

**REPORT OF PROCEEDINGS BEFORE**

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

**INQUIRY INTO ELECTORAL AND POLITICAL PARTY  
FUNDING**

---

**At Sydney on Friday 11 April 2008**

---

**The Committee met at 2.35 p.m.**

---

**PRESENT**

Reverend the Hon. Fred Nile (Chair)

The Hon. Amanda Fazio  
The Hon. Jennifer Gardiner  
The Hon. Don Harwin  
The Hon. M. S. Veitch

**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, on former affirmation:

**CHAIR:** Welcome to the fifth and final hearing of the Select Committee's inquiry into electoral and political party funding in 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 Committee clerks. Any messages from audience members should be delivered through the Committee clerks. I remind everyone present to please turn off their mobile phones.

I now welcome our two witnesses to this public hearing, Mr Barry and Mr Follett. As you know, you are giving evidence on your former oath or affirmation. Do you wish to make an opening statement?

**Mr BARRY:** No, we do not wish to make any statement, thank you.

**CHAIR:** What is your response to the Premier's announcement that he supports a ban on all private donations in favour of a system of public funding? Would a blanket ban on donations be enforceable? In your opinion, should there be a ban on donations? Should it be accompanied by a cap on spending? Should there be a limit on private donations from individuals, for example of \$1,000, which would not involve the danger of corruption, being a small amount?

**Mr BARRY:** You would appreciate that they are policy questions from the Premier. I think I can answer one part of it, that is, could they be enforced by the Election Funding Authority. The short answer to that is, with the resources that the funding authority currently has, it would not be able to enforce that, so the funding authority would need to be reviewed and it would need a completely different structure. I remind the Committee that the Election Funding Authority consists of the Electoral Commissioner as chair and two other Governor appointments based on a nominee from the Premier and a nominee from the Leader of the Opposition. It is supported by the director of finance and administration from the Electoral Commission on what was supposed to be about .3 of a full-time workload, but it has turned into more like .7, and two other positions of clerical officers to process returns. In terms of the authority being able to give effect to the Premier's announcements, it would need additional resources to be able to do it, but I cannot comment on the other matters that you have asked because they really are of a policy nature and I think it is one for this Committee to consider.

**CHAIR:** It might help the Committee, and perhaps you in the long run—is it possible for you to give us on notice a chart showing, if you were to have the powers to enforce, what would be the staffing structure of the authority?

**Mr BARRY:** Do you mean if the authority had powers of investigation?

**CHAIR:** Yes. If you were supposed to enforce the ban on all donations, et cetera, from corporate bodies.

**Mr BARRY:** I had turned my mind to that and I was going to put it to the Committee to consider. I do not think we want to be duplicating existing resources in the State, and I would have thought that subject to any legal impediment, what would be more appropriate if the authority is satisfied that a prima facie matter needs to be investigated, it would be better going off to either the New South Wales Police to investigate or, indeed, to the ICAC, both organisations who have expertise in investigation. I do not think we want to duplicate those resources.

**CHAIR:** So, even though you have been given those additional powers, you do not favour setting up an investigation unit as such?

**Mr BARRY:** No, I do not.

**The Hon. JENNIFER GARDINER:** That would be the same as the Commonwealth, as applies under the Commonwealth Electoral Act. If there is a prima facie case where the Australian Electoral Commission feels some offence has been committed, then it goes to the Australian Federal Police, does it not? They do an investigation, and if they think there is a good case they send it off to the Director of Public Prosecutions?

**Mr BARRY:** The Australian Electoral Commission has a staff, in its funding and disclosure area, off somewhere between 12 and 18 people. So, you can see the sort of dimensions we are talking about. The Australian Electoral Commission does not deal with local government. Remember, in New South Wales we have about 870 candidates for State elections and 5,000 candidates at local government elections. So, I think the Committee needs to be mindful in considering what resources the AEC has and the processes it has before it can refer things to the Australian Federal Police.

**The Hon. DON HARWIN:** And the equivalent statistic for the number of Federal candidates would be, what, about 1,500?

**Mr BARRY:** I would have thought about 1,500 for Australia.

**CHAIR:** If there were any change to the funding system to include local government, with those 5,000 candidates, or those who get funding, it would demand a large increase in the staff of the commission to handle that?

**Mr BARRY:** Bearing in mind that candidates and donors at local government elections are already captured by the election funding scheme, it is the funding authority not having the investigatory powers that I thought you were referring to. If it were considered that the funding authority should be given the investigatory powers, my concern would be that we do not have the resources to give effect to that. I would also suggest, what I said before, that the Committee should consider whether it is appropriate for the funding authority to muster those resources where they probably exist elsewhere in the State.

**The Hon. DON HARWIN:** With 12 to 18 staff in the AEC to process these matters and look at these matters and potentially see where a discrepancy, or a prima facie case of breach arises, what does having those extra staff enable them to do that you cannot do?

**Mr BARRY:** I am not an expert on the AEC's legislation but my understanding is that the AEC does spot audits of political parties. I do not know whether it goes to candidates. It is with respect to the funding side of the equation. I know the AEC has commented recently that if, indeed, its powers were to be beefed up where it had more investigatory powers, it has a resource issue. So, again, I think one needs to be very careful in assuming that the AEC, with between 12 and 18 staff, those staff, as I understand, are not investigators in the true sense of the word.

**CHAIR:** No, they are audit people.

**Mr BARRY:** That is correct.

**CHAIR:** Just to clarify one suggestion you have made, if there were investigations, they would be carried out by the New South Wales Police Force or the Independent Commission Against Corruption? Because of the specialised nature of what we are talking about, it probably would be better if it was handled by a unit within the ICAC, and if a unit in due course was set aside—if all these changes come into place—that would specialise in the electoral funding and disclosure area? Do you think that may be a possibility?

