they were developing back-end systems to be able to collect data and that they supported annual reporting but that annual reporting could be such that if it was online then the data would be updated on a regular basis and therefore would be available to the public. The counter view

perhaps expressed was that if that was required to be audited by the person who is making the donation or the organisations making the donation, that then would put in place a requirement for quarterly audits, and audits are not cheap. In fact, one large political party commented that it is a five-figure sum on an annual basis.

If it were annual reporting but updated such that, say for example, prior to an election in the December quarter the public could be made aware of at least the reporting, even though it had not yet been necessarily checked by the authority, would that, do you think, satisfy the continuous reporting requirements or not? Do you still want more?

Professor SAWER: I think there is value in continuous disclosure. The figures can be altered, as happens in current online disclosure systems. If an audit finds that something is inaccurate it can then be amended. It is not definitive simply because it has appeared online. I think the other issue wrapped up in all of this is that timely disclosure is terribly important. People should know before an election where the money has come from to fund campaigns. But it is not enough in itself to achieve our goal of a level playing field for electoral competition because it might simply normalise the idea that some parties get a lot more private money than others rather than seeking to be more equitable in the way you fund political parties.

The Hon. MICHAEL VEITCH: Just a clarification on your proposals of a cap on individual donations of \$1,000. Would that be \$1,000 in total or is that \$1,000 to each political party? Because there are some people we know who donate to the Greens and the Labor Party or they donate to The Nationals and the Liberal Party. Are you proposing a \$1,000 cap completely or \$1,000 per donation per party?

Professor SAWER: I am just having a mental blank about how the Canadian system operates. I think it is a \$1,000 cap altogether rather than being able to give \$1,000 to each party.

CHAIR: You have made fairly, I suppose you could call them, radical proposals. Do you feel there should be a national summit where an attempt could be made to try to rationalise the Commonwealth and each of the States to have similar disclosure rules, maximum donations and so on? Have you put that proposal to the Commonwealth? What are your views on it?

Professor SAWER: We believe it is very important to get bipartisan support for reform in this area. So, a summit might help push that along. We also think in the long term that it is important to have a ministerial council dealing with electoral reform; that at the moment we have ministerial councils it seems like in every other area of public policy but not in this area of electoral administration. We think there would be virtue in a ministerial council being established to supplement the very valuable work, of course, done by the Electoral Council of Australia, the official body. There is nothing at a ministerial level and we think there should be really.

CHAIR: Thank you very much for your attendance as witnesses. We appreciate all the hard work you do behind the scenes in this area. We hope it all bears fruit in the future.

(The witnesses withdrew)

SEAN AARON GADIEL, Chief Executive, Urban Taskforce Australia, Level 12, 32 Martin Place, Sydney, sworn and examined:

CHAIR: Thank you very much for agreeing to appear before our inquiry. Do you wish to make an opening statement?

Mr GADIEL: Yes, I do. Thank you for the opportunity to appear before this inquiry. I represent the Urban Taskforce Australia. The Urban Taskforce is made up of Australia's most prominent property developers and equity financiers. Its membership also includes key property lawyers, planners and architects. The Urban Taskforce very much supports this inquiry; it represents a rare opportunity to dramatically reshape politics in Australia because, let us be frank, the community is demanding change.

The current system of funding for political parties has served the community well for more than 20 years. However, the community's attitude has changed. The current system has run its course. There is a strong public feeling that the political system must not only be free of any actual corruption but must be free from any perception of financial influence. It is time to end the practice of funding Federal, State and local election campaigns by political donations. As an industry we recognise that political donations do not influence government decision-making. However, there is no question that the wider community's confidence in the political system is undermined by the dependence of that system on financial contributions from the private sector.

The Urban Taskforce position is simple, and we have had the same position for more than four years: we advocate a complete national blanket ban on political donations from anyone—corporations or individuals, developers, lawyers, doctors, trade unions, miners, tobacco companies or environmentalists. However, this kind of change must be accompanied by substantial additional public funding. Taxpayers should meet all of the costs of election campaigns. Funding should be allocated to political parties in line with their share of the vote. Only a radical measure like this will ensure that the system is once and for all free from any perception of financial influence.

I have stated the Urban Taskforce proposal but I also need to comment on some of the alternative positions that have been put before this inquiry. These are a proposal by the Greens to ban political donations from developers but not other business interests or individuals; a proposal by the New South Wales Government and the ICAC that development applicants must declare at the time of lodging an application any political donations that have been made; and the proposal by the New South Wales Opposition for there to be a national ban on donations by corporations but still to permit donations by individuals.

A ban on donations from developers alone is, firstly, logically flawed and, secondly, impossible to implement without introducing a ban so wide that you might as well have a general ban on donations. I will briefly explain. Government decision-making is crucial to a whole range of industries, not just property development. The same perception problems and corruption risks exist in relation to government tender processes, licensing decisions, liquor and gaming approvals, government grants and board appointments, to name a few. All of these areas of government decision-making have at one time or another been criticised because of political donations that have been made prior to a given decision.

The Greens' own website claims the financial and insurance sectors have given \$24.2 million to political parties since the year 2000; tobacco, hotels and alcohol interests apparently gave \$30 million; retail and service companies apparently gave \$6.5 million; and resource companies gave \$2.2 million. The Greens say the pharmaceutical and health industry has given \$6.5 million; manufacturing has apparently given \$5.6 million; the media communications sector has given \$6.3 million; transport interests apparently gave \$3.3 million. Any ban on developer donations will be seen by the public as an inadequate solution to a much broader issue.

A ban on developer donations would, if it was to be effective, amount to a near blanket ban on corporate donations and would also prevent a large number of individuals from donating. That is because a very wide spectrum of people and companies are involved in property development. If a developer is understood as someone who owns income from the development of land, any company

with significant landholdings can be regarded as a developer. At some time or another banks, television networks, breweries, manufacturers, retailers, fast food chains, all need to sell and acquire land. I can assure you that these companies rarely ignore the development opportunity of their land when buying and selling. Some choose to develop themselves; others enter into joint-venture arrangements with full-time property developers and others give a full-time developer an option on their land, which will result in the land's purchase if the developer successfully secures a development approval.

In all three situations these businesses earn income from property development. A narrow definition of "property developer" for the purposes of any such ban would be so easily circumvented that the law would be a joke. A broad definition of "developer" would be required for a ban to be effective, which would be the same as banning most major Australian companies as donors to political parties. You might as well have a general ban on everyone. The difficulty you can get into with a ban on donations from property developers only is illustrated by an article in Saturday's *Sydney Morning Herald* on donations received by the Lord Mayor of Sydney, Ms Clover Moore. The Lord Mayor has voluntarily imposed on herself a ban from accepting political donations from developers. Ms Moore defined the term "property developer" for the purposes of her ban as:

A person or organisation whose primary business or significant source of income involves property dealings.

