

Parliament of New South Wales

**JOINT SELECT
COMMITTEE UPON
THE PROCESS AND
FUNDING OF
THE ELECTORAL
SYSTEM**

Second Report

September 1992

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The Honourable J. JOHNSON, M.L.C.
The Honourable E. KIRKBY, M.L.C.
The Reverend The Honourable F. NILE, M.L.C.
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Peita Burgess - Assistant Committee Officer (May 1991 - May 1992)
Kendy McLean - Assistant Committee Officer (April 1992 -)

FOREWORD

I have much pleasure in presenting to the Parliament the second report of the Joint Select Committee Upon the Process and Funding of the Electoral System.

This report addresses questions of political donations and makes a number of recommendations as to the best way for these donations to be publicly declared.

It should also be mentioned that the evidence presented in the public hearing has been edited for the sake of clarity and the order in which questions have been asked has also been altered so that the evidence can be more effectively grouped under the issue headings.

This report is the culmination of much work undertaken by both this Committee and the 1990 Committee which existed prior to the 1991 State Election.

The Committee is indebted to the Project Director, Ms Amanda Olsson, for her excellent and thoughtful assistance. She has provided both continuity with the previous Committee and expert research.

As Chairman I would also like to express my appreciation to all Committee members for their non-partisan intelligent approach to what is a quite sensitive area of current politics.



Chris Hartcher, M.P.
Chairman

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1 THE RECOMMENDATIONS

THE RECOMMENDATIONS

1. The Committee notes the difficulties experienced overseas in defining what is meant by the terms "campaign contribution", "political contribution" and/or "contribution". The Committee also notes definitions such as those included in the Texas Election Code.

That is:

1. *Campaign contributions* is defined as "a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure [referendum]. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution."
2. *Political contributions* is defined as "a campaign contribution or an office holder contribution."

(s251.001)

The Committee recommends that the Election Funding Authority monitor the definition of contribution as is currently defined in the Election Funding Act.

The Committee also recommends that the Election Funding Authority continue to monitor the legislation for any perceived or existing loopholes as far as this definition is concerned and suggest any amendment if and when it becomes necessary. (For further information see 5.1.1)

1 THE RECOMMENDATIONS

2. The Committee recommends the explicit formulation of a definition of in-kind donations in the legislation.

The Committee recommends that in-kind donations be declared and a monetary value based on market rates be determined for all in-kind donations.

The Committee recommends that disclosure of in-kind donations only occur if the value of the donation is in excess of \$1,500 or the aggregate value of the donation over one year is in excess of \$1,500.

The Committee notes that many individuals donate their time to political parties.

Subject to recommendation 15, the Committee does not classify this as an in-kind donation and does not wish to discourage political participation by individuals nor encourage discrimination on political grounds.

If however employers direct employees or agents to work or assist in campaigns then the Committee views this as in-kind donation. (For further information see 5.1.2)

3. The Committee recommends that the minimum threshold for a contribution to a party or group to be declared be raised to \$10,000.

The Committee recommends that the minimum threshold for a contribution to a candidate to be declared be raised to \$1,500.

The Committee recommends that the Election Funding Authority have discretion to adjust this in line with inflation.

The Committee does not recommend the setting of any ceilings on the amount of money a candidate may receive in the form of political contributions. (For further information see 5.1.3)

4. The Committee recommends that the Election Funding Authority have the discretion to approach third parties and require them to furnish returns of expenditure. (For further information see 5.2.2)

The Committee recommends that any third parties that incurs expenditure in excess of \$1,500 must file a return indicating whether this money was obtained by way of donations and if so, the true source of these donations.

1 THE RECOMMENDATIONS

The Committee recommends the inclusion in the legislation of a definition of what is meant by the term third parties. (For further information see 5.1.5)

5. The Committee recommends that the reporting entity (agent, candidate or party) must report the name of a contributor, if known, even though the contributor may prefer to remain anonymous.

Anonymous contributions over the reporting threshold are essentially those which are received without any indication as to their source.

The reporting entity must fully explain the circumstances under which the contribution was received and explain why it cannot be attributed to a particular person. (For further information see 5.1.6)

6. The Committee recommends that consideration be given to inserting in the legislation a definition of what is meant by the term 'fund raiser'.

The Committee recommends that this definition state that the amount of profit received on each ticket (that is excluding the cost of food, printing and beverages) shall be declared as a political contribution on the candidates declaration form if the profit on each ticket is over the \$1,500 threshold. (For further information see 5.1.8)

7. The Committee is of the view that it would be an administrative nightmare to attempt to establish a regimen whereby candidates are required to disclose their contributions and expenditure prior to polling day.

The Committee is satisfied that the present disclosure of 90 days after the return of writs works satisfactorily.

While the Committee is not of the view that annual disclosure is necessary it accepts the fact that this is now a requirement of the Federal legislation and recommends a system of annual disclosure be introduced and that disclosure at a state level be satisfied by filing a copy of the Federal return. The Committee further recommends that the reporting period be the same in NSW as it is in federal law. (For further information see 5.1.9)

The Committee believes it would place an excessive administrative burden on the political parties, which are overwhelmingly volunteer based, to have different disclosure levels for the State and Federal systems.

1 THE RECOMMENDATIONS

Additionally, the Committee recommends that if the amount of money to be spent is comprised of membership fees then all that is required to be disclosed is the number of members times the membership fee.

The Committee respects the rights to privacy members of an organisation may have but finds that if an organisation wants to compete in the political arena for public attention it must comply with the normal requirements for political disclosure.

8. The Committee recommends that in the event of a political party dissolving after receiving an advance on their expected return at the next election the Act be amended so there is a possible recourse to the money.

The Committee does not recommend that donors be required to file and believes this would result in a blizzard of paperwork for the Election Funding Authority to administer.

The Committee recommends that donors provide details of their name, address, employer/employee associations or institutions and professional/business/trade associations or institutions when donating an amount above the threshold amount to a candidate, group or party. Further, candidates, groups and parties must make their best endeavours to obtain this information.

The Committee recommends that any donation despatched with membership fees be treated as a political contribution and disclosed if over the disclosure limit. (For further information see 5.1.10)

9. The Committee notes that the Election Funding Act currently attaches the relevant penalties to each section in the Act. The Committee recommends that the penalties should be consolidated into a schedule of offences both statutory and regulatory as in the Environmental Offences and Penalties Act, 1989. This was suggested in advice to the Committee received from the Crown-Solicitor.

The Committee also notes that the penalties for breaches of campaign finance law overseas tend to have all relevant offences detailed in the one area. For example, the Ohio law defines eighteen types of campaign finance prohibitions ranging from failures to fill statements to receipt of cash contributions over one hundred dollars; from use of campaign funds for personal benefit to the awarding of government contracts to donors to political campaigns.

1 THE RECOMMENDATIONS

The Committee believes that by having a schedule of penalties, auditors and officials will have a greater clarity of understanding and ensure that these responsibilities are not taken lightly. It would also assist in policing legislation - as Ms Gladwin stated:-

"We suspect in some cases the parties don't understand the legislation, don't understand exactly what it is that is required of them, don't read the handbooks we put out to them, or if they do they don't understand or they don't follow up and ask us if there is anything in there that they find ambiguous. Just on the basis of the amendments that have to be made to the returns that come in after each election, I am absolutely convinced that the people who furnish those returns simply do not appreciate exactly what is required to go in their return, but we have no way of proving it one way or the other and we certainly can't satisfy ourselves that returns are in accordance with the provisions of the Act."

The Committee also notes *Independent Commission Against Corruption Act 1988* and the definition of corrupt charges included in section eight of the Act.

This section details twenty five instances of corrupt conduct and, in relation to elections, includes bribery, funding offences and fraud.

The Committee endorses these inclusions in the Act and recommends more expanded definitions of these breaches and inclusion of the penalties associated with them to be placed in the *Election Funding Act*.

The Committee also recommends that breaches of the law be more effectively enforced. (For further information see 5.1.11)

10. The Committee does not make any recommendations altering the administration of the register of political contributions. (For further information see 5.1.12)
11. The Committee recommends that the artificial distinction between donations for administrative purposes and donations for electoral purposes be repealed.

The Committee notes that whilst a distinction can be drawn in theory the reality is that all donations are a form of income and the purpose of the donation is irrelevant as far as disclosure is concerned. (For further information see 5.1.13)

 1 THE RECOMMENDATIONS

12. The Committee does not recommend the establishment of a supporters register.

The Committee believes that the greater restrictions on disclosure will ensure those who are actively contributing to an election campaign will have their donations declared and further restrictions, may hamper the participation of individuals in the political process.

The Committee believes that participation in the political process is a truly healthy part of the democratic process. (For further information see 5.1.14)

13. The Committee recommends that all candidates must disclose political contributions and expenditures irrespective of whether or not they are successful in their campaign to be elected. (For further information see 5.1.17)

14. The Committee believes that the effective functioning of the political party system is essential to the operation of the Westminster parliamentary form of government. The Committee acknowledges the concern that excessive disclosure may impose a counterproductive burden on political parties.

The Committee recommends that this Committee continue to monitor the effects of disclosure upon the political system.

The Committee believes that the important function of political education of the voting community is not presently assisted by the state in any real way but is left largely to the political parties. As this imposes a considerable burden on them the committee supports the creation of a political education fund based on the cost of one standard postage stamp per elector per year.

This would be distributed each year by the Electoral Funding Authority in accordance with the formal vote received by each party (or where parties run as a group, then the endorsed ticket of a group of parties) in the preceding election for the Legislative Council (providing that no party shall receive funding assistance from this fund unless it is also eligible for assistance from the election fund).

This money may be expended on political education and educational materials only. The Committee considers the federal sales tax legislation which provides an exemption for educational material be used as the criteria to determine if state political material is properly classified as educational. (For further information see 5.1.18)

1 THE RECOMMENDATIONS

15. The Committee recommends that Independents be required to file a retrospective declaration (for the last 12 months prior to their announcement of their intention to stand for election) of political contributions and expenditure. (For further information see 5.1.19)
16. The Committee recommends the retention of the requirement that auditors certificates be submitted as required by law.

The Committee notes that the agent is the individual who bears the burden in terms of the legislation. The Committee notes that what is inappropriate however is the fact that it is the agent, not the candidate, who is solely responsible for any errors.

The Committee believes the legislation should be amended so that both candidates and agents in certain circumstances be responsible for proven individual errors and/or omissions. In particular, that a candidate be guilty of an offence where he/she has knowingly withheld or given false information which has been included in the return lodged by the agent.

The Committee recommends that any breach of this section by a candidate should incur a financial penalty only and the candidate's seat should not be declared vacant. (For further information see 5.1.20)

17. The Committee recommends the prohibition of any solicitation for campaign funds in exchange for the awarding or promise of awarding of a contract.

The Committee however has noted advice received from the Crown-Solicitor and does not believe it is necessary to create a separate offence provided that members of the public and relevant participants in the public process can easily locate the section in the legislation regarding offences. (For further information 5.1.23)

18. The Committee considers that s88 of the Election Funding Act contains a sufficient definition of electoral expenditure and that the Election Funding Authority continue to monitor the definition. (For further information see 5.2.1)
19. The Committee recommends that where the Election Funding Authority has a reasonable belief that a third party has been involved in the election process and has incurred electoral expenditure in excess of \$1500 then the Election Funding Authority, (if no return has been filed) may approach such third

 1 THE RECOMMENDATIONS

parties and require them to furnish returns of expenditure. (For further information see 5.7)

20. The Committee recommends that expenditure ceilings should not be established at this point in time.

The Committee further notes that one of the repercussions of fixed term parliaments may be increased campaign costs and an increased election season.

The Committee feels this issue warrants further attention as the potential for electoral funding and expenditure to spiral may be large.

The Committee notes the submission of the Constitution (Fixed Term Parliaments) Committee in this respect. (For further information see 2.4 and 5.2.4)

21. The Committee recommends that the current requirements for disclosure of expenditure should be amended in line with federal legislation and claims need only be lodged in the same areas as are prescribed federally.