**Mr BARRY:** I think what is important is that the body charged with conducting an investigation has the appropriate expertise and resources. We know the funding authority does not have them and my view would be that I do not want to see them duplicated. I think the funding

authority should be the first port of consideration of returns and any complaints matters, and if the funding authority is satisfied a matter needs to go further it can refer it on.

**The Hon. AMANDA FAZIO:** At the moment what would you do if you had an allegation about an irregularity or fraud in a funding return, an expenditure return? Who would you refer it to now for investigation if you thought it was a serious issue?

**Mr BARRY:** In my time, which is only four years, there have been two matters that the funding authority has regarded as material in nature and needed further inquiries made of the donor, the declarant, et cetera. Those are only recent matters. To some extent it is a voyage of discovery because the authority does not have the investigatory powers. It can ask people to clarify, or it can seek further and better particulars regarding their return, which we have done of late. If the authority were not satisfied with the responses, the next step would be to refer it to the Crown Solicitor and to ask the Crown Solicitor to consider whether prosecution was in order.

**The Hon. AMANDA FAZIO:** Given that you do not have an investigatory role, does that not leave a large gap in information and evidence collection between the Election Funding Authority dealing with the issue and the Crown Solicitor looking at it?

**Mr BARRY:** Yes, it does. The only matters that have been referred to the Crown Solicitor up until late have been where people have just not submitted a declaration and they have been fairly simple to prosecute. But there are matters that go to the two elements that I mentioned before. First, the declaration has to have knowingly been inaccurate, or a person has to have withheld information knowing that he or she withheld that information. That is a significant hurdle. Second, the matter has to be of a material nature. These matters have never been tested.

**The Hon. AMANDA FAZIO:** Would it not be preferable in those circumstances to refer it to a specialist unit within the police—somebody who looks at things such as white-collar crime, financial transactions, or something like that? You would then have somebody with particular expertise looking at it who would then be able to refer it to the Director of Public Prosecutions, the Crown Solicitor, or whoever. My concern with the idea of it going to the ICAC is that, as we are all aware, when you refer a matter to the ICAC for investigation, the means and methods it uses do not result in anyone being charged. It then refers it to the police for investigation to see whether charges should be brought. What are your comments on that?

**Mr BARRY:** As I said, I only offered up as an option the idea that any matter should go to the ICAC or to the police for investigation. I do not have a strong view either way. I have not had any discussions with anybody about the relevant expertise of either organisation. I really offer it only as a suggestion.

**The Hon. AMANDA FAZIO:** Would it be preferable, in your view, if you had a liaison point or direct reference point in the police service to which you could refer these issues? Before the hearing commenced I was thinking that it would be a bit silly if they were referred to whoever was in charge in the local area command that was looking at these types of crimes. You would never build up a level of expertise that would enable the matters to be looked expeditiously and you would also be taking it away from the local area where it might be a little more difficult when you are dealing with interactions between politicians and police.

**Mr BARRY:** I would agree with that. It is important to recognise that there is the risk that we can get vexatious complainants alleging all sorts of things about members of Parliament and councillors. I am always conscious of the fact that we have to have respect for people's dignity and their integrity. I would certainly agree that it is not the sort of thing you would want to be referring to the local sergeant at the local police station. It needs to be dealt with in a serious way, yet in a way where people have the relevant expertise to be able to conduct the investigations without trampling on people's integrity.

**The Hon. DON HARWIN:** The Department of Local Government also has investigatory powers, although they are specialised. Do you think there would be some capacity to have local government disclosure breaches investigated by a designated officer or unit in the Department of Local Government?

**Mr BARRY:** I think these all the sorts of things that need to be considered as part of the options in moving forward. I do not have a strong view on it either way.

**CHAIR:** Following up earlier questions about the Premier's desire for a total ban on all donations, in your opinion would a ban on donations discriminate against new or minor parties who did not achieve the 4 per cent threshold necessary for public funding and who therefore are reliant on donations? If all donations were banned would you support reducing the threshold for public funding to a lower level, for example, 2 per cent?

**Mr BARRY:** It gets very complex when you talk about part of a scheme that has not really been presented. From what I understand, we are hearing in-principle announcements about what we might be seeing in moving forward. You are asking now about how parties would come into a complete public funding scheme, and how Independent candidates may come into it. I think one needs to wait until we see a bit further down the track what the Premier announces in this regard. Clearly, there has to be a mechanism by which a new party or Independent candidates are able to participate in the public funding regime or, alternatively, are permitted to raise private funds. But they cannot double dip. They cannot have public funding and, at the same time, receive private funding. I do not know. We need to see some more information on that.

**CHAIR:** You made the point that the scheme we have now, which was introduced in 1981, was part of a package. If you change half the package you might have to change the other half. You cannot adjust only half the package and leave the other half up in the air.

**Mr BARRY:** I think all interests, all stakeholders, have to be considered in any new scheme.

**The Hon. DON HARWIN:** Mr Barry, the Director General of the Department of Premier and Cabinet made a submission to this Committee in which he made a number of suggestions based on the Premier's ministerial statement to Parliament in late February. Were you consulted about the submission that we received from the Department of Premier and Cabinet?

**Mr BARRY:** I have been consulted by officers in the Department of Premier and Cabinet on a range of things to do with election funding and disclosure. I was not specifically consulted on this document.

**The Hon. DON HARWIN:** The first of the proposed reforms—increasing the amount of information to be disclosed—talks about increasing the frequency of disclosure and reporting, and recommends biannual disclosure. Secondly, it talks about lowering the disclosure threshold, reducing it from \$1,500 down to \$1,000, in part based on some of the announcements that have been made at a Federal level. Were you consulted on the issue of the frequency of disclosure and reporting? Do you think that biannual reporting is feasible?

**Mr BARRY:** I was not specifically consulted on the biannual reporting; I was consulted on whether the Election Funding Authority could achieve a more regular reporting mechanism. And, yes, it can be achieved.