However, last Saturday the *Sydney Morning Herald* reported that Ms Moore had received donations from Mr Peter Holmes a Court, a co-owner of Souths, who was associated with the \$19.5 million redevelopment of Redfern Oval. When the *Sydney Morning Herald* asked Ms Moore why she had accepted the donations Ms Moore said:

Mr Holmes a Court is a businessman not directly engaged in the development industry.

I do not in any way suggest that either Ms Moore or Mr Holmes a Court have done anything wrong. I raise this as an example because the redevelopment of Redfern Oval may well mean profits to Souths and its co-owners. Those profits are made possible by property development. Many people would be of the view that a ban on property development donations should be extended to businesses making profits in this way.

The Government and ICAC's proposal that development applicants must declare their political donations at the time they lodge a development application is fatally flawed. Businesses that make development applications will have to declare their donations, but those making objections to development applications will face no such requirement. This means businesses and wealthy individuals opposed to a development will be able to make undisclosed donations and lobby against a development application.

Under the State's planning laws, existing businesses regularly object to development applications from potential new competitors. They may make donations and lobby against development approvals being granted. Wealthy individuals also often make objections to development applications in a bid to protect their property values. Any system of disclosure for development applicants also needs to apply to objectors to developments. This proposal also ignores the many different people who stand to earn income from property development transactions.

I will briefly explain the parties involved in a not uncommon arrangement. First, there will be one or more full-time property developers. They will have the job of making key commercial decisions and securing some or all of the equity and debt to finance the project. Secondly, there may also be equity financiers who may take an active interest in the commercial decisions affecting the project. Thirdly, there will be an original landholder who may still be involved in the property concerned, either as part of a joint venture with a full-time developer or through an option agreement with the developer. The original landholder could be an individual, a company with multiple shareholders or a trust with a number of potential beneficiaries. Fourthly, there will be an architectural consultant, a planning consultant and, on some occasions, a public affairs consultant. All of these parties stand to gain if the development application is successful.

However, the Government's proposal applies only to the development applicant. The applicant is sometimes a property developer, but not necessarily all property developers involved in a development would be formal applicants. The development applicant is often not a developer; often it

is an architect, a planner or another consultant. Under the Government's proposal it is the applicant who is legally responsible for declaring the political donations. Architects or planners are unlikely to have direct personal knowledge of political donations made by those who hired them. The party who hired them may not be the only party involved as a property developer. An applicant would be ignorant of the political donations made by others who stand to profit from the development, such as a landholder or, if the landholder is a company or trust, shareholders or beneficiaries of the landholder.

The Opposition's proposal for a national ban on corporate donations also falls short of what is required. This kind of restriction exists in relation to federal elections in the United States. Restricting donations to individuals does nothing to remove perceptions of conflict of interest. In the United States that is easily circumvented by the use of political action committees to link up networks of wealthy individuals to finance favoured candidates. Each United States presidential campaign typically raises about \$200 million in privately financed donations. Faith in the American political system is at an even lower level than faith in the Australian system. Urban Taskforce Australia sticks by its proposal, which is a complete, across-the-board, blanket national ban on political contributions made up for by substantially increased taxpayer funding. I again thank the Committee for the opportunity to appear today and I am happy to answer questions.

CHAIR: Thank you very much for being so precise in your proposals. Who makes up the membership of your organisation?

Mr GADIEL: Australia's leading property developers and equity financiers.

CHAIR: Based in Sydney or nationally?

Mr GADIEL: Most of them are based in Sydney, but some have headquarters in another State.

CHAIR: Are they parallel with another organisation?

Mr GADIEL: Some of our members are also members of other organisations such as the Property Council and the Urban Development Institute.

CHAIR: They do not overlap?

Mr GADIEL: The membership can overlap. The Property Council is more focused on owners of property; it traditionally represents the groups involved in the business of investing in a piece of property and holding it for 20 or 25 years. The taskforce is very much focused on the producers of new property. Businesses that do both might belong to both organisations. The Urban Development Institute is focused on greenfield, outer suburban land release only and includes a lot of consultants as members. The taskforce is focused on the developer. We look at greenfield issues, but we also look at brownfield development—that is, the building of apartments and urban renewal in the inner parts of Sydney.

CHAIR: Would you have 10, 20 or 1,000 members?

Mr GADIEL: We deliberately keep our membership small. We focus on quality rather than quantity. We have just under our cap of 85 members at the moment.

CHAIR: Are they united in this submission about the total ban on donations?

Mr GADIEL: We have had that position for more than four years and it was decided upon by the industry as a whole. I am not aware of any members having any difficulty with it.

The Hon. ROBERT BROWN: Thank you for your submission. It is to the point, very clear and concise. You mentioned the amount raised in the past election. How much in public funding should be provided for a state election?

Mr GADIEL: I do not have a clear suggestion because I do not pretend to be an expert in running political campaigns. We are not suggesting that campaigns can necessarily be run any more

cheaply and that taxpayers should cover the full cost. A good objective reference point is what the political parties are spending now.

The Hon. ROBERT BROWN: According to you that is about \$25 million.

Mr GADIEL: That was the figure for the past federal campaign. That is the Australian Electoral Commission figure disclosed six or seven weeks ago. Assuming that that bears out—I do not pretend to have looked at the detail—we suggest that money of that order be set aside at a federal level and an analysis be done of what parties have been spending at the state level. That money should also be set aside.

The Hon. ROBERT BROWN: Does that also apply to local government elections?

Mr GADIEL: Yes, definitely. It should be done at a local, state and federal level.

The Hon. ROBERT BROWN: Would you support the concept of a federal roundtable discussion to resolve these issues? Should it be uniform across the country?

Mr GADIEL: Absolutely, New South Wales cannot do it alone. There is no way that this can succeed in one State. That would create too many loopholes. Our companies are all national and they operate in a number of different States. If we had a ban in New South Wales but not in other States, they could be subject to the same accusations and inferences they are subject to now merely because they make a donation to the Queensland Australian Labor Party, which would be entirely appropriate in that State. We would strongly favour a national ban. Federal and State governments and Oppositions—it must be bipartisan—need to meet at a national level to sort this out.

The Hon. ROBERT BROWN: Have you done any research or polled the broad constituency—that is, taxpayers and voters—to determine what people think about fully funding elections?

Mr GADIEL: No, but we closely follow community feeling as expressed in the media and by people who contact us. While a minority do not want their taxes spent funding election campaigns, the majority are more concerned about the perception of influence than anything else. When we talk about \$25 million at a federal level, that is a very modest amount of money in the scheme of overall government activity. Would it not be nice to be clear once and for all from these perception problems?

The Hon. ROBERT BROWN: But it is likely to be far more than \$25 million taking into account local government elections as well.

Mr GADIEL: Sure.

The Hon. ROBERT BROWN: Your position is very clear and unequivocal. Does your organisation believe that there may be a less radical approach? Do you believe there is any way, for example, that the current system could be made more transparent such that the public could be satisfied about what was going on?