The Committee also recommends an Electoral Expenditure Index (EEI) be compiled and the Committee recommends the following areas be included in the EEI, ie.:-

- Communication
- Broadcast media time
- Newspaper advertising placement
- Billboard rental
- Printing and distribution of literature
- Advertising production
- Polling and research
- Travel particularly for country areas
- Fund raising
- Legal/auditing/accounting advice
- And any other matters as the Election Funding Authority may consider relevant.

This index should be utilised when increasing or decreasing thresholds and may also be useful for research purposes. (For further information see 5.2.5)

1 THE RECOMMENDATIONS

22. The Committee makes no recommendations as to campaign costs. (For further information see 5.3)

23. The Committee recommends that membership lists of political parties continue to be confidential and private to the parties concerned.

The Committee believes this will protect individuals from adverse political discrimination. (For further information see 5.4)

24. The Committee recommends that the Election Funding Authority continue to monitor the federal legislation on behalf of New South Wales. (For further information see 5.5)

25. The Committee notes that the ICAC is the appropriate body to deal with information or allegations of corruption. (For further information see 5.7)

26. The Committee recommends that the Election Funding Authority be given the discretion to determine the types of original electoral material which must be lodged with them as detailed in Clause 11 of the Election Funding regulations 1987 under the Election Funding Act.

The Committee further recommends that all documents retained by the Election Funding Authority for the six year period as required by law then be forwarded to the Archives Authority of New South Wales to be retained or disposed of as the Authority sees fit.

27. The Committee recommends the computerisation of all data (as listed in this report) which is held by the Election Funding Authority to make this information more accessible.

Returns should be accessible to the public and the current system of filing in manilla folders is obsolete and meaningless for research purposes.

This should occur as a matter of priority. (For further information see 6.3)

28. The Committee recommends a listing of the specific functions and duties of the Election Funding Authority be prepared by that Authority.

The Committee recommends additional funding be provided to the Election Funding Authority in order that inspectorial staff be employed.

1 THE RECOMMENDATIONS

The Committee also finds that the responsibilities of the Election Funding Authority and State Electoral Office have expanded and the number of staff and the resources available to it have not increased at the same rate.

The Committee recommends that funding be increased appropriately. (For further information see 6.3.1)

29. The Committee notes the concerns expressed with the current composition of the Election Funding Authority but does not believe that any amendment is warranted as at no time has the Authority acted in an improper manner. (For further information see 6.3.2)
30. The Committee notes that the issue of public funding and disclosure requirements for local government has been referred to the Local Government Legislation Committee.

The Committee makes no recommendation on this subject. (For further information see 6.4)

31. The Committee considers that public disclosure of funding by individuals and political parties is a public duty. To encourage this it believes the state government should urge the federal government to make all donations to political campaigns tax deductible. The Committee considers the recent amendment to the Tax law allowing deduction of party subscriptions to be a progressional step and an acknowledgment of the fundamental importance of political parties to the Westminster system.

2 THE COMMITTEE

THE COMMITTEE

2.1 APPOINTMENT OF THE 1990 COMMITTEE

On Thursday 3 May 1990, the Premier, the Honourable N.F. Greiner, M.P., moved a notice of motion as follows:

1. That a Joint Select Committee be appointed with the following terms of reference:
 - (1) To recommend to Parliament ways in which the current system of election funding could be improved, having regard to:
 - a) The need for accountability as regards the efficacious, efficient and equitable use of public money;
 - b) The public interest in the integrity and impartiality of the political process;
 - c) systems of election and electoral mechanisms.
 - (2) Without limiting the generality of (1), to recommend ways in which the system of election funding could be improved in relation to:
 - a) The disclosure of true sources of funding to candidates, groups and political parties; and
 - b) The disclosure of the expenditure of funds by candidates, groups and political parties.
2. That the Committee shall consist of eight members of the Legislative Assembly and five members of the Legislative Council being five Members of the Legislative Assembly supporting the Government and three Members of the Legislative Council not supporting the Government.

The Joint Select Committee upon the Process and Funding of the Electoral System

2 THE COMMITTEE

3. That at any meeting of the Committee any seven members shall constitute a quorum, provided that the Committee shall meet as a Joint Committee at all times.
4. That Mr Booth, Mr Jeffrey, Mr Merton, Mr Phillips, Mr Souris, Mr John Murray, Mr Mills and Mr Hatton be appointed to serve on such Committee as the members of the legislative Assembly.
5. That the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth and overseas and have power to take evidence and send for persons and papers; and to report from time to time."

In his speech he stated that the motion was introduced for the purpose of amending "significant" imperfections in the existing legislation as well as for the purpose of reviewing the question of public and private funding of the electoral process.

He also said that the proposal for the establishment of the Committee had been in train with the Government since late last year after discussions were held with the Australian Democrats regarding the legislation which relates to the reduction in the number of members of parliaments.

Provision was made for a minority report.

The Premier stated that he did not intend that the terms of reference be narrowly interpreted to refer solely to questions of public and private funding of political parties, groups and candidates. Instead, he intended the terms to include such matters as those raised in the Cundy Dickson report on electoral processes.

This question, as mentioned in the discussion on the interpretation of the terms of reference, occupied the Committee for a number of meetings and it was resolved to write to the Crown-Solicitor for advice on whether or not the terms of reference as adopted in the Legislative Assembly reflected the intent of the Premier. In the interim it was resolved by the Committee that their initial focus should be addressed towards public funding and if time permits, a review of the electoral process will be undertaken at a later date.

Mr Hatton then moved an amendment to the Premier's motion, as follows:-

That the question be amended by omitting all words after the word "reference" with a view to inserting in lieu thereof the following words.

- (1) To recommend to parliament ways in which systems of election funding could be improved, having regard to:

2 THE COMMITTEE

- a) The need for accountability as regards the efficacious, efficient and equitable use of public moneys and moneys from other sources, for electoral purposes;
 - b) The public interest in the integrity and impartiality of the political process;
 - c) Systems of election and electoral mechanisms.
- (2) Without limiting the generality of (1) to recommend ways in which the system of election funding could be improved in relation to:
- a) The disclosure of true sources of funding for candidates, groups and political parties; and
 - b) The disclosure of the expenditure of funds by candidates, groups and political parties.
2. That the Committee shall consist of seven members of the Legislative Assembly and seven members of the Legislative Council being three members of the Government and three members of the Opposition, and one independent in the Legislative Assembly; and three Members of the Government and three members of the Opposition and one other Member form the minor Parties and Independents in the Legislative Council, provided that the Chairman of the Committee shall be a Government Member from the legislative Assembly.
 3. That at any meeting of the Committee any eight members shall constitute a quorum, provided that the Committee shall meet as a Joint committee at all times.
 4. That Mr Booth, Mr Jeffery, Mr Phillips, Mr Knight, Mr John Murray, Mr Gibson, and Mr Hatton be appointed to serve on such Committee as the Members of the Legislative Assembly.
 5. That the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth and overseas and have power to take evidence and send for persons and papers; and to report from time to time.*

Mr Hatton maintained that after the 1988 New South Wales State Election a number of issues arose which warranted further investigation such as allegations of multiple voting, cemetery votes, fraudulent enrolments, electronic voting and so on.

This amendment was negatived and the original motion by the Premier was resolved in the affirmative.

A message was then sent to the Legislative Council advising it of the resolution to establish the Committee and requesting it to appoint five members.

2 THE COMMITTEE

The Legislative Council then proceeded to debate the topic and, in particular, the number of members and what parties they would be from.

The Honourable Elisabeth Kirkby moved that

(1) That in paragraph (1) the word 'improved' be omitted and there be inserted in lieu thereof the words 'improved', with the following amendments, in which amendments the concurrence of the Legislative Assembly is requested'.

(2) That paragraph (2) be omitted and there be inserted in lieu thereof the words:

"That the Committee shall consist of six members of the Legislative Assembly and six members of the Legislative Council-

(a) The legislative Assembly members shall be three Members supporting the Government nominated by the Government of which two shall be nominated by the leader of the Opposition and one shall be an Independent Member nominated by the Independent Members.

(b) The Legislative Council Members shall be three Members supporting the Government nominated by the Leader of the Government in the Council and three Members not supporting the Government of which two shall be nominated by the leader of the Opposition in the Council and one shall be a member of the Australian Democrats.

(c) That the Chairman of the Committee be a Member of the legislative Assembly supporting the Government."

(3) That paragraph (4) be omitted.

(4) That after paragraph (5) there be inserted the words

"That should either House stand adjourned and the Committee agree to any reports before the Houses resume sitting-

(1) The Committee have leave to send any such reports, minutes and evidence taken before it to the Clerk of the House;

(2) the documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the Order of the House; and

(3) The documents shall be laid upon the Table of the House at its next sitting".

2 THE COMMITTEE

She stated that she had been assured by the government of its support for these amendments.

The Honourable E P Pickering then stated that he wanted to amend the motion to provide for

"seven members from each Chamber so that two parties represented by members on the cross benches in this House (Legislative Council) will properly be represented on this Committee".

The Legislative Council then sent a message to the Assembly advising that it proposed a number of amendments relating to the Committee. These amendments were agreed to by the legislative Assembly and authority was also given by both houses for

"one or more members of the Committee to append a statement of dissent in relation to any part of the report".

Original Committee Members - 1990

J.D. BOOTH M.P.
Chairman

LEGISLATIVE COUNCIL

The Honourable R.T.M. BULL M.L.C.
The Honourable M.R. EGAN M.L.C. (Notice of intention to withdraw
was given 4 February 1991)
The Honourable E. KIRKBY M.L.C.
The Honourable J.C.J. MATTHEWS M.L.C.
The Reverend The Honourable F.J. NILE M.L.C.
The Honourable J.W. SHAW M.L.C.
The Honourable M.F. WILLIS M.L.C.

LEGISLATIVE ASSEMBLY

J.E. HATTON M.P.
B.L. JEFFERY M.P.
J.C. MILLS M.P.
J.H. MURRAY M.P.
R.A. PHILLIPS M.P.
G. SOURIS M.P.

COMMITTEE STAFF

AMANDA OLSSON - Project Director
DANIELLE WHITELEY - Committee Secretary

CLERK TO THE COMMITTEE

LES GONYE (to December 1990)
RONDA MILLER (December 1990 - November 1991)

2 THE COMMITTEE

2.2 APPOINTMENT OF THE 1991 COMMITTEE

On Wednesday 21 August 1991, the Hon T.J. Moore, Minister for the Environment, moved a motion as follows:

1. That a Joint Select Committee be appointed with the following terms of reference:
 - (1) To recommend to Parliament ways in which the current system of election funding could be improved, having regard to:
 - (a) the need for accountability as regards the efficacious, efficient and equitable use of public money;
 - (b) the public interest in the integrity and impartiality of the political process; and
 - (c) systems of election and electoral mechanisms.
 - (2) Without limiting the generality of (1), to recommend ways in which the system of election funding could be improved in relation to:
 - (a) the disclosure of true sources of funding to candidates, groups and political parties; and
 - (b) the disclosure of the expenditure of funds by candidates, groups and political parties.
2. That the Committee shall consist of seven Members of the Legislative Assembly and seven Members of the Legislative Council.
3. Notwithstanding anything to the contrary in the Standing Orders of either House:
 - (1) That Mr Hartcher, Mr Jeffery, Dr Macdonald, Mr Merton, Mr Mills, Mr Thompson and Mr Turner be appointed to serve on such Committee as Members of the Legislative Assembly.
 - (2) The Legislative Council members shall be:
 - (a) 3 Members supporting the Government nominated by the Leader of the Government in the Council; and
 - (b) 4 Members not supporting the Government, of which:
 - (i) 2 shall be nominated by the Leader of the Opposition in the Council;

 2 THE COMMITTEE

- (ii) 1 shall be Ms Kirkby; and
- (iii) 1 shall be Rev Mr Nile.
- (3) The Committee shall elect as Chairman a member of the Legislative Assembly appointed to the Committee as a supporter of the Government.
- (4) Notwithstanding anything to the contrary in the Standing Orders of either House, the Chairman of the Committee shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.
- 4. That at any meeting of the Committee any seven members shall constitute a quorum, provided that the Committee shall meet as a Joint Committee at all times.
- 5.
 - (1) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth and have power to take evidence and send for persons and papers; and to report from time to time.
 - (2) That one or more members of the Committee have leave to append to a report of the Committee a statement of dissent in relation to any part of the report.
 - (3) That the reports, documents and records relating to the proceedings of the Joint Select Committee upon the Process and Funding of the Electoral System appointed during the Forty-ninth Parliament be referred to the Committee.
- 6. That should either or both Houses stand adjourned and the Committee agree to any report before the Houses resume sitting:
 - (1) The Committee have leave to send any such report, minutes and evidence taken before it to the Clerk of the House;
 - (2) The documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the order of the House; and
 - (3) The documents shall be laid upon the Table of the House at its next sitting.

and requests that the Legislative Council inform the Legislative Assembly of the names of the Members of the Legislative Council appointed to serve on such Committee and appoint a time and place for the first meeting of the Committee.