**The Hon. DON HARWIN:** The second area that was announced was improving the quality of disclosure, with four changes: banning individual members of Parliament, councillors and candidates from having personal campaign accounts; limiting the involvement of members of Parliament, councillors and candidates in fundraising; making the EFA or another independent body basically a repository for money raised by Independent members of Parliament and councillors; and legislating to ensure that loans and other credit facilities provided to parties needed to be disclosed under the Election Funding Act. Certainly, the EFA will be very central to how that works. In line with what the department has submitted, do you think the EFA could provide a service whereby it is a repository for money donated to support Independent members of Parliament and councillors? Or do you think it will have to be another body?

**Mr BARRY:** No. I think the EFA could do that. In fact, I did provide officers in the Department of Premier and Cabinet with the outline of such a scheme.

**The Hon. DON HARWIN:** Was it based on experience elsewhere?

**Mr BARRY:** No, it was not based on experience elsewhere. It was based on Mr Follett and I trying to work out how we could provide a way in which Independent candidates at the State election would be able to have access to funding, and for it in some way being through the EFA by having the donor declarations received before the candidate could actually get the money in their hands and spend it. So we did put together an outline of a scheme that might work.

**The Hon. DON HARWIN:** The other three changes were banning elected officials and candidates from having personal campaign accounts; requiring those in parties to ensure all donations are received, handled and administered by the central party office; and then particular initiatives in the legislation relating to loans and other credit facilities. Obviously, that will involve a much broader ambit of things that the EFA presumably would have to not just administer but oversight. How practical do you think it is for the EFA to undertake this sort of role? Do you think another body will need to be involved? Or do you think the EFA can do it with supplementation?

**Mr BARRY:** I think the EFA can do it. We need to be very mindful of the fact that there is a lot of knowledge and expertise within the EFA at the moment. The legislation needs a little bit more clarity as to the role of the EFA, and the EFA would need additional resources to be able to give effect to it. From the Premier's statement, as I understand it, registered political parties' candidates would not be able to have local campaign accounts. It would all have to be run by the registered political party. That is fine for them, but there has to be an arrangement whereby Independent candidates have a similar scheme. At the moment, whilst the registered political parties could manage the finances of their candidates, Independents would need someone else to be able to manage for them.

**The Hon. DON HARWIN:** So your expectation on how the system would work for registered political parties would be that local party units would not be able to maintain separate accounts; it would have to be the central party office? Effectively, the registered officer at a State level and other staff members essentially would have to oversee it?

**Mr BARRY:** Correct.

**The Hon. DON HARWIN:** Another matter that is covered in the submission was the issue of in-kind donations. I imagine you have seen the transcript where we dealt with this at the last public hearing when the member for Sydney appeared before us. We canvassed the issue on how difficult it is to come up with valuations for in-kind donations. Do you think that instituting this ban will increase or reduce your workload?

**Mr BARRY:** I do not think it will reduce the workload, Mr Harwin. I think it is more than likely to increase the workload. The important thing is that Parliament needs to consider very carefully such legislation to ensure that there is a workable way to value in-kind matters, if people do provide services in kind.

**The Hon. DON HARWIN:** The submission says, "In order to further reduce the risk of private funding affecting the decisions of public officials, the Government proposes to ban the making of in-kind donations, including the provisions of offices, cars and telephones to candidates." But at the end of the day it all comes down to the market valuation payments for these facilities. Have you made any specific suggestions as to how the provisions that are put in place should work?

**Mr BARRY:** No, not at all.

**The Hon. DON HARWIN:** Are you aware of any such provisions elsewhere that we might look at that might provide guidance?

**Mr BARRY:** No, I cannot help you there. The only point I would say on that is that one needs to be careful that it would not preclude candidates and registered parties from being able to have access to that array of people who provide services to the party, like candidate workers handing out how-to-vote cards on election day. So, there are some very important issues around at in-kind donation if it goes to services. Yet, I can see on the other hand there has to be a balance between that and if a person is providing business services.

**The Hon. DON HARWIN:** Or, for example, if a corporation or trade union just provided a person who was on their payroll to work full time on the campaign?

**Mr BARRY:** Those things would need to be very carefully looked at in the legislation.

**CHAIR:** You commented in an earlier answer that if parties were to have their funds received and administered by the central party office, it creates a problem for Independents. Did you have a solution on how to handle that? Is it possible for a unit within the EFA to handle finance for Independents?

**Mr BARRY:** Do you want me to outline for you the proposal we put forward?

**CHAIR:** Yes.

**Mr BARRY:** What we contemplated is that we are starting from the premise that a candidate cannot run their own campaign account. So we said, well, all right, if a person wants to be a candidate in the State election, they have to first of all register with the Election Funding Authority at any point in time. The Election Funding Authority would establish a trust account in the name of that candidate. The candidate then would be given a pay-in book and account number, and the candidate could then go around and collect donations. They would pay the donations into the trust account or they could give the trust account name to a donor and say, "Write your cheque out to this account" or "Pay your money into this account." It would be held by the Election Funding Authority until such time as the Election Funding Authority had received from the donor, that is, the person who gave the money, the declaration. The authority would be able to check that we have received the declaration from the donor.

**CHAIR:** For any amount?

**Mr BARRY:** For the amount that the candidate says the donor gave.

**CHAIR:** Any amount; so there is not a limit?

**Mr BARRY:** We would then release that money to the candidate to spend. We have developed some add-ons to the scheme whereby we said that we might require a candidate to open a special election campaign account so they cannot mix it up with private funding. So the candidate has to open a special election funding account. The money that the Election Funding Authority pays into that account, the money that is held in trust, is put into a special campaign account. At the end of the election a candidate has to close the account and forward to the Election Funding Authority any unexpended funds because that would be dealing with a profit component. That was the scheme. I just want to caution members that this was a scheme that was outlined in dot points. There was no fine detail or flesh put around it.

**The Hon. MICHAEL VEITCH:** Have you thought about how you would treat individuals who are both local government representatives and State parliamentarians? Would there be separate accounting processes for the two spheres?