Mr GADIEL: I am sure one could tinker with the current system. However, at the end of the day, either money is flowing from the private sector into the coffers of political parties or it is not. No matter what rules one changes around that, there will be regular media reports linking particular government decisions with donations without any evidence and suggestions that something improper has occurred. To be honest, from a business point of view, we have no desire to be linked with that sort of coverage and we would be happy not to have any part of it. However, there must be something to replace it.

The Hon. DON HARWIN: I want to be clear about one of the comments you made referring to the difficulty of completely banning all donations unilaterally in New South Wales. Are you saying that New South Wales should not act unilaterally prior to any national approach being developed?

Mr GADIEL: Yes, because such a ban would not be effective. It would make things more difficult rather than solve things.

The Hon. DON HARWIN: Effectively your recommendation is not so much for a ban but a national approach?

Mr GADIEL: A national ban.

The Hon. DON HARWIN: That would bring in a ban.

Mr GADIEL: We have politicians of the same political party in every State and federally. Now more than ever before there is a window of opportunity for that kind of uniformity.

The Hon. DON HARWIN: Your organisation took the view that there should be a national ban about four years ago. I will take a leaf out of your book and quote numbers from the Greens' website. The Greens' submission suggests that over the past nine years the hotel industry has donated about \$5 million to the major parties in New South Wales, but the development industry has donated more than \$21.5 million over that period. Can you account for the enormous difference even between two very engaged industries such as property development and hotels?

Mr GADIEL: I can add one: Since 1996, trade unions have contributed \$60 million to the Labor Party. That figure is on the Liberal Party website. Clearly, a variety of organisations and industries contribute to political parties. If an organisation is a large, established corporate citizen in Australia, there is always an expectation that it will have a sense of corporate responsibility. That has typically involved a civic duty to charities, sporting organisations, arts and cultural organisations and political parties. That has always been the case.

In recent years some companies have said that they will not do the political party thing. For the past 20 or 30 years in Australia, big, established companies doing business here, employing people and earning an income have supported Opera Australia, children's charities and political parties. There cannot be any suggestion that Opera Australia is delivering some benefit to the businesses that donate to it—it is not. It is the same with political parties. However, there is a perception; these days people are very suspicious and recent incidents have no doubt have heightened people's concerns.

CHAIR: Some developers or businesses often make an even donation to both sides of politics.

Mr GADIEL: Absolutely. Generally speaking, over several election cycles the property development industry is equally supportive of the Liberal Party and the Labor Party.

The Hon. DON HARWIN: You alluded to the current controversy. Do you think there is a case for delaying local government elections until something is done to fix the current regime of election funding as it relates to local government?

Mr GADIEL: We advocate three things to deal with the local government problem. Without commenting in any way on the substance of the matter before the Independent Commission Against Corruption, the allegations are shocking to the industry and make people in the industry physically sick. We are thrilled that the hearing is being held and that this sort of stuff is coming out into the open so it can be dealt with properly. However, we need to restore public confidence in local council decision-making and the way that these projects are being dealt with at a local level. We advocate a three-pronged plan. First, local councils should not be dealing with major development applications. Anything involving \$5 million to \$30 million should be given to independent panels comprising independent experts with no conflicts of interest. Secondly, there should be a national ban on political donations. Thirdly, development applications should be dealt with in a timely fashion.

As the Independent Commission Against Corruption observed, delay breeds corruption risk. Development applications should be dealt with in accordance with the rules within 90 days. I accept that a ban on political donations may take time given that the different State Governments and the Federal Government need to be singing from the same song sheet. However, the other two proposals

could be implemented this year in the Government's pending planning reforms. Those in themselves will go a long way to injecting a bit more rigour into what is happening at the local council level.

The Hon. DON HARWIN: You do not think any particular changes could be made to the election finance regime we have relating to local government, other than a national ban, that might be helpful in terms of changing the perception, which is, with regard to the bulk of the property industry, quite unjust?

Mr GADIEL: If you take out of the hands of councillors the \$5 million-plus major developments—generally these accusations have related to those sorts of projects—and you give them to independent, credible, professional, technical experts, I think a large part of that whole issue disappears.

CHAIR: Following up on your support for the ban on donations, in answer to the previous questions you were swinging over to the national level. But it is a fact that many innovations have been introduced in New South Wales. As a strategy, would that be a way to achieve the national ban. If we recommended a ban and it was taken up by the State, that would then put pressure on the other States to consider a similar ban, and also federally. In other words, to delay it—which sometimes happens when you say, "Let's wait for a national agreement"—in 25 years time you might get the national agreement. Is it better, strategically, for New South Wales to take the lead, as it has on many other issues? I realise that there are practical problems.

Mr GADIEL: It certainly would not address our concern. To be really frank, where your average property development company finds itself right now is that, as a normal part of its business, it seeks from councils and from State government development approvals; it is a normal part of its business. Quite separate to that, it has a program of supporting civic institutions in society, such as charities, sporting, arts cultural organisations, and political parties. What is happening at the moment is that people are linking the two. At any given point in time a property development company will have a development application pending or just granted, and at any given point in time over the last 12, 14 or 18 months many of these companies may well have made a political donation, and people are linking the two.

You ban them in New South Wales. If they are a national company, they still may well be donating in Queensland or Victoria. You are still going to have the same problem, because they will get a development application in New South Wales, and then someone will check the Queensland Electoral Commission website and see a donation listed there, and someone will write an article and publish it, making implications based on the fact that a donation was made to the Queensland ALP. Bear in mind, as far as the ALP is concerned, for example, the Queensland ALP heavily subsidises the rest of the Labor Party because of huge investment income. It makes large donations to the Federal campaign, and then the Federal campaign makes donations into New South Wales. So it will not address the real perception problems that we have a problem with. As an industry, we do not like getting caught up with this stuff because it is really nothing to do with us.

The Hon. MICHAEL VEITCH: I was interested to hear your comments about the process of the objectors, because they are not mentioned at the moment; it tends to be all about property developers. Could I tease out further your views on how that would work, because for every development there is an objector.

Mr GADIEL: Companies that make objections are often very large businesses, with very large investments to protect, and they will, as applicants do, talk to decision makers, whether they be councillors, State Government officials or local council bureaucrats. Under the current rules, they may make political donations. We cannot see how, if a development applicant's donations need to be on the public record so everyone can see, the vested interests that might be arguing against that development application being granted should not also be on the public record. Also, a lot of individuals, often quite wealthy individuals, object to, for example, new apartments going in or new subdivisions being made in their area, because they are worried about the impact that that extra supply of housing might have on their own property values. Particularly if it is on the North Shore of Sydney, people might say it is going to bring the wrong kind of people to their area, even though they are typical families looking for homes.

Those people might make political donations, and might separately lobby. I am not suggesting they are doing anything wrong, and I am certainly not suggesting that they are linking their political donations to the lobbying. But if we are going to have a system that says to the applicant for a development application, "You are so suspicious that we are going to have a special regime of disclosure just for you," we need to apply that same regime of disclosure to those who seek to oppose the development application, because they might be hiding quite significant financial interests.