The Minister noted that the Committee's terms of reference were similar to those of the previous Committee (the Booth Committee).

2 THE COMMITTEE

The Minister also foreshadowed the broadening of the Committee's terms of reference to deal with other matters as agreed by the Government and Independent Members.

Mr Whelan wished the Committee well its deliberations whilst noting the dissenting opinion by Mr Mills, Mr Murray and the Hon J.W. Shaw in the Booth Committees report in 1991.

Mr Hatton noted a number of problems in regard to "massive rorting of the electoral system" (Hansard, 21 August, 1991, p303) and noted the intention referred to in the second reading speech that the Committee's terms of reference be amended to include examination of electoral system per se.

The Minister agreed to discuss the matter further and reaffirmed the non-partisan nature of the Committee.

The motion was agreed to and a message was sent to the Legislative Council advising it of the resolution and requesting appointment of seven Legislative Council members to serve upon the Committee.

On Tuesday 27 August 1991 The Hon E.P. Pickering moved a motion as follows:-

- (1) That this House agrees to the resolution in the Legislative Assembly's Message of 21 August 1991, relating to the appointment of a Joint Select Committee to recommend to Parliament ways in which the current system of election funding could be improved.
- (2) That Wednesday 28 August 1991 at 6.00 p.m.in room 1043 be the time and place for the first meeting of the Committee.

The motion was agreed to.

The following members were then nominated to serve as members of the committee.

- (1) Mrs Evans, Miss Gardiner and Mr Jobling were nominated by the Hon E.P. Pickering to serve as the Government members.
- (2) Mr Johnson and Mr O'Grady were nominated by the Hon M.R. Egan to serve as the Opposition members; and appointment of Reverend the Hon F.J. Nile was contained in the original motion and his appointment was carried forward.

2.3 TERMS OF REFERENCE

2.3.1 Original Terms of Reference (1990)

Terms of Reference of the Joint Select Committee upon the process and Funding of the Electoral System as agreed to by the legislative Council and the Legislative Assembly

1. That a Joint Select Committee be appointed with the following terms of reference:
 - (1) To recommend to parliament ways in which the current system of election funding could be improved, having regard to
 - a) The need for accountability as regards the efficacious, efficient and equitable use of public money;
 - b) The public interest in the integrity and impartiality of the political process;
 - c) Systems of election and electoral mechanisms.
 - (2) Without limiting the generality of (1), to recommend ways in which the system of election funding could be improved in relation to:
 - a) The disclosure of true sources of funding to candidates, groups and political parties; and
 - b) The disclosure of the expenditure of funds by candidates, groups and political parties.
2. That the Committee shall consist of seven members of the Legislative Assembly and seven members of the Legislative Council.
3. Not with standing anything to contrary in the Standing Orders of either House:
 - (1) The Legislative Assembly Members shall be:
 - (a) 4 Members supporting the Government nominated by the Premier; and
 - (b) 3 Members not supporting the Government, of which:
 - (i) 2 shall be nominated by the Leader of the Opposition; and

2 THE COMMITTEE

- (ii) 1 shall be an Independent Member appointed by the Assembly.
- (2) The Legislative Council Members shall be:
 - (a) 3 Members supporting the Government nominated by the Leader of the Government in the Council and
 - (b) 4 Members not supporting the Government, of which:
 - (i) 2 shall be nominated by the Leader of the Opposition in the Council;
 - (ii) 1 shall be Ms Kirkby; and
 - (iii) 1 shall be Rev Mr Nile.
- (3) The Committee shall elect as Chairman a member of the legislative Assembly appointed to the Committee on the nomination of the Premier.
- (4) Not with standing any thing to the contrary in the Standing Orders of either House, the Chairman of the Committee shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.
- 4. That at any meeting of the Committee any seven members shall constitute a quorum, provided that the Committee shall meet as a Joint Committee at all times.
- 5. (1) that the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth and overseas and have power to take evidence and send for persons and papers; and to report from time to time.
- (2) That one or more members of the Committee have leave to append to a report of the Committee a statement of dissent in relation to any part of the report.
- 6. That should either House stand adjourned and the Committee agree to any report before the Houses resume sitting:
 - (1) The Committee have leave to send any such report, minutes and evidence taken before it to the Clerk of the House;
 - (2) The documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the Order of the House; and
 - (3) the documents shall be laid upon the Table of the House at its next sitting.

2.3.2 Interpretation of Terms of Reference (1990)

The Chairman wrote to the Attorney-General, the Hon. J.R.A. Dowd on 27 November 1990 seeking the advice of the Crown Solicitor on the Committee's terms of reference.

Previous Committee meetings had been unable to resolve the question of whether the issue of elections and electoral mechanisms could be looked at as separate issues or whether they could only be looked at in so far as they were directly relevant to "the current system of election funding".

Confusion had also arisen as a result of some comments made by the Premier in the House when he moved the motion to establish the Committee and the Chairman felt it wise to resolve the issue as a matter priority.

The Committee received a response from the Attorney-General on 29 January 1991 which detailed the Crown-Solicitor's advice.

Firstly, the Crown-Solicitor maintained that the Resolution, on face value, confined the Committee to recommending ways in which the current system of election funding could be improved and, one of the things it should have regard to in doing so is the systems of election and electoral mechanisms.

Further, the advice also stated that although the debates in the Assembly may originally have intended other issues to be considered, because this was not ratified by the Council the Committee does not have the power to investigate these issues because it is a Joint Committee and it only has such powers as are conferred on it by both Houses.

This lack of authority to investigate other issues would have consequences for any exercise of its coercive powers under the *Parliamentary Evidence Act 1901*.

The advice also said that the Committee should confine its deliberations to the matters detailed in its terms of reference and the ordinary meaning of words should be assumed.

If the Committee intends to consider additional issues such as those referred to in the Assembly debates, the Committee should draw this to the attention

2 THE COMMITTEE

of both Houses so that an exchange of messages can occur or appropriate instructions can be given to the Committee.

2.3.3 Amended Terms of Reference (1991)

1. That a Joint Select Committee be appointed with the following terms of reference:
 - (1) To recommend to Parliament ways in which the current system of election funding could be improved, having regard to:
 - (a) the need for accountability as regards the efficacious, efficient and equitable use of public money;
 - (b) the public interest in the integrity and impartiality of the political process;
 - (c) systems of election and electoral mechanisms.
 - (2) Without limiting the generality of (1), to recommend ways in which the system of election funding could be improved in relation to:
 - (a) the disclosure of true sources of funding to candidates, groups and political parties; and
 - (b) the disclosure of the expenditure of funds by candidates, groups and political parties.
2. That the Committee shall consist of seven Members of the Legislative Assembly and seven Members of the Legislative Council.
3. Notwithstanding anything to the contrary in the Standing Orders of either House:
 - (1) That Mr Hartcher, Mr Jeffery, Dr Macdonald, Mr Merton, Mr Mills, Mr Thompson and Mr Turner be appointed to serve on such Committee as Members of the Legislative Assembly.
 - (2) The Legislative Council Members shall be:
 - (a) 3 members supporting the Government nominated by the Leader of the Government in the Council; and
 - (b) 4 Members not supporting the Government, of which:

 2 THE COMMITTEE

- (i) 2 shall be nominated by the Leader of the Opposition; and
 - (ii) 1 shall be Miss Kirkby; and
 - (iii) 1 shall be Rev Mr Nile.
- (3) The Committee shall elect as Chairman a member of the Legislative Assembly appointed to the Committee as a supporter of the Government.
- (4) Notwithstanding any thing to the contrary in the Standing Orders of either House, the Chairman of the Committee shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.
4. That at any meeting of the Committee any seven Members shall constitute a quorum, provided that the Committee shall meet as a Joint Committee at all times.
5. (1) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses; to adjourn from place to place; to make visits of inspection within the State of New South Wales and other States and Territories of the Commonwealth and have power to take evidence and send for persons and papers; and to report from time to time.
- (2) That one or more members of the Committee have leave to append to a report of the Committee a statement of dissent in relation to any part of the report.
- (3) That the reports, documents and records relating to the proceedings of the Joint Select Committee upon the Process and Funding of the Electoral System appointed during the Forty-ninth Parliament be referred to the Committee.
6. That should either or both Houses stand adjourned and the Committee agree to any report before the Houses resume sitting:
- (1) the Committee have leave to send any such report, minutes and evidence taken before it to the Clerk of the House:
 - (2) the documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the order of the House; and
 - (3) the documents shall be laid upon the Table of the House at its next sitting.

2 THE COMMITTEE

2.4 REFERRAL FROM OTHER COMMITTEES

The Committee notes the referral by the Joint Select Committee on Fixed Term Parliaments in its Report to the Parliament on 3 December 1991. That is:-

"One factor which does deserve further consideration is the possibility that fixed term elections may result in an election season similar to that experienced by the United States. Whilst the differences between the two systems are varied, the US has experienced an exponential increase in election campaigning costs as challengers and incumbents begin campaigning earlier and earlier. This may warrant referral to the Joint Select Committee Upon the Process and Funding of the Electoral System".

(Report, 1991, p70)

The Committee will be reviewing this issue at Committee meetings and will be determining its next inquiry as soon as this Report is finalised.

2.5 COMMITTEE MEETINGS

The Committee held numerous meetings during this Inquiry.

All Minutes have been tabled in Parliament. The following Minutes dealt specifically with the final draft of this Report.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE ASSEMBLY

MINUTES OF PROCEEDINGS

THE JOINT SELECT COMMITTEE UPON THE PROCESS AND FUNDING
OF THE ELECTORAL SYSTEM

Tuesday 19 May, 1992

At Parliament House, Sydney, at 10.00 a.m.

Members Present

Legislative Assembly

Mr C.P. Hartcher (Chairman)
Dr P.A. Macdonald
Mr W.A. Merton
Mr J.C. Mills
Mr G.E. Thompson
Mr J.H. Turner

Legislative Council

The Hon. B.A. Evans
The Hon. J.A. Gardener
The Hon. J.R. Johnson
The Hon. J.H. Jobling
The Hon. E. Kirkby
The Rev. the Hon. F.J. Nile
The Hon. P.F. O'Grady

The Committee's Project Officer Ms A. Olsson and Assistant Committee Officer Ms K. Mc Lean in attendance.

Confirmation of the minutes of the previous meetings was deferred.

The Chairman indicated that Members could lodge any dissenting reports with the Committee secretariat.

The Hon. E. Kirkby tabled a copy with the Chairman of a draft minority dissenting report. Copies were then circulated to the other Members of the Committee.

Agreed that that part of the draft report headed "The Recommendations" of the Report be now considered by the Committee.

Recommendation 1

Paragraph 1, be further considered, after the definition is clarified.

Paragraph 2, be further considered, after the definition is clarified.

Recommendation 2

Paragraph 1, read and agreed to.
 Paragraph 2, read and agreed to.
 Paragraph 3, read and agreed to.
 Paragraph 4, read and amended.
 Paragraph as amended agreed to.
 Paragraph 5, read and agreed to.

Recommendation 3

Paragraph 1, read and amended.
 Paragraph as read agreed to.
 Paragraph 2, read and agreed to.
 Paragraph 3, read and agreed to.
 Paragraph 4, read and disagreed to, deleted.
 Paragraph 5, read and agreed to.