**Mr BARRY:** We would just treat a candidate as a candidate for an electoral event.

**The Hon. MICHAEL VEITCH:** So the event would be the focus.

**Mr BARRY:** The event would be. I might just ask Mr Follett if I have missed anything.

**CHAIR:** It was not restricted to just Independent candidates, is that right?

**Mr BARRY:** It would not be limited to—that would cover Independent candidates.

**CHAIR:** Yes.

**Mr BARRY:** Not party candidates because the registered political party has responsibility for all of its candidates.

**Mr FOLLETT:** The idea behind the scheme was to address where we have a differing number of declarations from donors compared to parties and candidates. At our earlier appearance we put a slide where we showed 2,735 donors that we are aware of through party and candidate declarations, but we had only received 1,800 declarations from the donors. So we had a significant number of donors who had not made a declaration, close to 900. The idea of the scheme was to close the loop on that and to follow the cash flow with a declaration so that we had full disclosure before those monies were released.

**The Hon. AMANDA FAZIO:** So you think that, basically, when people were advised that they were going to receive a donation from someone, this system that you have talked about would actually give them a massive incentive to give that person the donor's declaration form and encourage them to fill it in as soon as humanly possible.

**Mr FOLLETT:** Correct, so the money would not flow back to the candidates until that declaration had been completed and filed with us.

**CHAIR:** There was another proposal, which would even be more complicated than the one you have outlined for Independents. One witness suggested that a blind fund be established to receive donations from corporations and other interested bodies. This blind fund would be administered by the Election Funding Authority or another independent body. The donations would then be distributed across all parties and candidates and would be used for a non-partisan purpose, such as providing political education. Do you believe it is feasible to establish and administer a blind fund such as this? Would the Election Funding Authority be the appropriate body to manage such a fund?

**Mr BARRY:** I did not understand what that was all about, I must admit. I think it is a policy matter. The Election Funding Authority could administer it, but it struck me as a bit like calling for money from the public. The candidates raise it and submit it to the Election Funding Authority and then in some way it gets distributed to other people on some basis that is not defined. Yet, if that is what it is, it could be administered. As to how much money would ever go into the account, I think that would be another question.

**The Hon. AMANDA FAZIO:** I think it was suggested by a witness as a way of still allowing donations to be made from corporations and other interested parties when you have a system of 100 per cent public funding. That was the scenario in which was raised.

**CHAIR:** I have just a general question in regard to political education. We have received evidence that suggests citizens still have a poor understanding of our system of government and the electoral process. To remedy this, witnesses have advocated a much greater focus on political education. Do you agree this is necessary? Should the Election Funding Authority play a role in this, or even a larger role than it does now?

**Mr BARRY:** Mr Chair, I do agree that events of recent time show us that the main cast in this play does not understand their obligations, the candidates. If the candidates do not understand their obligations, the public who give money to candidates or parties are even further down the food chain, so to speak. What we have seen or what has been brought to attention of recent times is that we have to put more effort into educating candidates as to their obligations, and candidates need to understand that these are real obligations and that there are significant penalties. I do not just mean offences: I mean there is the embarrassment. There is the so-called naming and shaming if you do not comply.

I think candidates need to be put on notice that if you are going to be a candidate at the State and local government elections, then you do have obligations. The obligation is on you as the candidate to inform yourself of your responsibilities. The other part of this education role is that up until now the Election Funding Authority does not have any money and does not have any funds for that sort of activity. It is something to remember that, in moving forward into any new scheme, the authority would have to be funded to enable it to conduct and provide better information to



candidates, and the people in the community who choose to donate to political parties and candidates, they all have obligations.

It is all very well to introduce other regimes and other schemes, but there has to be the accompanying education that goes with it. As to the broader community, I think that they are probably somewhat in the dark as to how it all works.

**CHAIR:** I imagine in the beginning it was thought that the political education grants to the parties would fill that gap. Do you feel that that is being achieved?

**Mr BARRY:** That was before my time, Mr Chair. I am not really sure what the intention of the political education fund was when it was introduced, so I really cannot comment on it.

**The Hon. JENNIFER GARDINER:** I would like to go back to the previous question on education candidates under a new regime. As you know, we have very short formal campaigns in New South Wales. Do you think the Election Funding Authority in conjunction with registered parties should perhaps have a training program for that final hectic phase when candidates are well and truly informed of their obligations and their responsibilities? You think that would be feasible, if the Education Funding Authority had the appropriate resources? Would that be an idea?

**Mr BARRY:** What I would like to say on that question is that, commencing in mid-May this year, the New South Wales Electoral Commission for the first time is going to be conducting some 26 candidate information seminars around the State. I think the answer to that question will lie in the support that we get and the number of people who come along to those. My experience in the past when we have run candidate information seminars is that they are poorly attended. Interestingly this time around I will be very keen to see the support from sitting councillors who are going to re-contest council elections and whether they turn up to these information seminars because we are going to talk about the current election funding and disclosure obligations on the basis of the law as it exists at the moment. I think it will be very telling to see the support for those because at the end of the day, if people do not come along and listen, all we can do is produce material and we can put it in their hands, but we cannot make them read it.

**CHAIR:** Would it be more effective if those seminars were open public as well?

**Mr BARRY:** They are open to the public.

**CHAIR:** Are they? Not just to candidates?

**Mr BARRY:** Yes. They are open to anybody.

**The Hon. DON HARWIN:** Mr Barry, I wanted to go back to the submission from the Department of Premier and Cabinet for a while. I have a few more questions on that. Yesterday or the day before the Premier in Parliament basically indicated that the first tranche of reforms, namely, those encompassed in the Department of Premier and Cabinet submission before the Committee, would be in place before the local government elections. Do you think it is feasible to implement changes before September? Have you been consulted about the proposed changes, are you in the process of implementing these changes and when is the latest that you think these changes could be finalised?