CHAIR: You made the point earlier that it could be the architect who is making the development application, so it does not have any value at all. So you have to have some system of all those who are involved in the project, including the developers, the owners of the property and investors?

Mr GADIEL: I cannot see how that could work, because often that is unidentifiable. For instance, it is very common in New South Wales that property will be owned by a trust. If it is a family trust, it is a discretionary trust. If it is a large family, there could be 20 or 30 people nominated as potential beneficiaries. At the time the property is developed, the trustee has not decided which beneficiary is going to get the income from the trust. In fact, it is not even generally known to the rest of the world who those beneficiaries are; the trust deed is not on the public record. So even people dealing with the trust deed, like the developer, could not say, "I know who that money is ending up with", because it is a matter between the trustee and the beneficiaries.

The same issues can come up with companies and shareholders. It is impossible to work out who is profiting from some developments. There is nothing wrong with it; it is just a way our economy works. Publicly listed companies' information is all in the public domain, but a lot of property is owned by private individuals and they are not obliged to put their information in the public domain. To be honest, I do not know how any system based on the applicant can be effective, but if some sort of system is to be introduced it should also be applied to the objectives.

The Hon. MICHAEL VEITCH: You talk about a total ban on donations. How do you propose we treat in-kind donations? A political party could have diaries, for instance, and sell them at a slightly inflated price. Someone could buy a truckload of them and all that would be reflected in the financial returns is "sale of diaries".

Mr GADIEL: That is an interesting point. I think you have to distinguish between campaign expenditure and other expenditure, and in doing so you have to be very careful because in other jurisdictions that has led to loopholes, which people have got around. But to some degree you obviously need to have a provision for the members of that political party to finance and contribute to its own operations, for their own branches, their own publications, and so forth. You may need to have a provision to allow some minor degree of trading activity by a political party. Certainly some political parties own quite significant assets; from time to time they have owned radio stations and other property. So you will need to manage the way that works and develop some rules about the detail of how those assets are to be managed—for instance, having them on an arms length basis and quarantining money raised through that trading activity from being used for campaigning purposes.

The Hon. JENNIFER GARDINER: Mr Gadiel, you have had a recent career change, having been the chief of staff to two Ministers, Mr Obeid and Mr Tripodi. Was that experience something that informed you in terms of now becoming a strong advocate for substantial donation to law reform, and if so how?

Mr GADIEL: No.

The Hon. JENNIFER GARDINER: You are saying that nothing that ever occurred in those Ministers' offices when you were chief of staff—

The Hon. AMANDA FAZIO: Point of order—

CHAIR: The witness has said, "No."

The Hon. AMANDA FAZIO: I cannot see the relevance of this to the terms of reference, particularly given that Mr Gadiel stated earlier that it had been the policy of the Urban Taskforce Australia for the last four years to have a blanket ban on political donations.

The Hon. JENNIFER GARDINER: To the point of order: I heard what Mr Gadiel said. I think there is a lot of interest in this inquiry. Mr Gadiel is not a political neophyte, and I think it would bring the Committee into disrepute if questions of this nature were not asked. I am sure Mr Gadiel has been around long enough to have expected some questions on the topic, Mr Chair.

CHAIR: You asked a question and the witness answered it, "No." You are really asking the question again. You are simply re-phrasing your first question.

The Hon. JENNIFER GARDINER: I am happy to rephrase the question.

CHAIR: I am simply saying it is the same question.

The Hon. JENNIFER GARDINER: Am I not allowed to rephrase the question?

The Hon. AMANDA FAZIO: Not when it is outside the terms of reference.

CHAIR: As I said, the witness has answered the question. He said, "No."

The Hon. JENNIFER GARDINER: Mr Gadiel, you say in your written submission that business is caught between a rock and a hard place. Can you expand on that, and what do you mean by it?

Mr GADIEL: Sure. Simply put, for decades business has had a sense of social responsibility to contribute to non-profit organisations and non-profit causes within the community: Sporting organisations, arts organisations, cultural and charitable causes, and political parties. It is part of what a good corporate citizen in Australia has always done for decades. Businesses do strive to fulfil those traditional responsibilities. I think in the modern day and age they feel caught, because on the one hand they have always supported these non-profit organisations, including political parties and including the Liberal and National parties and the Labor Party.

On the other hand, these days when they support these parties, they find their names in the newspapers linked with quite unrelated government decisions and the suggestion of some improper influence. That is the last thing businesses want to do. So they are in a difficult position: On the one hand they want to do what has always been expected of a good corporate citizen, but on the other hand they do not want their name tarnished in the newspapers. That is the difficulty they are facing.

The Hon. JENNIFER GARDINER: When you were working with Mr Tripodi's office, for example, did you have protocol that dealt with questions that may come up? For example, if a donor walked through the door, there needed to be a protocol in place as to how that issue—?

The Hon. AMANDA FAZIO: Point of order: Again, this question is clearly outside the terms of reference for the inquiry. I believe this line of questioning, which is nothing more than muckraking, will bring the inquiry into disrepute, rather than, as the Hon. Jennifer Gardiner claimed earlier, the inquiry would be in disrepute if it did not ask this line of questioning. Mr Gadiel is appearing here today as the Chief Executive Officer of Urban Taskforce Australia, and it is not appropriate to ask him questions about his previous employment. It is not the Spanish Inquisition; this is an inquiry into political funding.

The Hon. DON HARWIN: To the point of order: With regard to whether the line of questioning is outside the terms of reference, the terms of reference specifically include the issue of undue influence. I would have thought the issue of how a ministerial office may or may not have acted in terms of the protocols in place regarding political donors is right on point as a matter within the terms of reference.

The Hon. AMANDA FAZIO: Further to the point of order: Mr Gadiel has been invited here and has attended today as the Chief Executive Officer of Urban Taskforce Australia, and I believe it is

inappropriate and outside the terms of reference to ask him questions outside the submission and outside the organisation he is here to represent.

CHAIR: You made it clear in the point of order that it may be a question about a Minister or the Minister's staff. Mr Gadiel was not involved in any Minister's staff—

The Hon. DON HARWIN: My comment on the point of order is that it cannot possibly be outside the terms of reference.

CHAIR: But it is outside the witness' role in appearing before this inquiry. You would have to direct that question to a staff member currently working for the Minister.

The Hon. JENNIFER GARDINER: Mr Chair, you may persist thinking inside the terms of reference, but you may allow the question to be asked and Mr Gadiel can answer it in whichever way he sees fit.