In accordance with Standing Order 354 the names of Committee Members are recorded on the Motion—"What is the acceptable Monetary Value levels for Disclosure for Parties to be included in the Report from the Committee";

\$10,000 level

<u>Ayes</u>	<u>Noes</u>
Mr Hartcher	Dr Macdonald
Mr Merton	Mr Mills
Mr Thompson	Rev. Nile
Mr Turner	Mr O'Grady
Mrs Evans	Mrs Kirkby
Ms Gardiner	
Mr Jobling	
Mr Johnson	

Carried in the affirmative.

\$5,000 level

<u>Ayes</u>	<u>Noes</u>
Mr O'Grady	Mr Hartcher
Mr Mills	Mr Merton
Rev. Nile	Dr Macdonald
	Mr Turner
	Mrs Evans
	Ms Gardiner
	Mr Jobling
	Mr Johnson
	Mrs Kirkby

Negatived.

\$1,500 level

Ayes
Mrs Kirkby
Dr Macdonald

Noes
Mr Hartcher
Mr Merton
Mr Mills
Mr Turner
Mrs Evans
Ms Gardiner
Mr Jobling
Mr Johnson
Mrs Kirkby
Rev. Nile

Negatived.

In accordance with Standing Order 354 the names of Committee Members are recorded on the motion of-"What is the acceptable level of disclosure for Candidates to be included in the Report from the Committee";

\$1,500 level

Ayes
Mr Hartcher
Mr Merton
Mr Thompson
Mr Turner
Mrs Evans
Ms Gardiner
Mr Johnson
Mr Jobling

Noes
Dr Macdonald
Mr Mills
Rev. Nile
Mrs Kirkby
Mr O'Grady

Carried in the affirmative.

\$1,100 level

Ayes
Mr Mills
Mr O'Grady

Noes
Mr Hartcher
Dr Macdonald
Mr Merton
Mr Thompson
Mr Turner
Mrs Evans
Ms Gardiner
Mr Jobling
Mrs Kirkby
Rev. Nile

Negatived.

\$200 level

Ayes
Rev. Nile
Mrs Kirkby
Dr Macdonald

Noes
Mr Hartcher
Mr Merton
Mr Mills
Mr Thompson
Mr Turner
Mrs Evans
Ms Gardiner
Mr Jobling
Mr O'Grady

Negatived.

Recommendation 4

Paragraph read and disagreed to, paragraph deleted.

Recommendation 5

Paragraph 1, read and agreed to.
To be further considered.
Paragraphs 2, 3 and 4, read and agreed to move to form part of
Recommendation 9.

Recommendation 6

Paragraph 1, read and amended.
Paragraph as read agreed to.
Paragraph 2, read and agreed to.
Paragraph 3, read and agreed to.

Recommendation 7

Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 read and disagreed to, deleted.

Recommendation 8

Paragraph 1, read and agreed to.
Paragraph 2, read and amended.
Paragraph as read agreed to.

Recommendation 9

Paragraph 1, read and agreed to.
Paragraph 2, read and agreed to.
Paragraph 3, read and agreed to.

Recommendation 10

Paragraph 1, read and agreed to.
Paragraph 2, read and agreed to.
Paragraph 3, read and disagreed to, deferred for further
consideration.
Paragraph 4, read and agreed to.

Recommendation 11

Paragraphs,1,2,3,4,5,6,7 and 8 read and disagreed to.

Agreed to refer matter contained therein for clarification and advice from the Crown Solicitor.

Recommendation 12

Paragraph,read and agreed to.

Recommendation 13

Paragraph read and agreed to.

Recommendation 14

Paragraph read and agreed to.

Recommendation 15

Paragraph read and disagreed to.
Paragraph deleted.

Recommendation 16

Paragraph read and agreed to.

Recommendation 17

Read and amended.
Paragraph read and agreed to.

Recommendation 18

Paragraph read and agreed to.

Recommendation 19

Paragraph read and amended.
Paragraph read and agreed to.

Recommendation 20

Paragraph read and disagreed to,paragraph deleted.

Recommendation 21

Paragraph read and disagreed to,paragraph deleted.

Recommendation 22

Paragraph read and amended,deferred for further consideration.

Recommendation 23

Paragraph read and amended, deferred for further consideration.

Recommendation 24

Paragraph read and amended, for further consideration.

Recommendation 25

Paragraph read and amended.
Paragraph read and agreed to.

Recommendation 26

Paragraph read and deferred for further consideration.

Recommendation 27

Paragraph read and agreed to.

Recommendation 28

Paragraph read and amended.
Paragraph as read agreed to.

Recommendation 29

Paragraph read and agreed to.

Recommendation 30

Paragraph read and disagreed to, paragraph deleted.

Recommendation 31

Paragraph read and amended.
Paragraph read and agreed to.

Recommendation 32

Paragraph read and amended.
Paragraph read and agreed to.

Recommendation 33

Paragraph read and disagreed to, deferred for further consideration.

Recommendation 34

Paragraph read and amended.
Paragraph read and agreed to.

Recommendation 35

Paragraph read and amended.
Paragraph read and agreed to.

Recommendation 36

Paragraph read and amended.
Paragraph read and agreed to.

Recommendation 37

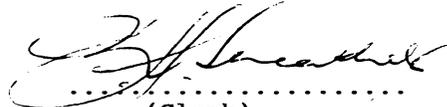
Paragraph read and amended.
Paragraph as read agreed to.

Recommendation 38

Paragraph read and disagreed to, deferred for further consideration.

The Committee adjourned at 3.46 p.m., until 16 June, 1992 at 10.00 a.m.


.....
(Chairman)


.....
(Clerk)



PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE ASSEMBLY

MINUTES OF PROCEEDINGS

THE JOINT SELECT COMMITTEE UPON THE PROCESS AND FUNDING
OF THE ELECTORAL SYSTEM

Tuesday 16 June, 1992

Legislative Assembly

Mr C.P. Hartcher (Chairman)
Dr P.A. Macdonald
Mr W.A. Merton
Mr J.C. Mills
Mr G.E. Thompson

Legislative Council

The Hon. B.A. Evans
The Hon. J.A. Gardiner
The Hon. J.R. Johnson

Apologies received from Mr B.L. Jeffery, Mr J.H. Turner and
The Rev.the Hon. F.J. Nile.

The Committee's Project Officer Ms A. Olsson and Assistant
Committee Officer Ms K. McLean in attendance.

Confirmation of the previous minutes as circulated agreed to.

Agreed that the previously circulated draft report be now
considered by the Committee.

The Committee deliberated.

Recommendation 1

Paragraph, read and amended.
Paragraph as amended agreed to.

Recommendation 2

Paragraph read and agreed to.

Recommendation 3

Paragraph read and amended.
Paragraph as amended agreed to.

Recommendation 4

Paragraph read and disagreed to, deleted.

Recommendation 5

Paragraph read and agreed to.

Recommendation 6

Paragraph read and amended.
Paragraph as amended agreed to.

Recommendation 7

Paragraph read and amended.
Paragraph as amended agreed to.

Recommendation 8

Paragraph read and amended.
Paragraph as amended agreed to.

Recommendation 9

Paragraph read and amended.
Paragraph as amended agreed to.

Recommendation 10

Paragraph 3 read and amended.
Paragraph as amended agreed to.

Recommendation 11

Paragraph as read and amended.
Paragraph as amended agreed to.

Recommendation 12

Paragraph read and agreed to.

Recommendation 13

Paragraph as read agreed to.

Recommendation 14

Paragraph as read agreed to.

Recommendation 15

Paragraph as read and disagreed to.

Paragraph deleted

Recommendation 16

Paragraph read and agreed to.

3.

Recommendation 17

Paragraph read and amended.

Paragraph as amended agreed to.

Recommendation 18

Paragraph read and agreed to.

Recommendation 19

Paragraph read and amended.

Paragraph as amended agreed to.

Recommendation 20

Paragraph as read disagreed to.

Paragraph deleted.

Recommendation 21

Paragraph read disagreed to.

Paragraph deleted.

Recommendation 22

Paragraph read and amended.

Paragraph as amended agreed to.

Recommendation 23

Paragraph read and amended.

Paragraph as amended agreed to.

Recommendation 24

Paragraph read and amended.

Paragraph as amended agreed to.

Recommendation 25

Paragraph read and amended.

Paragraph as amended agreed to.

Recommendation 26

Paragraph read and amended.

Paragraph as amended agreed to.

Recommendation 27

Paragraph as read agreed to.

Recommendation 28

Paragraph read and amended.

Paragraph as amended agreed to.

Recommendation 29

Paragraph read and agreed to.

Recommendation 30

Paragraph read and disagreed to.

Paragraph deleted.

Recommendation 31

Paragraph 1, read and disagreed to.
Paragraph deleted.

Paragraph 2, read and amended.

Paragraph as read agreed to.

Recommendation 32

Paragraph read and amended.

Paragraph as read agreed to.

Recommendation 33

Paragraph as read, disagreed to, and deleted.

Recommendation 34

Paragraph read and amended.

Paragraph as read agreed to.

Recommendation 35

Paragraph read and amended.

Paragraph as read agreed to.

Recommendation 36

Paragraph read and amended.

Paragraph as read agreed to.

Recommendation 37

Paragraph read and amended.

Paragraph read and agreed to.

Recommendation 38

Paragraph read and amended.

Paragraph as read agreed to.

All members agreeing to the other sections of the Report.

Resolved that the Draft Report be the Report of the Committee.

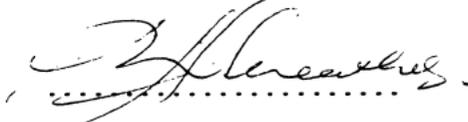
Whereupon the Chairman signed the Report.

The Committee deliberated.

The Committee adjourned at 1.31 p.m., sine die.



(Chairman)



(Clerk)

2 THE COMMITTEE

2.6 REPORTS

This is the second report by the Joint Select Committee upon the Process and funding of the Electoral System.

The first report addressed a number of problems which were apparent with the operation of the existing legislation.

Copies of all Committee, reports, papers and transcripts of Public Hearings are available from the Committee Secretariat located at:

Room 1134
121 Macquarie Street
SYDNEY NSW 2000

PH: 251-4084
FAX: 251-4050

THE LEGISLATION

3.1 THE ELECTION FUNDING AUTHORITY

The preamble to the *Election Funding Act 1981* ("the Act") provides:

"An Act to constitute the Election Funding Authority of New South Wales, to make provision for the public funding of Parliamentary election campaigns and to require the disclosure of certain political contributions and electoral expenditure; and for other purposes".

Section 5 of the Act establishes the Election Funding Authority (EFA), a corporation which consists of three members - the Commissioner, a person nominated by the Premier and a person nominated by the Leader of the Opposition in the Assembly (s6).

This body has responsibility for dealing with:-

- a) applications for registration by parties, candidates, party agents and official agents;
- b) claims for payment as detailed in Part 5 of the Act;
- c) declarations of political contributions; and
- d) electoral expenditure as detailed in part 6 of the Act (s23).

3 THE LEGISLATION

3.2 REGISTERS

Register of Candidates

The EFA must keep a Register of Candidates (s31). This register must include the name and address of the candidate, the name and address of the party for which they are a candidate and the party or group affiliation if applicable (s33).

An official agent can also register a group of candidates as long as this registration occurs on or before the day of nomination for the election and after the polling day for the previous elections (s34).

Applications may also be lodged with the returning officer (s35).

Register of Party Agents

A Register of Party Agents is maintained by the EFA and each party may only appoint one party agent (s40). This agent may not be a corporation and number of details including the agents address and occupation are entered into the register (s40 and s41).

The appointment of a party agent is not effective unless it is accompanied by the signed acceptance of the person being appointed (s41).

If a party commits an offence against this section each person who is an officer of the party is guilty and liable to a penalty not exceeding \$10,000 - the party is also liable to a penalty not exceeding \$20,000 (s41).

Register of Official Agents

The EFA is also bound to keep a Register of Official Agents (s44). These agents are appointed for the candidate's benefit and can either be appointed individually by a candidate or by a group (s46). In the event that the agent dies, the candidate is then deemed to be his own official (s49).