**Mr BARRY:** I am attending a meeting next Monday with officers in the Department of Premier and Cabinet. I think modest changes can be given effect to before the current round of local government elections. I am aware that officers in the Department of Premier and Cabinet are aware that we are now starting to run candidate information seminars in May. They are very aware, as indeed I understand from what they have told me that the Premier is aware, that with these local government elections some people are already campaigning. So, yes, some changes can be put into effect for these elections, but it is really a matter for the Premier to determine the scope of them.

**The Hon. DON HARWIN:** Is one of those going to be the requirement that Independent candidates lodge their money with you?

**Mr BARRY:** I am not aware of the scope of what changes are going to be put in place. Monday, I believe, will be when I will get a bit of an insight into that.

**The Hon. DON HARWIN:** I think a figure of about 5,000 candidates was mentioned before for the local government elections. What proportion of those, if you have a rough feel for it, Mr Follett or Mr Barry, would be Independent, as such, 50 per cent, 40 per cent?

**Mr BARRY:** I cannot answer that.

**The Hon. DON HARWIN:** You have no feel for it, based on the last local government election?

**Mr BARRY:** I was not there at the last local government election nor was Mr Follett. But remember that some of these candidates run in local government elections as candidates who, while they might belong to a registered political party, they are not running as an endorsed candidate of a party. To put a number on it would be too hard.

**The Hon. DON HARWIN:** Conceivably you could need to set up as many as 1,000 of these accounts for Independent candidates, maybe even 2,000?

**Mr BARRY:** Four thousand.

**The Hon. DON HARWIN:** Are you satisfied that you are resourced adequately to be able to administer such a new provision or do you think that will require some supplementation?

**Mr BARRY:** That part would not be able to be administered for these coming elections. It is too close.

**The Hon. DON HARWIN:** So at least that part of the submission is just not likely to occur at all for this election?

**Mr BARRY:** I think that would be too difficult.

**Mr FOLLETT:** I think that would be very difficult to get there in that time frame for that particular part. I would not say impossible but I think very difficult. When we put together this idea of funds flowing through the EFA, that was a little while ago and time has ticked on. If that suggestion were to be taken up, it would have to be very, very soon.

**The Hon. DON HARWIN:** Do you have a view on how valuable such a change would actually be when candidates will still be able to solicit donations anyway?

**Mr FOLLETT:** I think where we were heading for was to maximise public disclosure. At the moment we have somewhere around a third of the donations not being declared by the donor and that was the concept behind suggesting that the funds should go into a trust account and then be cleared from the trust account upon receipt of the declaration.

**The Hon. DON HARWIN:** So you think it is a provision that will be more directed towards donor compliance rather than candidates and party compliance?

**Mr FOLLETT:** Yes, we expect it will maximise the donor compliance and probably utilise the candidates to achieve that aim.

**Mr BARRY:** The other part about it too is that it would cut off the ability of an Independent candidate to receive money and not disclose it because the only money that could be paid into their campaign account would come from the EFA.

**The Hon. DON HARWIN:** The announcement talked about banning for the future so-called personal campaign account for candidates. What sort of measures do you think will be required to deal with the accounts that will already be in existence for Independent candidates? I imagine it will be easier for registered parties to deal with closing down the accounts of local party units, if that is the

direction we eventually go in. What will need to happen to deal with some of these personal campaign accounts held by Independents? How can we stop candidates accessing money in those sorts of accounts?

**Mr BARRY:** I appreciate it is probably a bit difficult with me just painting these mental pictures as to how the scheme might work. Just coming back to the point I made: A candidate would be required to do two things: One is to register with the EFA. The EFA would open a trust account and a candidate would be required to open an election account but the only money that could go into that account would come from the EFA trust account. To close the loop off, at the end of the election, the candidate would have to make a declaration as to how much they had spent on their campaign. Say for example, to keep it simple, \$10,000 had been raised and paid into the EFA trust account and over a period \$10,000 had been paid into the candidate's election account. We would expect to see invoices for \$10,000 worth of expenditure. The question I think you are raising is: "What about if somebody had an account on the side from a previous time?" Well, they could not spend any more than the \$10,000.

**The Hon. DON HARWIN:** But they would be perfectly free to withdraw the funds in an account and put it in their EFA trust account?

**Mr BARRY:** Correct.

**The Hon. JENNIFER GARDINER:** What about fundraising from an fundraising event where you have a barbecue and a whole lot of people put money in small amounts into a hat or whatever? How would that be accounted for?

**Mr BARRY:** Candidates would be able to collect small amounts of money at fundraising events and they would just pay it into their trust account.

**The Hon. JENNIFER GARDINER:** As an aggregated sum?

**Mr BARRY:** As an aggregated sum, yes.

**The Hon. MICHAEL VEITCH:** That raises an interesting point. Prior to the next local government elections would you envisage having in place the increased investigative powers or regime that you were talking about earlier?

**Mr BARRY:** The regime could be put in place before the next local government elections because of a lot of the matters do not get investigated until after the election so it is after September, but I think, as Mr Follett was saying, these things need to be sorted out fairly quickly.

**The Hon. MICHAEL VEITCH:** The reason I ask is: I think it is important that candidates in the next local government election understand that those arrangements would be in place because I think it would actually increase the compliance if they knew you had increased investigative regimes?

**Mr BARRY:** That underscores the point I was making before; that the new regime needs to be announced and put in place fairly quickly because we already have out there at the moment perhaps 150 or so people who have asked the EFA for receipt books and so forth.

**The Hon. AMANDA FAZIO:** Following on from that, that means that when the regime changes prior to the September local government elections this year you would already have a list of people who had put their hands up to be involved in the election funding disclosure scheme.

**Mr BARRY:** We have people that we have sent receipt books and manuals to.

**The Hon. AMANDA FAZIO:** And you keep a database of those?

**Mr FOLLETT:** We would have a list of those, yes.

**CHAIR:** One of the issues that were raised during other evidence was the report that the EFA gives to Parliament. You provide an annual report, but it has been stated that there is no

requirement for the EFA to report on whether the electoral funding and disclosure scheme is achieving its objectives. It is more of a factual report. Would that be correct?