The Hon. AMANDA FAZIO: Further to the point of order: If the tone of questioning today is indicative of the tone of questioning for the duration of the inquiry, and if the Hon. Jennifer Gardiner wants to take a no-holds-barred approach and go back to what people were doing in their past lives, when some of the representatives appear later it would be extremely hypocritical of her to object if we have lines of questioning that she takes umbrage with. I firmly believe we have invited Mr Gadiel here to speak to the submission of the organisation that he is here to represent. It is still inappropriate and I still maintain outside the terms of reference to ask him about the operations by a previous position that he worked in.

The Hon. DON HARWIN: Perhaps it might be appropriate to clear the room so we can deliberate on the best approach?

CHAIR: I was going to rule the question out of order, as it is not related to the witness's role in appearing before this inquiry. If we were going to take that line of questioning then we would have to tell the witness to prepare his answers for questions to be asked in that direction. I rule the question out of order.

The Hon. DON HARWIN: Out of order on what basis?

CHAIR: That it is not applicable to the witness and his role before this inquiry.

The Hon. JENNIFER GARDINER: I have another question. In the submission you say, "There is no suggestion of major corruption throughout say the New South Wales planning system. The Independent Commission Against Corruption said as much last year." In light of today's ruling by Mr Cribb that he is recommending to the Government that the Wollongong City Council be sacked on the ground that systemic corruption does in fact exist, at least in relation to the Wollongong City Council, do you revise those words in your submission?

Mr GADIEL: I mean I reported what ICAC said when it released the Corruption Avoidance Report last year. Obviously the revelations as to Wollongong City Council have been shocking for people in the industry, they are horrific allegations. Certainly the many thousands of people who work in the property development industry every day doing the right thing are horrified that this sort of thing has been going on, or is alleged to have been going on, and are grateful that strong action has been taken to deal with it. The industry is particularly supportive of any decision by the Government to sack Wollongong City Council and put in an administrator.

The Hon. AMANDA FAZIO: As a follow-on from your comments about people objecting to development applications, as well as applicants being outside or should be involved in any sort of capture of the people involved in the development process. What are your ideas on the impact in local government where small local parties are often formed with the view of opposing particular local developments, how you see that fitting into the whole process if we did not accept the Urban Taskforce Australia's position that there should be bans on all donations—we were still allowing donations? How would it fit in with an organisation that was set up to run candidates in a local

government election to oppose a particular development in the local area? Would you then say that that organisation should not be allowed to solicit donations?

Mr GADIEL: I think if you are banning the Labor and Liberal parties from soliciting donations then you have to apply that equally to other political parties or political movements that might be formed. The other comment I would make is, that we think it is probably better that local councils and councillors focus on getting smaller development applications right, getting them through quickly—mum and dad getting their approvals done for their home extensions, for their pergolas and so forth—and focus on strategic plans for the community; the overall direction of the community, the rules, the protocol, the guidance notes, and to allow the actual development assessment of major projects to be handled by experts who then measure those projects against the vision and strategies that have been ticked off by the local community.

The Hon. AMANDA FAZIO: But it is not uncommon in some local government areas for a group to rally up around objecting to a development that is small—not much more than a mum and dad investment—and that would never reach the \$5 million threshold that you were talking about earlier? How do you think you should deal with an organisation like that?

Mr GADIEL: In terms of political funding?

The Hon. AMANDA FAZIO: Yes.

Mr GADIEL: I think they should be funded based on the votes they get at the election.

CHAIR: It would be difficult to have that party disclose? I suppose, if they want the developer to disclose donations, the political group should disclose as well.

The Hon. ROBERT BROWN: The stance that the Urban Taskforce has taken, if you will excuse the expression, seems to me to be throw the baby out with the bathwater. Rather than a blanket ban on all corporate or private donations from groups or associations—that takes into account unions, non-government organisations, constituent types of sport organisations like clubs and associations—would perhaps it not be better if the Urban Taskforce merely wanted to remove any question of smear upon its members and the industry, that the industry voluntarily withdraw from making donations and still allow other associations who felt they could carry the weight of public opinion, such as non-government organisations, to make donations?

Mr GADIEL: I think that raises two issues. Firstly, if the business community, or a substantial portion of the business community, decided to stop funding political parties tomorrow the system would collapse. The reality is that our democratic system, like it or not, involves quite expensive election campaigns to give people information about the political parties and that is heavily dependent at the moment upon private sector donations. So to walk away without seeing an alternative system of funding in place I think would be irresponsible by the business community collectively. Secondly, there is no particular passion for walking away and saying, "We are going to walk away and allow some sectors of society to continue to contribute and other sectors not to." Because we think that would only encourage a lack of balance in participation in the political process.

The Hon. ROBERT BROWN: So the Urban Taskforce obviously from that statement does support the concept that adequate funding from wherever in the political process is necessary for a healthy democracy?

Mr GADIEL: It is absolutely essential.

CHAIR: Do you think that there is public resistance to suddenly a dramatic increase in public funding amounts? If it became clear to the public that it is now \$20 million or \$30 million, they would see it almost going to political parties? Are you aware of, or do you anticipate, any public resistance to tax payer's dollars being spent in that way?

Mr GADIEL: I understand what you are saying but I think if you clearly communicate to voters that democracy either way requires funds to be spent on campaigns and getting messages out to people so they can make a choice, and then give them the two alternatives—would they want it funded

by the private sector or would they want it funded by the tax payer—my gut feeling, for what it is worth, is that the majority will choose the taxpayer because they can get away from the perception problems that currently dog the political system. But I will defer to you at the end of the day because you are the elected representatives.

CHAIR: It could be a restriction on expenditure by political parties so that the amount of public funding would be a reasonable amount? So you do not seem to be subsidising the television stations and the newspapers for all the expensive advertisements that would be paid for by the taxpayer?

Mr GADIEL: That goes to something that I am not qualified to comment on: what is a fair amount to spend on an election campaign? The only comment I make is that does not really solve our fundamental issue that corporate citizens, corporate companies trying to do the right thing by the community as a whole, who make donations find their name unfairly linked to some utterly unrelated government decision. That is disturbing really because of the way it is being interpreted at the moment and that will happen whilst you have a system where the political parties are depending on the private sector for funding.

The Hon. DON HARWIN: I take you to second point of your submission where you are talking about the American experience. I am concerned that perhaps you are dismissing the concept of a ban on donations by corporations and other organisations a bit too lightly. I am also interested in your position on the issue of spending limits. Have you considered the experience in Canada, for example, where there are spending limits and bans on donations from corporations and other organisations that seem to be working quite well? Have you considered the position in the United Kingdom and the position in New Zealand? Do you not think, therefore, that there are viable alternatives to what you are suggesting based on the experience of those three countries?

Mr GADIEL: I have to say that the United Kingdom is not a good example if you look at the—and I do not pretend to know the ins and outs—large degree of public disquiet over peerages and political donations and fund raising. We probably have not had a scandal like that in Australia. I would suspect there is probably a greater degree of confidence in what is going on in Australia than there is in the United Kingdom but I am not a resident of the United Kingdom so I do not qualify or pretend to be an expert. Canada I profess ignorance; I am not a political scientist and I have not been following Canada. But the United States is a prime example of where that system has been operating for a long period of time, it is very established, and there are 100 ways around it if one is willing to do it. At the end of the day we are all people, and some people who might have made donations through corporations will make donations as individuals. It is the same people and the same money; it is just a different mechanism. I think you have to break the link altogether.