Registers for by-elections

The Authority must also maintain two registers during a by-election - a Register of Candidates and a Register of Official Agents (s51). These registers are kept from the date of the issue of the writ.

The legislation also states that copies of each register must be kept by the EFA and public access to all registers must be available during ordinary office hours. The Act ensures publication of this Register in the Gazette, two weeks prior to the polling day for each election (s52).

3.3 GENERAL

Any person who knowingly makes a misleading or false statement to the Authority is guilty of an offence and liable to a penalty not exceeding \$10,000 (s54).

3.4 PUBLIC FUNDING

Part 5 of the Act details a number of aspects relating to the public funding of election campaigns.

Constitution of Funds

The Act states that for each general election two funds shall be kept by the EFA - the Central Fund and the Constituency Fund (s56). Funds for each are to allocated according to the following formula:

$$A = \frac{E \times Y \times M}{100}$$

- A = The amount of money (\$) to be credited to the fund.
- E = The total number of electors in all electoral districts as at 6.00 pm on the day the writs are issued.
- Y = The number of years between the return of writs for the general election and the previous general election.
- M = The monetary unit. This amount is adjusted in accordance with information set out in Schedule 1 and varies from election to election. The amount was approximately 45.6 cents at the last general election in 1991.

3 THE LEGISLATION

(s57)

Two thirds of this amount is credited to the Central Fund (s58) and one third is credited to the Constituency Fund (s64).

The Central Fund

The amount of money in the Central Fund is then distributed according to the following formula:

$$P = \frac{F \times PV}{TEV}$$

- P = The amount of money (\$) payable to the party, group or candidate.
- F = The amount of money in the Central Fund.
- PV = The primary vote of the party, group or candidate.
- TEV = The total primary vote of all parties, groups or candidates eligible to participate in the distribution of money from the Central Fund.

It should be mentioned that this formula is used to calculate the distribution of funds to registered parties (s59), independent groups of candidates in Council elections (s60) and independent candidates in Council elections.

Return of Deposits

The criterion for the return of deposits is detailed in the *Parliamentary Electorates and Elections Act 1912*.

This provides for the return of deposit to a candidate in a Council Election provided the total number of first preference votes exceeds 4% of the total first preference votes polled.

No-one may receive more than one-half of the money available in the Central Fund (s63).

The Constituency Fund

3 THE LEGISLATION

The Constituency Fund is the Fund which provides funding for candidates who stand in the Assembly (s65).

The legislation details that funding is available if a candidate is elected or if he receives enough votes to qualify for the return of his deposit. That is, if he receives at least 4% of the total first preference votes for the electoral district concerned (s65).

The *Parliamentary Electorates and Elections Act 1912* details this in Section 79 which states that the deposit will be returned to the candidate if the total number of first preference votes polled in his favour is at least 4% of the total number of first preference votes polled by candidates in the electoral district (s79) (7A) (c). The 1990 legislation changed this to a 4% threshold for return of deposit.

The Constituency Fund is calculated by dividing the amount of money available by the number of electoral districts. This amount is then available for distribution in each electorate (s66).

The formula for each electorate is as follows:

$$C = \frac{F \times CV}{TEV}$$

- C = The amount of money (\$) payable to a candidate.
- F = The amount of money (\$) available for distribution per electorate as previously calculated.
- CV = The primary votes of the candidate.
- TEV = The total primary votes of all candidates eligible to participate in the distribution of money from the fund (s67).

The legislation states that no one candidate can receive more than one half of the funds available for distribution (s68).

Advance Payments

Parties are entitled to advance payments for each of the first three complete years after the return of writs (s691(a)). The amount payable equal to 10% of

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the total amount of money which the party was entitled to receive in the previous election.

Advance payments are deducted from future payments to the party (s70).

By-election funds

The Act details the distribution of money and the amount to be made available in a by-election (s73). That is -

$$A = \frac{E \times M \times 3}{100}$$

- A = The total amount of money (\$) to be credited to the fund.
- E = The total number of electors enrolled in the electorate as at 6.00 pm on the day the writs are issued.
- M = The monetary unit (see previous definitions).

(s73)

Entitlement of parties

Political parties are eligible for payment from this fund if the party is registered and secondly if the endorsed candidate is either elected or obtains at least 4% of the total first preference votes cast in the electoral district.

Other details regarding this are contained in s73(b).

Payment

Claims for payment are approved by the Authority if the claims are made in the form and manner approved and if they are fully audited with a certificate from an auditor attached to the documentation saying that full and free access to all relevant papers was received (s75).

All payments from these funds depend upon disclosure as required in part 6 of the Act (s78).

Obligation to Disclose

Within ninety days of the return of the writs parties, groups and candidates must declare all contributions received and all electoral expenditure from the day after the last election, the day of nomination or the day the candidate was registered and the day of the election, (s83, s84, s85).

Details to be Disclosed

Details to be provided to the EFA include the date the contribution was made and the name and address of the person making the donation (s86).

Disclosure is not required if the total amount donated is less than \$500 to a candidate or less than \$2,500 to a party or group (s87(4)).

Also exempted for disclosure are all donations not given for the purposes of an election, that is,

"a payment made under the condition that the money not be used for electoral expenditure in relation to an election."

(s87(7))

Nil returns are required (s91).

Auditors

Declarations must be accompanied by an auditor's certificate unless the EFA determines otherwise (s93).

That is, if the declaration states that no money was spent or incurred, or the group or candidate is not eligible to receive public funding (s93(3)).

Penalties

Penalties for failure to lodge a return are, for an agent \$10,000 and, for a party \$20,000.

Enforcement

The Act makes provision for the appointment of an inspector (s108) to investigate any alleged breaches of the Act. An inspector may request that

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information is produced, make inquiries and review bankers' books and records. It is an offence to intentionally obstruct or delay an inspector in the exercise of his powers (s110).

Miscellaneous

The rest of the Act details a number of minor administrative and financial provisions relation to the EFA's reporting requirements, staff, delegation of powers and regulations.

EVIDENCE RECEIVED

4.1 WRITTEN SUBMISSIONS RECEIVED

1.	Critical Economic, Social and Political Watchdog Organisation	30.07.90
2.	Australian Community Action Network	20.08.90
3.	A K Mallise	27.08.90
4.	Australian Labor Party (New South Wales Branch)	03.09.90
5.	New Australian Republican Party New South Wales State Assembly	05.09.90
6.	Australian Democrats (New South Wales Division)	05.09.90
7.	Ivor Jones	11.09.90
8.	F C Sheldon-Collins	18.09.90
9.	National Party of Australia - NSW	17.12.90
10.	Election Funding Authority	05.02.91
11.	Election Funding Authority	18.03.91

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12.	Mrs K Wright	04.10.91
13.	Environmental Youth Alliance	06.10.91
14.	Australian Electoral Commission	14.10.91
15.	Department of Local Government	23.10.91
16.	Australian Democrats (New South Wales Division)	25.10.91
17.	Privacy Committee of NSW	28.10.91
18.	Australian Democrats (New South Wales Division)	05.11.91
19.	Liberal Party of Australia (NSW Division)	09.12.91
20.	The Association for Good Government	12.12.91

4.2 EVIDENCE BROUGHT FORWARD

4.2.1 Australian Democrats

The Australian Democrats made a number of written submissions to both this Committee and the Booth Committee and this information was circulated to all members once consent was obtained.

The Democrats also appeared at a Public Hearing on 18 December 1990 and the evidence relating to disclosure by political donations is summarised below.

It should be mentioned that the previous Chairman sought to confine public hearings to the operation of the current legislation and any perceived anomalies in order to clarify areas which required attention. The 1991 state election interrupted further hearings.

Public Hearing - 18 December 1990

For the sake of completeness those questions which were raised by members of the 1990 Committee and which were deferred for a later hearing were brought to the attention of new Committee members. The purpose was to enable Committee members to become au fait with those issues which occupied the attention of the 1990 Committee and, if desired, these questions could then be readdressed to witnesses.

Mr Hatton queried the proposed amendments by the Australian Democrats in regard to s86 and s87 of the *Election Funding Act 1981*.

Their recommendations were as follows:

- *11. That s87 of the *Election Funding Act 1981* be amended to provide for full disclosure by political parties and candidates, their holding companies and other organs, of all income, either financial or in kind.
12. That s86 of the *Election Funding Act 1981* be amended to provide for mandatory disclosure of the known original source of all external contributions to political parties, candidates and groups, either financial or in kind.

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13. That s86(2) of the *Election Funding Act 1981* be amended to provide for mandatory disclosure of the known original source of contributions to political parties, candidates and groups, either financial or in kind."

Debate was then interrupted.

Mr Mills then raised the following recommendations by the Democrats and queried the idea of annual declarations as detailed in point 14.

- "14. That s83 of the *Election Funding Act 1981* be amended to provide for the requirement that registered political parties and Independent Members of Parliament must furnish declarations of income and expenditure on an annual basis, such declarations to be made no later than 30 days after 30 June.
15. That s84 and 85 of the *Election Funding Act 1981* be amended to provide for an extension of the disclosure period for political donations for candidates and groups from the day after the last general election to 120 days after polling day.
16. That s84 and 85 of the *Election Funding Act 1981* be amended to extend the time during which official agents of candidates and groups can submit their declarations of contributions and expenditure from 90 days to 120 days."

Mr Terrett (Party Agent for the Australian Democrats) responded by stating that:-

"By at least having annual returns of donations, and in our submission we have requested returns on all income to political parties, we would see that as being a way of having political donations on the public record."

Debate was stopped before further comment could be made.

Mr Murray asked Mr Terrett

"Why the *Local Government Act* should be amended to provide for full disclosure of income and expenditure of candidates for local government elections? Who will oversee this? Will the Electoral Funding Authority do that, and will you set up a parallel local government funding authority?"

Mr Terrett responded by saying

"As from the next council elections in September next year they will be administered by the State Electoral Office. We see that as the administration of local government with regard to donations to candidates and expenditure by candidates coming equally at the same time through the State Electoral Office. The *Local Government Act* is a State Act, and the ultimate responsibility is that it be overseen by the State.

Mr Murray then asked whether a separate electoral funding authority should be established.

Mr Terrett responded by saying that

"Certainly within the same authority. Regularly a candidate for local government will also be a candidate for State Government. There is some parallel between local government and State elections. Certainly the Act should parallel with local government as well. We see the disclosure of any donations that indirectly come to political parties via local government."

Debate was then stopped.

A summary of the Australian Democrats full recommendations as presented to the Committee is as follows:

Summary of Recommendations

1. That s6(b) of the *Election Funding Act 1981* be amended to provide for the appointment of the State Auditor-General or his deputy, as a member of the Election Funding Authority, replacing the member appointed by the Premier.
2. That s6(c) of the *Election Funding Act 1981* be amended to provide for the appointment of the I.C.A.C. Commissioner or his Deputy, as a member of the Election Funding Authority, replacing the member nominated by the Leader of the Opposition in the Legislative Assembly.
3. That, consequent upon changes to the composition of the Election Funding Authority, consideration be given to amending or repealing s.8-14, 19 and 20 of the *Election Funding Act 1981*.

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4. That s79(7A)(c) and 81F(3) of the *Parliamentary Elections and Electorates Act 1912* be amended to provide for the minimum vote of 4.0% of first preferences to secure the return of deposits and eligibility for public funding payments for the Legislative Assembly and Legislative Council and eligibility for public funding payments.
5. That s59, 60 and 61 the *Election Funding Act 1981* be amended to provide for payments to parties, groups and independents consequent upon election of a candidate to the Legislative Council.
6. That s57, 62 and 67 of the *Election Funding Act 1981* be repealed, and replaced with an entitlement formula based on a fixed dollar value for every first preference vote received for the Legislative Assembly and Legislative Council; the value to be determined in accordance with entitlements available under the *Commonwealth Electoral Act 1918*.
7. That consideration be given to banning all paid electronic political advertising, and replacing it with free air time for candidates and parties.
8. That consideration be given to the introduction of free delivery of one piece of literature through Australia Post from candidates to households in their electorate, to supplement public funding.
9. That the amount of \$200 be deleted from s55.(1)(a)(iii) of the *Election Funding Act 1981*.
10. That s (i) "expenditure on audit fees incurred as a result of complying with this Act" be added to s88 of the *Election Funding Act 1981*.
11. That s87 of the *Election Funding Act 1981* be amended to provide for full disclosure by political parties and candidates, their holding companies and other organs, of all income, either financial or in kind.
12. That s86 of the *Election Funding Act 1981* be amended to provide for mandatory disclosure of the known original sources of all external contributions to political parties, candidates and groups, either financial or in kind.
13. That s86(2) of the *Election Funding Act 1981* be amended to provide for mandatory disclosure of the known original source of contributions to political parties, candidates and groups, either financial or in kind.