**Mr BARRY:** It would. I think it is very important to remember two things: First, this legislation goes back to 1981 and, secondly, the legislation does not really set out in great detail what its purpose is. It does not set out what the objectives of the Act are. That makes it very difficult for the EFA to report on anything, other than to be a factual report. I think it is probably just a fact of life that this legislation was pioneering legislation when it was introduced in 1981, but it has not been reviewed; it has not been given a fresh coat of paint. I think it is important that the legislation have very clear objectives, have a purpose, and have very clearly stated the functions and duties of the authority.

**CHAIR:** I know you may say these are policy matters, but could you provide on notice some of the material that you think should—

**Mr BARRY:** I do not think that would be appropriate, Mr Chairman. I think that is a matter for the Government.

**CHAIR:** Even to state how you would like to see your own role clarified?

**Mr BARRY:** It is not just a matter of the role of the Chair, it is a matter of the purpose of the Election Funding Authority, because as you are aware the Premier has already made announcements through the Premier's statement that there are going to be some changes. Consequently, I would anticipate that there would be changes to the legislation. In changes to the legislation it would be good to have some things made clear—a clear purpose of the Act and some objectives for the Election Funding Authority. It may well be that some of those things are more longer-term than they are very short-term.

**CHAIR:** Just checking through your submission in case you wish to add any further information, you have said an area for improvement would be to require political parties, groups, candidates and donors to submit annual returns because at the moment their returns are on a four-yearly basis. Do you wish to make any comment on that?

**Mr BARRY:** I think we just underscore what we said in our submission, that annual returns would be a lot simpler for all of the players—the parties, the candidates and the donors. Bi-annual returns, or six-monthly returns, I think would make it even simpler for people.

**CHAIR:** Based on the financial year.

**Mr BARRY:** Yes.

**CHAIR:** The other recommendation which has been raised by some witnesses is that to improve identification of donors you suggest that in the case of a company an Australian Business Number [ABN] be supplied and, for individuals, details of that person as they appear in the New South Wales electoral roll.

**Mr BARRY:** I stand by that. I think that would be very helpful. As Mr Follett has mentioned, it is extremely difficult to identify some people and it is extremely difficult to identify some organisations.

**CHAIR:** That would alert you if the organisation's name appeared without an ABN. You would then make inquiries as to whether it is a legitimate company or just a name without any status.

**Mr FOLLETT:** I think what we would like to propose is that we would not actually be accepting the record until such time as we had both the company name and the ABN or, in the case of an individual, we would know who they are because we could check that against the electoral roll in the background, so we would have 100 per cent identification of individuals.

**CHAIR:** The other point made by a number of witnesses you endorse in your submission where you state that one of the most useful reforms would be to require online lodgement of

declarations by parties, groups, candidates and donors in real time, so it is actually a fluid situation rather than people waiting until after the election to find out what donations had been made.

**Mr BARRY:** There is something we perhaps need to clarify in that. We were suggesting that people be able to go into the trusted website and put in their declarations and their donations and so forth. We were not suggesting that they immediately go up onto the web because we could see there could be some difficulties in doing that. I think we were suggesting that with the real time thing, people who gave an amount of money to a political party could go home, get onto their computer and put it in straightaway.

**CHAIR:** So you would be aware of it but you are saying it would not be public at that point.

**Mr FOLLETT:** Yes, we have differentiated the two events—24/7 in terms of being able to go in and key in your donation, but when that information comes onto the website for the public would be a different question. We would have some time lag in that occurring just to be able to validate the data so there was no data that had been unfairly entered.

**The Hon. DON HARWIN:** What sort of time lag do you think you would need?

**Mr FOLLETT:** I think that really is a policy decision as to when that would go up, as to whether it was in lumps of one month, three months, six months, annual—we could deliver on anything from a month out.

**The Hon. DON HARWIN:** Certainly in jurisdictions in Canada such as Ontario they have it down to about 10 days. If that was the policy that the Parliament chose to go with, would there be any technical—would greater resourcing of the authority be required? Would there be a problem with any of the software systems that you have? Would there be any impediment to doing that?

**Mr FOLLETT:** At the moment we do not have that sort of software so it is something that would need to be developed. I do not see any technical impediment to making that information available on a very short time frame. The questions are more around the validity of the data and giving the chance to the other side of the equation to say, "Yes, that record is correct."

**The Hon. MICHAEL VEITCH:** Just following on from that, how would you treat those people who are both members of State Parliament and also local government councillors, because they will have two lots of reporting regimes?

**Mr FOLLETT:** I think we have proposed moving to an annual return and moving away from the event in that case. That moves us away from talking about whether it is a by-election, a local government election or a State election, and just talking about a period.

**CHAIR:** So even if the person who made the donation clearly designated it for local government or State Government, would it not be possible for that to be indicated?

**Mr BARRY:** That opens up a whole raft of questions about whether people can donate to political parties and tag the money for particular electoral events. At the moment the EFA does not recognise that. The Act does not contemplate that. It is a matter that this committee might want to turn its mind to.

**The Hon. AMANDA FAZIO:** That then explains why when people are talking about the amount of money that political parties receive there is always this double up because, in fact, the same donations appear in the return to the New South Wales Government as appear in their return to the Australian Electoral Commission?

**Mr BARRY:** Yes.

**The Hon. AMANDA FAZIO:** You are hinting that you would like some sort of recommendation on that?

**Mr BARRY:** As you pointed out, if the purpose of this is to give the public an accurate picture—at the moment, unless you understand how it all works, then it is not clear to people and they can draw wrong conclusions.

**The Hon. JENNIFER GARDINER:** As you said at the outset, the authority and this select Committee are operating at the moment in an environment where the Government of the day has set out an in-principle agenda for reform. Are there any other matters that you think would be useful for this Committee to recommend, bearing in mind that we obviously have a lot of work to do to sort through recommendations in this environment? Are there other things that you think we should turn our mind to that would assist the authority in its work?