The Hon. DON HARWIN: And on the issue of spending bans?

Mr GADIEL: Again I do not pretend to be an expert on that side of the equation. You need to talk to people who know how political parties operate their campaign finances and it is not something that either the Urban Taskforce or myself are expert in.

(The witness withdrew)

(Short adjournment)

ANNE JONES, Chief Executive Officer, Action on Smoking and Health Australia, sworn and examined:

CHAIR: Do you wish to make an opening statement?

Ms JONES: Just a brief opening statement because I realise that I have covered a fair bit of detail in our submission. I certainly welcome this inquiry. Political donations have been a concern of my organisation for some time. We believe political donations are very controversial. They have contributed to a level of distrust and perhaps lack of confidence not only in the community but amongst some health groups. It has resulted—obviously not in all cases but in some very critical cases for us—in some poor policy decisions made by government that have been in favour of the commercial entity, for example, the gambling industry, at a cost to the community. I am happy to elaborate on some examples with which I am familiar. My concerns about political donations in general are three or four.

One is the secrecy about these donations—the lag time from when donations are made and from when voters vote to when they find out who has been funding that particular candidate or that party. Reforms have taken place in a lot of other countries and we have not really caught up with reforms that we should be making to create a more democratic process not only in New South Wales but Australia. In particular, I wanted to explain that for 14 years I have been the CEO of ASH. In the beginning I was mainly concerned about donations from the tobacco industry, but as time went on we realised that there were many third-party entities under the current system that could be set up so that you cannot say you want to ban donations from one industry because it is very easy for that industry to donate to a third party or entity that in turn funds candidates or political parties.

To give you an example of where I live just as a voter, my local member, who was elected to this Parliament, received nearly \$250,000 in donations to assist him in his campaign, but the only declaration he has to make is that he received \$250,000 from his political party. Now, that does not tell a voter anything about where the funds have come from to help elect that person. I think that does not really pass the test that any voter should have when they go to vote. I think they need to know where the money has come from. I started off being concerned about tobacco company donations; I do not believe you can stop there. I think you have to put in place a number of principles and those principles in brief are that we believe political donations from corporations, unions and so on really should be banned. I do not have a problem with donations from individuals, as long as they are capped.

We would like to see full disclosure and better transparency of donations. In this electronic age I think it is quite possible for candidates and political parties to be putting their donations online in a more timely way. I think 12 months is a bit too infrequent, but more frequently would be good. I think the critical issue is particularly before the election so that we know where the funds have come from when we go to vote for the local candidate. Of course, we have a strong view that there needs to be a national response. It cannot just be something that State governments deal with because there needs to be reform across the board. So, we would like to see some recommendations from this Committee about some national solutions, even a national forum that would involve not just politicians but some eminent people, some academics, so that you have a bit more of a community spread from which to take advice because, after all, this is about politicians deciding where they are getting their funding from.

I think it is important to consult the community a bit more widely. This is a very good start, this sort of process, but I think it is important to get some community opinion about whether private funding should be replaced by more public funding. There should be much more discussion about how much the community is prepared to pay for that. Lastly, we would like to see not only reforms in New South Wales but national reforms and broader community consultation. I am happy to speak in more detail about our 10 recommendations.

CHAIR: In your remarks you referred to donations from certain areas. Your report notes that most political parties now refuse to accept donations from tobacco companies. Do you support restricting the sources of political donations, for example, banning donations from the tobacco

industry? You mentioned also the gambling area and possibly the liquor area. Should our Committee consider also those areas?

Ms JONES: If you look at the annual report of the Australian Hotels Association and the clubs, you will see that they have publicly declared in the past that they have received sponsorship from tobacco companies. It is interesting to reflect on the national law we have about the tobacco industry because they have been banned for some time. I think you are very familiar with this case. They have been banned from sponsoring arts events and sporting events, yet some political parties have created an exemption for themselves and continue to take donations—you can call it sponsorship if you like—when those same politicians in many cases have actually banned the taking of money from tobacco companies. I do not think it is a very relevant argument to say, "Well, this is a legal product, so they should be able to engage in whatever business they want." This is a very regulated product and it does not matter about legality; it is more about the harm this product causes.

We know there are 15,000 deaths a year and the Commonwealth has estimated this huge disease burden at \$21 billion a year. So, we have a lot of chronic disease caused by these products. It is very important for us to continue to see the tobacco industry as one that needs to be regulated. But given that it is very good at funding third-party entities, I think that we have to broaden the ban on donations and actually include all corporations and unions. I am very happy to include non-government organisations [NGOs]. I do not have a problem with NGOs; most do not give political donations but I think it has to be a comprehensive ban because once you create exemptions you will end up with loopholes that are able to be exploited.

The Hon. MICHAEL VEITCH: When you were talking about unions, were you actually talking about industrial associations or just trade unions?

Ms JONES: No, I think any industrial association, unions; I think they have all got to be included. I think it has to be comprehensive. I think the only real exception can be individuals, and they should be capped as well so that cannot be exploited. That way you have a level playing field.

CHAIR: So you would like to see a total ban on donations, is that what you are advocating?

Ms JONES: Yes, that is what I support.

CHAIR: From corporations, whether it is an employer association, union body or a business?

Ms JONES: I think the only exception can be individuals and those donations should be capped.

CHAIR: What cap would you put on the individual donation?

Ms JONES: Well, there are suggestions of \$1,000. I think it is worthwhile, of course, looking at what reforms have happened in other countries, what models had been successful. I think there has already been a research paper produced by the Parliamentary Library here on those other models. I think it was a very good piece of work and that is what we should be looking at.

The Hon. DON HARWIN: I have noted from your submission that it is \$1,000 per year per donor?

Ms JONES: Yes.

The Hon. DON HARWIN: Is that per year per donor per party—

Ms JONES: Yes. I realise the complications.

The Hon. DON HARWIN: —because some people actually donate to both parties?

Ms JONES: I am not an expert in this whole area. As you know, ASH is all about reducing chronic disease caused by tobacco products, so I do not profess to be an expert. I cannot quite see that

there is a problem with donations to different parties because sometimes you do get entities that try to be bipartisan. Of course, if entities are corporations and they cannot make political donations, then it is up to individuals. I do not quite know why they would be donating to everybody. I do not see that there is a real major difference between the two.

CHAIR: So it would be a \$1,000 donation to a political party full stop?

Ms JONES: Yes.

The Hon. DON HARWIN: I notice that in point nine you say "political donations are no longer tax deductible"?

Ms JONES: Yes.

The Hon. DON HARWIN: Why is that?