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14. That s83 of the *Election Funding Act 1981* be amended to provide for the requirement that registered political parties and Independent Members of Parliament must furnish declarations of income and expenditure on an annual basis, such declarations to be made no later than 30 days after 30 June.
15. That s84 and 85 of the *Election Funding Act 1981* be amended to provide for an extension of the disclosure period for political donations for candidates and groups from the day after the last general election to 120 days after polling day.
16. That s84 and 85 of the *Election Funding Act 1981* be amended to extend the time during which official agents of candidates and groups can submit their declarations of contributions and expenditure from 90 days to 120 days.
17. That the *Election Funding Act 1981* be amended to provide for the submission of returns by broadcasters, printers and publishers.
18. That a public register of lobby groups and their clients be established.
19. That the *Election Funding Act 1981* be amended to as to provide for the disclosure of all forms of income and expenditure by third parties.
20. That the Election Funding Authority keep a register in third parties and include its current listing in reports under s.107 of the *Election Funding Act 1981*.
21. That the *Election Funding Act 1981* be amended to give the Election Funding Authority and its officers an unfettered right of entry and inspection to conduct spot audits on the financial records of any party, group or candidate.
22. That s96 *Election Funding Act 1981* be amended to make the candidate liable for failure to lodge a declaration as required by section 83.
23. That the *Election Funding Act 1981* be amended to make it an offence for any person to give false or misleading information about any contribution or donation to a political party, group or candidate.

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24. That the State Electoral Office conduct a Seminar for party officials and Independent MPs after changes to electoral laws have been enacted.
25. That the *Local Government Act* be amended so as to provide for full disclosure of income and expenditure by candidates in Local Government elections.

It should be pointed out that these proposed amendments related to the legislation prior to March 1991 when the Committee's first report was tabled and, as a result, a number of the Committees recommendations were adopted and the legislation amended.

4.2.2 Australian Labor Party

The submission by the Australian Labor Party which was carried forward to this Committee can be summarised as follows:

- Recommends that the funding of the electoral system and political parties be placed on the political of the Special Premiers' Conference on the Federal/State Relations in order to implement a national system of election funding and disclosure linked to the introduction of free hire or subsidised time on broadcast media and to prevent interstate transfer of funds
- Amend the *Election Funding Act 1981* (EFA) to provide the Election Funding Authority with the power to require yearly statements from the parties' auditors on donations to funds
- Amend s85 of the EFA to provide for the disclosure of donations and expenditures during the period commencing on the day following the polling day for that previous election for all candidates
- Amend the EFA to provide for the disclosure of all donations
- The New South Wales Branch of the Australian Labor Party also generally supports the recommendations contained in the Committee's report entitled *Who Pays the Piper Calls the Tune*.

The ALP also endorsed the recommendations detailed in a federal report entitled *Who Pays the Piper Calls the Tune - Minimising the Risks of Funding Political Campaigns*.

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The set recommendations related to federal legislation however the ALP endorsed the principle behind these amendments. The recommendations are:

1. Amend the *Commonwealth Electoral Act 1918* (CEA) to provide the Australian Electoral Commission (AEC) with the power to conduct spot audits of the electoral activities of registered political parties.
2. AEC to publish a full record of all spot audits undertaken - full reports to be provided where breaches of the CEA have occurred.
3. Amend the CEA to provide for full disclosure of all forms of income and expenditure by registered parties.
4. Amend the CEA so that during any one disclosure period third parties are required to disclose income and expenditure which related to any election and not just the election burdened by the current disclosure period.
5. AEC to publish its current listing of third parties.
6. Amend the CEA to provide for the full disclosure of all the income of, and expenditure by, third parties publicly listed by the AEC.
7. Amend the CEA to provide the AEC with the power to conduct spot audits of their parties known to or found to have a financial relationship with a registered political party.
8. Amend the *Broadcasting Act* (BA) to provide for a system of free political broadcasting time on television and radio.
9. Establish an independent committee to have responsibility for the allocation of broadcasting time.
10. No minimum time period set for political advertisements broadcast on radio and television.
11. Amend the BA to ensure that policy launches of major parties be broadcast free of charge at reasonable times.
12. Amend the BA to remove responsibility for electronic blackouts from the Australian Broadcasting Tribunal and place the responsibility on licensees.

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13. Amend the BA to provide that sufficient identification of a party or individual at the end of political advertisements be the logo or name of the party or individual appearing for a minimum period of one second.
14. Resume the collection of statistics of total time of telecasts and broadcasts by the Australian Broadcasting Tribunal.

Information at the Public Hearing on 18 December 1990 in which Mr Della Bosca appeared was also ruled out of order by the 1990 Chairman as it did not relate to the topic being discussed. It has also been carried forward for the sake of completeness.

Public Hearing - 18 December 1990

Ms Kirkby asked Mr Della Bosca of the Australian Labor Party why he believed contributions should be anonymous. That is if a party receives donations from public interest groups or lobbyists, should voters have the right to know the financial backing the different political parties receive.

Mr Della Bosca replied by stating that

"Our submission argues the contrary case. It accepts that there can and should be full disclosure, but that other issues have to be addressed in tandem. That is the sheer cost of political communication and broadcasting and other controls or limitations or a total ban; and some other matters that Mr Souris and I canvassed about political education and ongoing funding. Therefore I do not need to explain why there should be anonymous donors. The law provides for people to be able to donate to political parties in certain circumstances anonymously. That is their choice. Our view is that that is an innate right within the political system. We certainly accept that the public has a right to know such things. I fail to understand the full impact of the question, because our submission goes contrary to that view."

Ms Kirkby then asked if she may have misunderstood him previously. She said she was seeking a reply as to whether he believed it is democratic that a situation exists where anonymous donations can be made legally and there need be no legal disclosure?

Mr Della Bosca replied

"I do not think I need to justify that, because what I have said is the opposite. I have said that the ALP accepts that what should happen is that there should be a general movement to full disclosure, but that we believe the appropriate response is to attract support across the board, interstate and across the political spectrum to a general reform of the political process, including many changes to the sheer cost of campaigning and to the impact of the financial laws that allow a body to have funds in another State. Neither I nor the New South Wales Parliament can control the fact that the Queensland Australian Democrats may make a donation to the New South Wales Australian Democrats, perhaps a contribution for maintenance purposes or anything else. As I understand the Constitution, the State Parliament cannot control that. We suggest - I did not canvass it in great detail because most of our submission is outside the inquiry you are conducting - the opposite. We suggest that in exchange for a general disclosure mechanism there be certain controls introduced in relation to costs. As I said, the obvious one relates to the electronic media. With regard to anonymity I make one point. If there were to be a change - and I made the point about people having authority effectively to raid a political party's office, if that is not too dramatic terminology - any alterations should not be retrospective. If people do not want to publicly donate after any change, that would be their business. If they have donated on the basis of anonymity, that would be their right."

No further debate occurred on this aspect.

Ms Kirkby asked Mr Maher of the Liberal Party what his views were on the legislation which permits anonymous donations and whether voters are entitled to know which area or party wealthy interests are supporting.

The debate was interrupted before a response was given by Mr Maher.

4.2.3 Liberal Party of Australia

The Liberal Party did not make a written submission to the 1990 Committee although they did appear at a public hearing on 18 December 1990. The evidence that was presented at this Hearing related primarily to the mechanics of the *Election Funding Act 1981*. As the previous Chairman, Mr John Booth stated at the hearing:

"I wish to make a few remarks which I shall repeat as each witness appears before us today. After a certain amount of media attention

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over the weekend, I wish to clarify what seems to me to have been misunderstood by people in some circles. It was always the intention of this inquiry to deal with matters relating to the mechanics of the *Election Funding Act*. Early next year we intend to deal with matters relating to reforms to the disclosure of donations. Next year, as time permits we intend to deal with matters relating to reforms of the electoral system. So media speculation about whether people did or did not want to appear today to discuss donations to political parties is not correct and not particularly helpful."

(Report, 1991, p75).

All committee members received copies of the evidence presented at this hearing for their information.

4.2.4 National Party of Australia

The National Party of Australia declined to appear before the committee and instead sent in a written submission.

This submission was printed in full in the first report.

The relevant sections of the submission relating to disclosure can be summarised as follows:

1. The National Party believes that donors to political parties have a right to anonymity in a democratic society.
2. The National Party does not support the view that public funding of elections should be dependent upon disclosure of the identity of campaign donors.
3. The National Party believes that the public funding system has a bias towards political parties less reliant upon support from their own subscribing members and that this bias should be addresses in a review of the system.
4. The National Party believes that the Commonwealth provisions (prior to the 1991 amendments which were made after the date of this submission and have not been considered by the national Party to date) are superior to the NSW provisions as they are less bureaucratic and time-consuming.

4.2.5 Election Funding Authority

The Election Funding Authority provided this Committee with much help and assistance. They also appeared before this Committee to answer questions in both a formal and an informal capacity.

The Committee would like to take the opportunity of thanking Mr Ian Dickson-State Electoral Commissioner, Mr John Wasson-Secretary of the Election Funding Authority and Mrs Monica Floyd-Executive Assistant for their availability at short notice and their generous assistance at all times.

4.2.6 Independent Commission Against Corruption

The Committee did not receive any written evidence from the Independent Commission Against Corruption.

Mr Kevin Zervos, General Counsel to the ICAC did however appear before the 1990 Committee and gave evidence which was presented to 1991 Committee members for their information.

Background Information to the North Coast Land Development Report

According to Mr Zervos the ICAC received information in April 1989 which led to the Commissioner (Mr Ian Temby) approving an investigation into land development and related issues in the Tweed Shire.

Preliminary investigations resulted in the scope of the inquiry being widened in July of the same year and, as a consequence, the conduct of public officials concerned with this land development was included in the inquiry.

The hearings held by the ICAC also examined the payment of political donations and the processing of associated with these donations.

The most important section of the report was as far as this Committee is concerned, disclosed

"the payment of political donations in a manner and in circumstances designed to conceal the identity of the donors"

The report by the ICAC also determined that some of the donations

"made to influence and to induce favourable treatment"

Mr Zervos' comments are worth quoting in totality as they summarise the pertinent sections of the report as they relate to this Committee's terms of reference. That is

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"The report discussed in some detail common law bribery. It is worth mentioning this to the committee today. Common law bribery is commonly described as the receiving or offering of an undue reward by or to any person in public office in order to influence his or her behaviour in that office and to incline that person to act contrary to known rules of honesty and integrity. The question arises as to whether a payment made or offered to a person, other than a public official, can operate as a bribe. If it were established that a substantial sum was paid to a political party, to influence the behaviour of a member of the party who held public office, could that be a bribe at common law? I believe that it is. Mr Roden recommended that the law relating to bribery and official corruption should be standardised, particularly to the way in which the offence is defined and to the range of penalties. He made particular reference to attention being paid to the question of third party bribes.

The relevant law is contained in the Election Funding Act which, as members know, was introduced in 1981. Amongst other things, it requires disclosure of donations made for campaign purposes. In the report Mr Roden identified two popular beliefs which he said were encouraged by obvious weaknesses in the legislation. First, if a donation is diverted through a third party, especially if the third party is a company incorporated or resident outside New South Wales, the donation can be described as having been made by that third party. This enables the donation to be disclosed in the return required under the Act without mention of the true donor's name. Second, if the donation may be described as being the party's administration or maintenance fund, it need not be disclosed at all.

Commenting on the concealing of the donor, at page 494 of the report Mr Roden said:

Channelling a donation through a third party, and then asserting that the third party was the donor in order to defeat the obvious purpose of the legislation, is so artificial and transparent a device, that it would be surprising if it were upheld by any modern court.