**Mr BARRY:** With respect to registered political parties, I see difficulties with having party agents—I think I may have mentioned this in my previous evidence. This Election Funding Act predated registered political parties. I can understand why the legislator introduced party agents because in those days there was no natural person as the official of the party so it could be anybody—could be a secretary, a treasurer, a president. No doubt party agents was introduced to establish a clear person of accountability. Then, of course, the regime for registering political parties came along where every party is required to have a registered officer. Now we have got a lot of confusion because we have got registered officers and party agents. It seems to me what would be better is for the registered officer of the party to fulfil all the functions in the Act that are currently assigned to a party agent. It just takes one more layer of complexity out of the two pieces of legislation.

The other point that I would strongly request that you look at, is the whole scheme of the Act. Is it clear? If it is not clear to you, it is not going to be clear to the public. My belief is that legislation should be clear. At the moment I do not think that the Election Funding Act, because it has all of these entities written into it such as party agent, is not clear. It ought to have a clear purpose, clear objectives, clear functions and duties on the part of the authority.

The other thing is that the authority is not a body corporate: the body is just an entity. Whilst the chairman has certain roles with respect to the authority, there is no structure. For example, Mr Follett is the secretary of the authority. He is secretary by virtue of the fact that as Electoral Commissioner that is a duty I have written into that position. The Election Funding Act does not really contemplate there being any staff other than the fact that the Electoral Commission provides the staff to it. It would be good if there were a clear purpose, objectives, functions and responsibilities of people who are going to be in the future key players in giving effect to the legislation.

**CHAIR:** You have mentioned that you have had 150 inquiries already from local government candidates. Is there any confusion amongst those candidates on registering as a candidate for nomination purposes? For example, we have now at least three categories: an Independent, we now have Independents who form a group so they are technically still not a political party, and then you have a political party?

**Mr BARRY:** Yes.

**CHAIR:** Who is able to authorise those persons when they come to the nomination point to give them the authority to use the name of a registered party?

**Mr BARRY:** That is a very good point. The arrangement that I will be putting in place for these local government elections is that it is only the registered officer of the party who can approve the name of the party to be on the ballot paper beside their candidate's names.

**CHAIR:** That is a State registered officer?

**Mr BARRY:** Yes.

**CHAIR:** For the State?

**Mr BARRY:** Yes, or deputy if there is one. But you are quite right that there is confusion on the part of candidates. There is a lot of myth and the myth is with local government elections because the word "local" is in there that it has all got to be very simple. These elections are far more complex

than State elections—make no bones about it. These elections are far more complex than State elections. I mentioned before that a State election has 870 candidates, of which something like 85 per cent are endorsed by a registered political party, and the registered political parties impose considerable discipline on their candidates. Now you move from that 870 to 5000, of which 90 per cent of them are Independents and are putting their hand up for something that they think is an honourable thing to do, and all of a sudden they are confronted with the Election Funding Act with a whole raft of provisions and obligations there and the complexities of whether or not they form a group. It is a very complex environment. It is not an easy one to manage.

**CHAIR:** I suppose it would be a big question as to whether it can be achieved at this election but can it be simplified? Have we made it so complicated progressively that it should be simplified?

**Mr BARRY:** I think what is very important is that whatever the Government decides and settles on as the position that will be given effect at these elections, that we have enough time to be able to go out there and explain to people what their obligations are. I do think in most cases people want to do the right thing but they are just not aware of what the right thing is. There are some people who take advantage of the situation, but by and large I am sure if most people understood that if you are giving money to a candidate, or political party, that you then have obligations to disclose it to the Electoral Funding Authority. I am sure most people would want to do the right thing. It is very difficult when we are chasing people four years down the track for someone to remember: Did I give \$800 or \$900 to a particular candidate three years ago? That is very difficult—bordering on unreasonable.

**CHAIR:** Some people have said we have made the local government elections complicated because we have tried to transpose the upper House Council system to local government. Would that be true?

**Mr BARRY:** They are complex by virtue of the fact that the voting system being proportional representation, being able to form groups and having group voting squares above the line, and having some people who are from a registered party being able to have the party name beside the group voting square above the line, and some situations where there is not more than two groups so you cannot have the group voting square above the line—it is complex. It is more complex than the State election because of the size of it. Whereas at the State election for the upper House it is one election, in local government—as I said before—we are running 300 elections. Now that is complex.

**The Hon. AMANDA FAZIO:** The committee heard from representatives of local government at its last full day's hearing. Their main complaint about the changes is that you are charging them too much to conduct local elections—the costs have gone up at least three times compared to what they last spent when they ran an election. What do you think are the differences in the costings? Is it simply that your costings are more accurate than theirs?

**Mr BARRY:** What I can say about the costings for the local government elections is, what I am putting in place and what was in place prior to me coming here, was basically a devolved model whereby whilst the Electoral Commissioner had responsibility for the elections, and has had so since the late 1980s or early 1990s. I have centralised the administration of these elections in much the same way as I did for the State election. I want to see consistency of services across the State. I want to see everybody have equal access to the democratic process, whether they live in a remote part of the State or in metropolitan Sydney. I want to see well-trained returning officers, people first of all properly selected and trained. In the past they got, at best, one day's training. They are now getting four day's training.

I want to see the same sort of services that we had for the State election with a centralised call centre where people can ring a 1300 number and get answers to any question about the election. We are automating most of the election processes like we do at the State election by giving the returning officers access to customised computer software. We are providing virtually a tally room on the Internet so people can get the results on election night. We are centralising the printing of ballot papers—it might surprise committee members to note that a couple of councils actually printed their own ballot papers at the last local government elections, and they tell me it worked very well. I am sure it did, but I do not think that that is the sort of democratic system we want in New South Wales for local government elections.