Ms JONES: Well, it was interesting because when I was in the Federal Parliament only a couple of weeks ago that was the piece of legislation that had just been tabled. I think it may be there as part of the Federal Government's reform package because it has also confirmed to us in writing that it intends to appeal those last changes that were made under the Howard Government, which actually lifted the limit and made donations a bit more secret. You could make donations up to \$10,000 or \$9,999 and not have to declare the source of that donation. So, I think there is a package of reforms, which is why this inquiry is very timely. I think the new Government will be looking at a number of reforms. It sounds like a good idea, but I have not read the rationale for why the Federal Government would want to make them no longer tax deductible. However, I would think it is a disincentive to make them non-tax deductible because there would be less reason I suppose to give that donation if you cannot get a tax deduction.

The Hon. DON HARWIN: If you are trying to achieve a system that reduces the role of individuals and any undue influence they might bring to bear, surely by taking away tax deductibility or reducing the number of individuals that can afford to make donations and, therefore, maintaining tax deductibility, you are in fact multiplying the possible sources and diluting the possibility of any undue influence?

Ms JONES: Yes, I think you could put that interpretation on it. As I said, I had not read the rationale for the bill, which I am sure the second reading speech would tell us a bit more. It may be that it is an indication of where the Federal Government is intending to go with political donations. It may be that its intention is to have more public funding rather than private.

The Hon. ROBERT BROWN: Just to make sure that I absolutely understand your position, your recommendation 1(c), "a requirement that all funding disclosures must be accompanied by a report from an accredited auditor" coupled with quarterly disclosure, would place the burden of, say, 17 audits over an electoral period on all political parties? Not all political parties are as big as the Labor Party or the Liberal Party. That could be a very expensive exercise for a smaller political party?

Ms JONES: Yes. It sounds a bit like our new tax system. What I had to take into account is that we have an electoral authority that does not seem to have a lot of powers, and as they suggested this morning, maybe they should be under the Auditor General. If that were the case, that might be a better way of reforming the whole system. I think the onus needs to be in one place or the other. Rather than making it more difficult for government to do the audits, it may be that the onus perhaps should be on the candidates.

The Hon. ROBERT BROWN: Parties have their returns audited now. There have been recommendations from other presenters to this Committee that a disclosure be annually, quarterly, or annually but live online so it could be updated. Part of the problem is that the electoral funding authority or whoever does that must be able to verify the information that comes on line, so there has to be an audit somewhere. Would it be better that the funding authority did the auditing rather than the political parties?

Ms JONES: I suppose it comes down to who is going to bear the cost. Obviously I am keen to see a better and more open and transparent system. As long as auditing is done I do not feel that strongly about who does it, but it needs to be done.

The Hon. ROBERT BROWN: Just to confirm your view, item three refers to either a total ban or at least limits on political donations from organisations, including corporations and trade unions. In your subsequent personal presentation you said "total ban".

Ms JONES: I prefer a total ban because the way this is heading it will perhaps cost taxpayers more in terms of public funding. It should not just be an open chequebook. There has to be a lot more community consultation about how much people are prepared to pay as taxpayers. We have just seen a very long federal government election; it seemed to go on for a year. Do people really want to have millions of dollars spent on funding very long election campaigns when if there were limits on electoral spending by the parties and candidates we might have some good controls in place that would give us shorter election campaigns?

The Hon. ROBERT BROWN: Okay, so you are not concerned that the broad definition of corporations, trade unions and trade associations would also cover non-government organisations that might be representative of community groups that had political representation?

Ms JONES: I do not have a problem at all with that. This is about trying to create a better system. The only reason I feel individual caps could have been left in there is that they might help offset some of the costs. Our parliaments might seek more money from taxpayers and if they can recoup some from individuals that is fine. It is about trying to reduce the influence of some of these very powerful vested interest groups that I believe, in our experience with public health policy, are having an undue influence on outcomes.

The Hon. ROBERT BROWN: Do you have any feel for what sort of maximum impost should be placed on taxpayers for, say, a state election?

Ms JONES: I think this is such a big and important issue, which involves politicians making decisions about their own funding, that it has to involve much more community consultation about what is acceptable. We are talking about large amounts of money. More consultation, which this process today has started, would be a really good idea. We would get a sense of whether people are prepared to pay. I am sure from a politician's point of view when you are trying to win a seat or win one back, you will spend whatever you can to try to achieve that. If taxpayers' money is to be spent, there has to be some consultation about what people think is a fair go, given that money will be spent on financing campaigns. It will have to come from somewhere and it means that something else will not be funded.

The Hon. ROBERT BROWN: In writing your submission, though, did you have some sort of global idea of what sort of monies are spent on campaigns? For example, other presenters have stated that \$25 million was spent in the last State election campaign.

Ms JONES: I have heard varying figures. I have heard that federally the figure was \$50 million and here it was \$10 million. It is obviously a significant amount of money. I do not have the details of what it cost. We have to look very carefully at ways of limiting private funding and if that means increasing public funding, there needs to be some consultation given that the taxpayers will be paying for it.

CHAIR: Increasing public funding has to come from other places such as grants to your organisation, so you would have to be very careful when the Government is looking for—

Ms JONES: My funds come mostly from other charities.

CHAIR: In your submission you said the reason you are concerned about donations having some influence on decisions that are being made is that they may result in favourable decisions to the donor. Can you give us some examples where you believe they may have had some influence on decisions?

Ms JONES: I will give you one that is of great concern to us at the moment, which is that poker machines are being moved into smoking areas. The definition of smoking areas in New South Wales is not based on evidence. It is a definition that the hotels and clubs themselves wanted. It defines an outdoor area as being up to 75 per cent enclosed. That does not sound very enclosed to the average person. If you look at the expert advice that the government received, not only from its own department but also from independent health authorities, all that was ignored. We are seeing poker machines increasingly moved into smoking areas. That means that decision was contrary to the occupational health and safety law in New South Wales. It is causing harm to the health of people who have to work in those areas and to the gamblers themselves. It is certainly not a socially responsible gambling policy.

If you look at other jurisdictions, Queensland very sensibly banned the moving of poker machines into smoking areas because those are areas where a gambler can go and have a break and get away from the machines as well as not cause harm to other people while he or she is smoking. So other jurisdictions based their decisions on evidence and expert advice and we have an extraordinary decision in New South Wales which we believe is certainly not based on expert advice or the evidence and advice of the Government's own health authorities, but which is the decision the commercial entities wanted. That is a good example of one matter we are dealing with and we have others. I have correspondence this high that my organisation has had with the Minister for workplace safety. We feel it was a very poor decision and one that went against all the advice. It is a decision that the commercial entities wanted. The gambling lobby pushed very hard and it got the decision in its favour at a cost to the community and to the health of people working in those areas, and really at a cost to the health of gamblers.

CHAIR: Are there any other examples that you can think of?