He went on to say the following on concealing the purpose:

Legislation requiring the disclosure of donations to political parties and candidates should be directed towards preventing secret donations that might influence policy or other decisions, especially by the party in power. I fail to see how that can be achieved or even seriously attempted by a law which exempts from disclosure donations for parties' administrative, rather than

electoral, purposes. The distinction is illusory. In any event, substantial donations to political parties are as likely to influence, whatever label they be given, and whatever purpose they may have.

He went on to say:

The relevant law is misunderstood. In the case of donations to political parties, the exemption from compulsory disclosure applies to payments made under the condition that the money not be used for electoral expenditure in relation to an election. Evidence before the Commission suggests there is a belief that diversion of a donation into the party's administration or maintenance fund, with the consent of the donor, is sufficient to attract exemption. It clearly is not.

It is clear from the report that the existing legislation is ineffective in enforcing a requirement that donations to political parties or candidates be publicly disclosed. As noted by Mr Roden, the weakness in the law and the devices which are notoriously used by the major parties to circumvent the law make disclosure, in effect, optional. On the North Coast land development investigation he said:

So long as substantial donations can be made to political parties or candidates without public disclosure, they can be used to purchase influence. The law that allows secret political donations, creates conditions conducive to corrupt conduct. If that is not a self-evident fact, it surely requires no further explanation after the matters that have been disclosed in the course of this inquiry.

Some argue that donors have a right to confidentiality and that other people have no greater right to know which party or parties they support financially. A payment of money in the form of a donation has the capacity to influence. Serious difficulty arises in distinguishing between the honest and the corrupt when donations are made secretly and not openly and publicly. As noted by Mr Roden, if you take away the openness and the publicity and substitute secrecy except to those involved, the inference of intent to influence must be almost irresistible and the case for disqualifying the donor must be almost unanswerable. The right to confidentiality, like all rights, cannot be absolute. It must yield to the public's right to know what financial contributions are being made to our political parties if public confidence in the integrity of our parliamentary system is to be maintained. The public have a right to know what influences might be being brought to bear on public officials. If official corruption is to be

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minimised, public officials cannot be allowed to have confidential or private financial dealings which could give rise to a conflict of interest. The alternative to compulsory public disclosure is an unacceptable risk that, through financial necessity, influence on governments of any political persuasion will be a purchasable commodity. If there is conflict between public interest and the convenience of the major political parties, the public interest must be allowed to prevail.

One of the stated objects of the *Election Funding Act* is to ensure the public disclosure of substantial donations made to political parties or candidates for electoral purposes. However, by two simple devices that I have already mentioned, parties are avoiding disclosure and are either declaring donations in the name of a dummy or nominee company through which the donations are passed or not declaring them at all if they are described as being for the purpose of party maintenance or administration. Mr Roden recommended that the *Election Funding Act* be amended with a view to removing the loopholes and strengthening the Act's enforcement provisions. He said:

Here is a law that is meant to govern the lawmakers. It is either being broken and not enforced, or avoided and not tightened. That provides little incentive to others to obey the law that governs them and provides a poor example in the campaign against corruption.

The report sets out provisions that require attention and relate to what donations are to be disclosed, who is to be named as donors, when disclosure is to be made, offences and enforcement. However, in my opinion the Act is so flawed that it would be preferable to repeal and replace it. I am firmly of the view that public disclosure of the source of funds acquired by political parties and candidates is essential if public confidence in the integrity of our parliamentary institutions is to be maintained. It is imperative that legislation is empowered to effectively provide for compulsory disclosure. At present donations are exempt from the requirement of disclosure if they are made conditionally and are not to be used for electoral purposes. The name of the real donor need not be disclosed if the donation is channelled through a third party. Those loopholes are well known and are exploited by all major parties. If there is a genuine determination to provide for compulsory disclosure, those loopholes must be closed.

Provision should also be made for adequate enforcement, including the power to make spot checks and to require the production of documents and the giving of evidence by such persons and at such times as is

necessary to trace political funds to source. It is essential that the names of the true donors be disclosed and not be allowed to hide behind dummy organisations as they have in the past.

There is a pressing need for effective legislation requiring disclosure of the source of funds and benefits received by political parties, groups and candidates. The *Election Funding Act* is and still remains, despite the findings of the North Coast land development report which was delivered some 18 months ago, an ineffective tool in informing the public about the financial support of and contributions to our political organisations. A body should be established which is truly independent and which has teeth to deal with this important public requirement. Otherwise, as I have stated, public confidence in the integrity of our parliamentary institutions is at stake. Mr Roden in his report also highlighted the need for enacting legislation designed to require disclosure of political contributions at the local government level, an area that has been sadly neglected and where immediate attention is required." (Transcript, 25 November 1991)

GENERAL

Thus the essential piece of evidence carried forward to this Committee for its attention was the ICAC's report and its subsequent recommendations.

The report also made a number of recommendations about which provisions in the legislation require specific attention. That is:-

- (a) What donations are to be disclosed
- (b) Who is to be named as a donor
- (c) When disclosure is to be made
- (d) Offences
- (e) Enforcement.

(p531)

The report also identified problems regarding:

- The use of intermediaries between donor and party
- The exemption of disclosing payments if the money is not used for electoral expenditure
- The failure of the legislation or the party agent to declare the actual known source of a donation rather than the last source
- Problems regarding interstate transfers of donations
- The failure to penalise the candidates rather than the agent

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- The failure to penalise a person for giving false or misleading information for the purpose of influencing a declaration
- The failure to adequately enforce offences
- The lack of power of inspection and right of entry that hinders investigations by the Election Funding Authority (EFA)
- The fact that the EFA can not investigate an allegation unless it is almost 100% sure that a conviction be sustained.

4.2.7 1990 Committee Focus and Questions Raised

A number of other questions were raised in the Public Hearings. The bulk of these have been addressed in the Hearings or the Committee meetings. These questions are worth mentioning as they define some of the issues which occupied the 1990's Committee's interest as well as providing areas for future analysis for this Committee.

1. What is the reason for the introduction of public funding - is it to encourage the development of smaller political parties? Is it to reduce the reliance by candidates upon political donations and campaign contributions? Is it an important part of the budgeting process and how well does it equate to public support?
2. How can the ballooning of electoral expenditure be minimised? - should it be? Is the equality of the political process put into question because of these disparities? Should political parties or candidates be given free or subsidised media time as a means of reducing this expenditure? How should this distribution be calculated? Should there be any guidelines beyond those governing normal advertising? For example, should negative campaigning be permitted? How do small parties compete with the larger parties for funding?
3. How do you resolve the situation where candidates are often not familiar with the public funding provisions? Should they be provided with training prior to election or after election? Should political or support staff be trained prior to or after an election? Should they be trained at all?
4. What is the role of ethics in campaign finance and in the political system in general? How ethical does the public want their political system to be and to what extent are they willing to participate in the policing of ethical standards? What role should the media play? Is

- there a distinction between ethics in a business environment and ethics in the political environment?
5. Should there be more instances of support in-kind rather than financial support? Does support in-kind make it easier to avoid the legislative requirements regarding disclosure?
 6. What role should the Election Funding Authority play? Should it be an investigative body or an administrative body? Should the present structure and composition be retained?
 7. Should third parties be allowed to spend unlimited amounts of money in a political campaign? Should they be compelled to disclose their sources? How far should the definition of third parties extend?
 8. Is there a need for unity between federal and state legislation? Who should retain control? Should these issues be resolved by the various State Premiers at a Special Premiers' Conference or by the Ministers who are responsible for the legislation at a Ministers' Conference?
 9. Should there be fixed election terms? Will they create an election season similar to that experienced by the U.S.A.? Would this minimise the amount of money spent during a campaign or would it create a dramatic escalation in costs? Should election funding be supplied on a continuous basis rather than being tied to the election process?
 10. How should the autonomy of the political parties operating in the political system be dealt with? Should public funding administration intrude upon their operations? To what extent should this intrusion be allowed to occur?

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4.3 PUBLIC HEARINGS

The Committee held Public Hearings as follows:-

18 December 1990

7 April 1991

23 September 1991

28 October 1991

25 November 1991

9 December 1991

All hearings were open to the public.

4.4 OVERSEAS TRAVEL

The Booth Committee travelled on an overseas study tour in February 1991. Details of those individuals interviewed is as follows:-

Los Angeles

Robert Stern	Co-Director, California Commission on Campaign Financing
Dr Herbert Alexander	Director, Citizens Research Foundation University of Southern California

San Francisco

Nielson & Merksamer	(US law firm dealing in campaign legislation)
Greg Baucher	Staff Director, Fair Political Practices Commission
Joe Rencho & Lowell Finley	(Attorneys specialising in campaign finance legislation for Democrats)

Portland

Jack Graham	Director, Elections Division
Larry Bevens	Elections Manager, Elections Division
Vera Katz	Ex-Speaker, House of Representatives
Senator Glenn Otto	Chair, Senate Government Operations and Elections Committee
Michael Greenfield	Deputy Secretary of State
Gail Ryder	Administrator, Government Operations and Elections Committee
Dick Yates	Department of Revenue

Vancouver

Robert Patterson	Chief Electoral Officer of Victoria Australian Consulate-General
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Ottawa

Jean March Hamel	Special Consultant to Chairman, Royal Commission on Electoral Reform and Party Financing
Ron Gould	Assistant Chief Electoral Officer, Elections Canada
Guy Goulard	Executive Director, Royal Commission on Electoral Reform and Party Financing
Dr Peter Aucoin	Director of Research, Royal Commission on Electoral Reform and Party Financing
Lucy Pepin	Commissioner, Offices of the Royal Commission

Toronto

Donald MacDonald	Chairman, Commission on Election Finances
Warren Baillie	Chief Election Officer, Bureau du Directeur General des Elections
Pierre Cote	Chief Electoral Officer of Quebec, Chairman of the Commission de la Representation Electorale
Rob Jolicoeur	CPA Advisor
Politicians from major political parties	

Boston

John Cloonan	Director, Elections Division
Mary Tighe	Director, Candidate & Campaign Finance Division

New York

Jerome Koenig	Counsel to the Assembly Committee on Election Law (Representatives from Common Cause Magazine, lobby groups and Senators also present)
Carole Campolo	Deputy Executive Director, New York Campaign Finance Board
Thomas Wilkey	Director Election Operations, New York State Board of Elections

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Dean John Seerik	School of Law
Timothy J Brosnan	Former Counsel to Chairman, New York State Commission on Government Integrity

Trenton

Gloria Berry	Supervisor, Election Administration
Joan Haberly	Secretary of State
Fred Hermann	Executive Director, New Jersey Election Law Enforcement Commission

Philadelphia

Dennis Kelley	Director of Elections
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Baltimore

Gene Raynor	Director, Board of Elections
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Washington

	Financial Director of the Democratic Senatorial Campaign Committee
Charles Lenard	National Campaign Director, National Republican Campaign Committee
Chris Lamb	Minister for Congressional Liaison, Embassy of Australia
John Surina	Staff Director, Federal Election Commission
Larry Makinson	Research Director, Center for Responsive Politics c/- Australian Embassy
Bob McLaughton	Director, AFLCIO (Labour Union)

Los Angeles

Professor Daniel Lowenstein	Law School UCLA
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4 THE EVIDENCE

The following chapters seek to summarise the pertinent points raised by witnesses attending before the Committee at its public hearings

THE ISSUES

5.1 DONATIONS

5.1.1 What is a political donation?

Numerous definitions abound as to what is actually meant by the term 'political donation' and this was an area which occupied the Committee's attention.

The current, New South Wales legislation, the *Election Funding Act 1981* does not contain definitions for either political contributions or contribution. The only relevant definition is contained with s87 and assumes a prior knowledge of what a political contribution is by specifying those that are to be disclosed.

That is:-

Political contributions that are to be disclosed

87. (1) The political contributions to be disclosed under this Part by the agent of a party, group or candidate are gifts made to the party, group or candidate during the relevant period referred to in section 83, 84 or 85.
- (2) A contribution to a group or candidate need not be disclosed in a declaration if the contribution was not given for the purposes of the current election referred to in section 84 or 85.
- (3) A contribution to a party or group need not be disclosed in a declaration if the amount of the contribution is not more than \$2,500.