I do not want to make any bones about it: elections are expensive. One has to ask the question: At what price do you want democracy? If it is the decision of the Parliament to hand back elections to councils, I do not think there will be a lot of resistance from some of the people in my office because it is more complex, but you will get a lot of resistance from me, I might add, because I think it would be a retrograde step and I know it is not something that the Government is considering. It is an expensive operation but it is an expensive operation that has to be paid for. The Federal Government pays for its elections. The State Government pays for its elections. And local government is required by law to pay for its election. I am doing the best I can in that environment.

It is a difficult environment to manage because I have got the legal obligation to run these elections, and the council has got a legal obligation to pay the bill. That is not the best commercial environment that anyone wants to be in, particularly from the point of view of council, so what have I done? I gave them a letter in June of last year which perhaps, if I was being strategically cunning, I would not have sent but I did it in the spirit of openness. I gave them a bit of a head's up, "This is what it is going to cost you. Start thinking about it." I said in that letter, and I have delivered on it, that staff in my office, including myself, will sit down with each council. We have sat with general managers and their senior staff and gone through a presentation on what we are going to do. I have consulted with every council on the location of key cost drivers, which is polling places. We have given them estimates of the number of voters that will turn up at those polling places.

I said that we would set up a centralised call centre. I have said to councils they will not have to provide their general manager's personal assistant to help the returning officer, which is what happened last time. I have said they will not have to pay the election officials who work on election day, which is also what happened last time—every council paid the staff. In other words, I have put in place a very similar model to what we had at the State election. I have said that the other thing I will do is I will put all the costs on the table and that in March I will give them—I have not delivered on this component—an itemised budget for every component of the election. I think there is something like 40 line items of every part of the election. They will get that by the end of this month. I cannot do any more.

**Reverend the Hon. FRED NILE:** Obviously it would vary from council to council and how many polling booths?

**Mr BARRY:** Yes it will. Again the picture is quite extraordinary. In the State election we had 93 Legislative Assembly districts, and there are roughly the same number of voters in them, whilst they are geographically small and large. In local government some councils have 160,000 voters and their bill will be about \$1 million. They have four times the size of a State district. If we run a State by-election it costs about \$300,000. On the one hand you have a council area of 160,000 voters, nearly four times the size of a State district, and on the other hand we have got an electorate with 800 voters. If I pay a returning officer say \$15,000 to run an election for 160,000 people the council that has 800 voters will still have to pay \$15,000 for a returning officer. Of course, it is not equally distributed, and will not be the same.

I have told councils I recognise that issue and said "What about we share a returning officer?" It is amazing some of the councils have come back and said "No, Colin, we don't want to share returns, we want our own." I have consulted with them on all the key cost drivers. I cannot do any more. I am not going to enter into the argument about what it cost last time because quite frankly councils do not really know what it cost them last time because they provided so much of what you call "in-kind services". But I will say "I am starting afresh, here is a page, this is what it is going to cost you" and I have given them options. I have given them options about "Tell me which newspapers you want your statutory advertisements put in." I have given them options about the polling places. I have given them options to even provide the accommodation of the returning officer, if they can. I do not really think I can do any more.

Furthermore I have said, and I say to this committee, I think it would be very healthy at the end of this process—let us get on and run these elections, let us not have any more arguments about the money, you have got to pay. The Government has said to me, "If there are councils that are under financial stress, it is happy to allow them to pay their bill over two financial years"—maybe the



Premier might consider a reference to the electoral matters committee to do a report on the conduct and administration of the local government elections. I would be the first one to champion it.

**The Hon. AMANDA FAZIO:** I had a feeling that might be coming.

**CHAIR:** Would there be many councils where it will cost \$1 million?

**Mr BARRY:** There might be one or two. They have already been told. They know who they are—Sutherland Shire, Blacktown.

**CHAIR:** What system do they have in place to fund the \$1 million? For example, do they get it from the ratepayers?

**Mr BARRY:** They have to fund it; they have to pay for it. I am not entering into this argument that "We cannot do this and we cannot tile the local swimming pool because we have to pay for the election." That is like the Premier saying, "We can't do this because we have to run a State election." I know it is expensive, I am aware of that. But I cannot be anymore transparent with them. The other thing we have to remember is at the end of the day people want elections conducted fairly with absolute impartiality and integrity. We see from other countries around the world that people will pay for that. My commitment to the New South Wales Parliament while I am Electoral Commissioner is that is how the elections will be run. If that is what they cost, that is what they cost.

**The Hon. MICHAEL VEITCH:** The in-kind comment is interesting. With the view that local government elections are coming up, would you as the Electoral Commissioner like clarification prior to the elections about the definition of "in-kind" donations?

**Mr BARRY:** It has not come up at the Election Funding Authority as being a big issue, the in-kind donations. I can understand why you are raising it because it has come up through this process. It may be something that the Committee wants to turn its mind to. I would be happy to give to the Committee a copy of the material I have presented to the local government councils, if you would like.

**CHAIR:** Yes, thank you.

**The Hon. DON HARWIN:** When in the first tranche of reforms there are changes to disclosure and the frequency of disclosure, should we require electronic filing of the disclosure of income rather than just having it as an option?

**Mr FOLLETT:** We would like to see electronic filing.

**The Hon. DON HARWIN:** Compulsory or optional?

**Mr FOLLETT:** Compulsory. It is information that would only be handled once. At the moment that information is being entered onto forms. The forms may have been downloaded from the web site and then somebody is handwriting onto those forms and sending them into our office. Our staff are re-keying it. Across the State the information has been handled several times. We would like it as compulsory.

**CHAIR:** Thank you very much for appearing before the Committee for the second time. We appreciate your attendance and the work that you do in both departments, as the Electoral Commissioner and the Electoral Funding Authority.

**Mr BARRY:** Thank you, Mr Chair and members of the Committee.

**CHAIR:** We hope that Parliament passes the legislation in time for you to be able to act on it.

**(The witnesses withdrew)**

**(The Committee adjourned at 4.02 p.m.)**