Ms JONES: We had a very long delay in getting pubs and clubs to go smoke-free, longer than most other jurisdictions. Victoria went that way at the same time as New South Wales but other jurisdictions moved years ahead of New South Wales. That was despite overwhelming evidence that second-hand smoke caused harm to people working in those areas as well as to patrons. It was totally contrary to the occupational health and safety law, the guidance note from the Occupational Health and Safety Commission and international evidence. This decision by the Government was what the pubs and clubs wanted; it was what they lobbied for and they seemed to have unequal access to government over the decision.

The Hon. MICHAEL VEITCH: Ms Jones, I want to go back to some comments you made about local government. I guess it ties in with the requirement for an auditor's certificate for the return. Have you given any consideration to the impact on country councils and country councillors?

Ms JONES: I wanted to really stay away from local government because it is not something I felt confident about making statements on, but we felt that we had to do that because we want the same principles to apply. It is the third level of government. Also we know that pubs and clubs are all the time trying to influence decisions made in local government in relation to smoking. It is a core activity and interest of ours to protect people from second-hand smoke. I cannot say much more than the general view we have that they cannot be ignored and the same principles should apply. Obviously, other people know a lot more about the impact, whether rural councils or whatever, and good advice has to be taken about that.

The Hon. MICHAEL VEITCH: On another page in your submission you talk about the process of laundering money via dealers or functions. Earlier today we were talking to another witness about the same thing and where we draw the line on that. Do you have any views on that?

Ms JONES: Is a very controversial term, is it not? A number of third-party entities have been set up and that concerns us greatly. There is no level of accountability for them about where the money comes from; the declaration is that the money came from the entity. We know that in the past tobacco companies have given donations to a whole range of organisations or third parties to improve their lobbying power and the influence they can bring to bear. I remember a few years back when Mr Carr was Premier he had a major fundraising function, as I have seen with Mr Howard, so both parties have been involved. Both functions were sponsored by a whole range of sponsors, including British American Tobacco and perhaps Philip Morris; I am not sure about them, but BAT was definitely

involved. Those are the sorts of examples that concern us. People are naive if they believe that money does not open doors; I think it does.

The Hon. MICHAEL VEITCH: One last question is to do with the \$1,000 individual cap. Do you have any suggestion as to how in-kind donations should be treated? Is your \$1,000 cap proposal for cold hard cash or does it relate also to in-kind donations?

Ms JONES: I think you have to be very careful about the way you define all of these terms. Again, you can get some good advice about that. I think in-kind donations are very influential. I will give you one more tobacco industry example: we have seen a huge increase in smoking in films and we have discovered—this is published information now—that tobacco companies used to give large amounts of money to people like Sylvester Stallone to promote smoking in five of his feature films. They have also delivered truckloads of tobacco products to film studios so that their largesse can be distributed. To me, that is the same sort of thing. I think you have to look very closely at in-kind donations in terms of the benefit. As Anita Tang said earlier today, there may be a difference with, say, grass roots type activity and we do not want to make it too onerous for people to have to declare lots of small donations when they have a chook raffle or something like that, but some close scrutiny is required of the sorts of definitions that are used to try to capture in-kind donations.

The Hon. JENNIFER GARDINER: With respect to the suggestion that there be an independent committee to monitor government advertising campaigns to ensure that public funds so spent are for the purposes of public education and not political gain, presumably that would have to be a national approach as advertising obviously crosses borders.

Ms JONES: I should clarify that I can think of more national examples where I believe there have been some question marks as opposed to the state level. There are a lot of well-funded anti-smoking campaigns in New South Wales as a result of the establishment of the Cancer Institute. I think you asked earlier how much that was and I believe about \$10 million is being spent in the current year to reduce smoking rates. I have no complaint about that, but because I can think of a few question marks over some federal campaigns it may be that that is best done at a national level. I realise there is a bit of a fine line in deciding what is educational as opposed to self-promotion by a political party just prior to an election. That is something that should be looked at.

The Hon. JENNIFER GARDINER: Do you have any idea how that might work?

Ms JONES: I do not have any further comments to make about that. I think it is an area that requires more scrutiny. I realise it is possibly a difficult area but it is one that I think could be further investigated.

The Hon. DON HARWIN: Are you aware of the Ontario model in Canada?

Ms JONES: No.

The Hon. DON HARWIN: The Auditor General is given the responsibility to review all government advertisements before they are put to air and must authorise them as falling within the sorts of not guidelines but what you want to achieve in terms of them being education, not for political purposes.

Ms JONES: That sounds like an interesting model. It could be worthwhile looking at, as long as it does not result in very long delays. That would be my concern because I have heard some of my bureaucratic colleagues say that it takes a very long time waiting for ministerial approval of, say, an anti-smoking campaign in the past. So if we have another layer of approval, one would want to look to see what may be some of the disadvantages of a system like that, but it sounds reasonable.

CHAIR: We have had a little debate about whether the evaluation of the advertising should be national or State. It would have to be State if it was a State advertising campaign—

The Hon. DON HARWIN: Yes.

CHAIR: —I would assume, and national if it is a Federal election campaign. One thought I have had—you and others have talked about the summit. Is there any thought of any input into the 2020 summit in April?

Ms JONES: Yes. A few of my colleagues have been nominated to be involved in that process and that would be very good, but it needs to include the whole reform of political donations. It would be very good to have that on the agenda.

CHAIR: They could come through as recommendations, hopefully adopt some of the things you want, could be fed through the groups and may be adopted by the 1,000 delegates.

Ms JONES: Yes, it would be very good. I think the sort of process of consultation that has been initiated by government is a very good idea. An issue like this needs to be urgently reviewed at the national level and it is something that a new government can be a bit more interested in doing.

CHAIR: Are you going yourself?

Ms JONES: No. Some of my colleagues have been nominated, and if that is the case I am sure there will be an opportunity to raise this whole issue. Of course, I do not know about other candidates so I would hope that political donations, the whole reform area, is an issue for a lot of people. I think there has been a big increase in concern about political donations in the community in general, and hopefully there will be a number of people who might consider raising it.

CHAIR: I think Reverend Tim Costello is heading one of the groups. He is talking about looking at gambling and the impact of those areas on our society, so it could be quite wide ranging.

Ms JONES: That is right.

CHAIR: Good for you to have some input, that is what I am suggesting.

Ms JONES: Yes, do not worry—I would be trying to do that.

CHAIR: Is there anything you would like to add? You have given us a precise list of 10 recommendations which are quite clear. Thank you for that.

Ms JONES: No. I think I have talked about the principles that we would like to see this Committee consider, but it is quite important, too, that there be a national response. I think I heard a different suggestion today from the democratic audit which sounded like quite a good suggestion to have some ministerial council consider what should be done at the national level so that you would have a public outside of Parliament process as well as something internal. That way we might end up with some better decisions made about what needs to be reformed and by when. So thank you very much.

CHAIR: Thank you for appearing before the Committee.

(The witness withdrew)

(The Committee adjourned at 4.20 p.m.)