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- (4) A contribution to a candidate need not be disclosed in a declaration by the candidate if the amount of the contribution is not more than \$500.
- (5) Subsection (3) or (4) does not apply to 2 or more contributions, made by one person, body or organisation during any period of 12 months during the period in respect of which the declaration relates, if the contributions, in the aggregate, exceed \$2,500 or \$500, as the case may require.
- (6) Corporations that are deemed to be related to each other for the purposes of the *Companies Act 1961* shall be regarded as a single corporation for the purposes of this section.
- (7) For the purposes of this Act -
 - (a) a payment under this Act;
 - (b) an annual subscription of not more than \$200 paid to a party by a member of the party; and
 - (c) a payment made under the condition that the money not be used for electoral expenditure in relation to an election,

are not political contributions.

(s87 Electoral Funding Act)

The ICAC Report on North Coast Land Development whilst useful to this Committee in its deliberations notes loopholes and weaknesses contained in the law rather than suggesting legal definitions. The Committee recognises that this is the proper role for the ICAC to fulfil and hence turned their eyes to overseas experience.

They noted that many individuals felt the definition was a simple one to formulate. That is, a donation given to a politician. However, defining this concept legally has caused insurmountable headaches and heartaches for legislators throughout the world.

In fact, it seems that the tighter and more rigid the definition, the more carefully scrutinised it is for loopholes and the more imaginative the attempts to devise these loopholes.

The problem facing this Committee was to formulate a definition neither too limiting nor too broad which was comprehensive to all, and simple to enforce. A definition which does not result in unintended consequences.

Overseas Definitions

For the sake of argument it may be worthwhile to present a variety of definitions utilised in overseas legislation.

Alaska

2AAC50 313(a) refers to a contribution as:

"a payment, gift, subscription, loan, advance, transfer, deposit of money, services or anything of value made by a person or group for the purpose of influencing an election for State or municipal office or influencing the pass or defeat of a ballot proposition or question, and includes a personal contribution as described in 2AAC 50.316".

An expenditure made on behalf of a candidate or in consultation with a candidate is also considered to be a contribution.

Thus the definition also includes tickets for fund raisers such as dinners, raffles and other similar events and the granting of discounts or rebates generally available to the public.

Pledges are not viewed as contributions unless they are legally enforceable.

Contributions can also be monetary or non-monetary.

The only exemptions are volunteer workers provided that the volunteer's services are not donated by their employer and provided that the work is not professional services given to a campaign by a person who is normally paid for their services.

Services by accountants, bookkeepers or lawyers to help comply with filing responsibilities are not considered to be contributions.

Other exceptions include the hosting of morning teas of less than 25 people in private homes, non-monetary contributions of \$15 or less, and debts incurred by an organisation in communicating to its members the need to vote provided that no soliciting of contributions or advocating of ballot choices occurs.

Wisconsin

Wisconsin's definition is quite extensive and has also been reproduced in order to assist with clarity.

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11.01

*(6)(a) 'Contribution' means:

1. A gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a commercial lending institution made by the institution in accordance with applicable laws and regulations in the ordinary course of business), made for political purposes. In this subdivision "anything of value" means a thing of merchantable value.
2. A transfer of personality, including but not limited to campaign materials and supplies, valued at the replacement cost at the time of transfer.
3. A contract, promise or agreement, if legally enforceable, to make a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a commercial lending institution in accordance with applicable laws and regulations in the ordinary course of business) for a political purpose.
4. A transfer of funds between candidates, committees, individuals or groups subject to filing requirement under this chapter.
5. The purchase of a ticket for a meal, rally or other fundraising event for a purpose under subd. 1, whether or not actually in.
6. The distribution of any publication or advertising matter for any purpose under subd. 1 other than by a registrant under s. 11.05, or as provided in s. 11.29.
7. (a) A gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a commercial lending institution made by the institution in accordance with applicable laws and regulations in the ordinary course of business), or a contract, promise or agreement, if legally enforceable, to make the same, made by a committee for a purpose authorised under s.11.25(2)(b), or by an individual for a purpose authorised under x.11.25 (2)(b) if deposited in a campaign depository account.
- (b) Notwithstanding the foregoing meanings of "contribution", the term does not include:
 - (1) Services for a political purpose by an individual on behalf of a registrant under s.11.05 who is not compensated specifically for such services;
 - (2) The use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for a purpose under par. (a) 1 if no funds are raised with the knowledge of the host;
 - (3) An un-reimbursed payment for travel expenses made by an individual who on his or her own behalf volunteers the individual's personal services for political purposes;

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- (4) The costs of preparation and transmission of personal correspondence, provided such material is not reproduced by machine for distribution; or
 - (5) Compensation or fringe benefits provided as a result of employment by an employer to regular employees or pensioners who are not compensated specifically for services performed for a political purpose, and not in excess of that provided to other regular employees or pensioners of like status.
 - (6) The reuse of surplus materials or utilisation of unused surplus materials not exceeding \$400 in value at the time of original receipt, in the aggregate, acquired in connection with a previous campaign for or against the same candidate, candidates, party or referendum in connection with which the materials are, if by the same registrant previously acquiring the materials and previously reported by that registrant as a contribution under s.11.06.
- (c) Notwithstanding par.(a), when a committee or group not organised exclusively for political purposes receives a gift, subscription, loan, advance or deposit of anything of value and does not utilise it for political purposes, it is not a 'contribution'."

Thus the dilemma - how to word the legislation so it is concise and simple.

Public Hearing - 23 September 1991

Mr Ian Dickson, Electoral Commissioner recognised this problem and at a public hearing on 23 September 1991 he noted that for the purposes of definition there should be no distinction between cash donations or donations in kind.

Mr O'Grady queried this matter with Ms Libby Gladwin of the Australian Electoral Commission and asked how this would work as far as the declaring of volunteer labour.

Ms Gladwin stated that volunteer labour is excluded from their definition including professional volunteer labour. That is

"There is a proviso that if a person, is say, a lawyer and they volunteer their professional services as a lawyer then that is a gift. On the other hand, if that same lawyer stands around handing out how to vote cards that is volunteer labour and it is not required to be reported."

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Public Hearing - 28 October 1991

Ms Kirkby asked Dr Ernie Chaples from the Department of Government at the University of Sydney whether he felt that disclosure would result in a drying up of political donations. Ms Kirkby referred to arguments presented to the Committee (whilst on its overseas study tour) by both the Republican Party and the Democrat Party which refuted this allegation.

Dr Chaples agreed with the overseas arguments and also referred to the burdens associated with fundraising. That is

"I think the data supports that because there is now quite an extensive data base that we can compare over many years. I might say that there is a corollary to this and that is that candidates are incredibly bogged down with fund-raising. The successful senator that I told you about whose campaign I followed for several months spent two thirds of her time, not meeting people, but on the telephone raising funds.

I think that is a perversion of the election process, but she needed about \$6 million to run for senator and to win both the primary and the general election, and she raised it. She was someone with a very humble background who had no personal or family money put into her campaign. I think the interest of the contributors is in getting access and successful legislation is such that there are still an awful lot of people willing to contribute. While they may, for a certain period of time show their reluctance, they will still contribute and if they don't, all the better in many cases."

Dr Chaples also noted that if people were discouraged from making political donations as a result of disclosure then perhaps the political system is better for it.

Public Hearing - 25 November 1991

Mr O'Grady questioned whether political donations should in fact be illegal and asked Mr Zervos, General Counsel to the EROS, his opinion on this.

Mr Zervos' response was:-

"No, I do not [agree]. It seems that in this day and age it is a fact of life that we have to accept that political parties, like all other organisations, need funds to exist. ... I am not saying that they should

be outlawed; I am saying that there should be adequate provision to ensure that moneys that are coming into our political organisations are fully accountable for. We should be able to source where the funds have come from."

The Committee notes the difficulties experienced overseas in defining what is meant by the terms "campaign contribution", "political contribution" and/or "contribution". The Committee also notes definitions such as those included in the Texas Election Code.

That is:

1. ***Campaign contributions*** is defined as "a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure [referendum]. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution."
2. ***Political contributions*** is defined as "a campaign contribution or an office holder contribution."

(s251.001)

The Committee recommends that the Election Funding Authority monitor the definition of contribution as is currently defined in the Election Funding Act.

The Committee also recommends that the Election Funding Authority continue to monitor the legislation for any perceived or existing loopholes as far as this definition is concerned and suggest any amendment if and when it becomes necessary. The Committee recommends that a full definition of what is meant by the terms campaign contribution, political contribution and/or contribution be included in New South Wales legislation.

5.1.2 What are in-kind donations?

Overseas experience has led to the formulation of legislative definitions to ensure that in-kind donations are both sourced and disclosed.

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The rationale is that members of the general public should have the opportunity to know of all relevant influences upon the decision making processes of government. That is, the public will have the ability to identify potential conflicts of interest and more effectively evaluate government action.

The idea is thus the minimisation of graft and corruption. Corruption in this context being defined as anything which "deviates from the norm actually prevalent or believed to prevail in a given context" (Friedrich in Heidenheimer, 1990, p 15).

The questions to be addressed relate to the degree of corruption (ie. accepted, tolerated, condoned or institutionalised) and what is being corrupted.

The information gathered by the Committee whilst on its overseas study tour pointed overwhelmingly to the need to define and quantify the level of in-kind donations in order to avoid even the hint of graft or corruption in elected officials.

For example:

Portland

An in-kind contribution is a thing or service, other than money, which has a monetary value based on fair market prices.

In-kind donors must provide the candidate with their name, address, occupation or company name and work address.

Maryland

In-kind contributions must not exceed the relevant contribution limits (which vary according to whether the election is a primary or general and whether the donation is to a candidate or a candidate's committee). An example of the form required to be completed is attached. See Appendix 1.

Québec

Québec legislation details exactly what is not viewed of as a contribution. It defines the specific, the residual are contributions.

More specifically:-

87. Only an elector may make a contribution. He shall do so only in favour of an authorised entity and only in accordance with this division.
88. Sums of money donated to an authorised entity and services rendered and goods furnished to it free of charge for political purposes are deemed to be contributions.

The following are not deemed to be contributions:

- (1) volunteer work and the goods or services produced by such work;
- (2) anonymous donations collected at a meeting or rally held for political purposes;
- (3) amounts paid to a political party under any Act, and reimbursements and advances on reimbursements of election expenses contemplated in Chapter VI of Title IV;
- (4) a loan granted for political purposes by an elector or a bank, trust company or savings and credit union at the current market rate of interest at the time it is granted, or a guarantee granted by an elector as a surety;
- (5) an annual amount not over \$25 paid by a natural person as a dues of membership in a political party;
- (6) at the option of the official representation of an authorised entity, an entrance fee to a political activity or rally, where the fee is not over \$50;
- (7) air time on the radio or television or space in a newspaper, periodical or other printed matter made available free of charge outside an election period by any radio, television or cable broadcaster or any owner of a newspaper, periodical or other printed matter to authorised political parties, provided he offers such service equitably as to quality and quantity to the parties represented in the National Assembly and to the parties which received at least 3% of the valid votes in the last election;
- (8) transfers of funds between
 - (a) the various authorised party authorities;
 - (b) an authorised party and any of its authorised party authorities; or
 - (c) an authorised party, any of its authorised party authorities and the official agent of an official candidate of the party.

Ontario

The legislation in Ontario defines in-kind contributions under the branch of contributions.

That is

"contribution" does not include,

- (a) any goods produced for any political party, constituency association, candidate or leadership contestant by voluntary unpaid labour,

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- (b) any goods for any political party, constituency association, candidate or leadership contestant by an individual voluntarily, so long as such individual does not receive from his or her employer or from any person, corporation or trade union pursuant to an arrangement with the individual's employer, compensation in excess of that which he or she would normally receive during the period such service was performed, and
- (c) any moneys, goods or services solicited by or donated to a political party, constituency association, candidate or leadership contestant for purposes other than the purposes set forth in subsections 10(1), 11(1), 14(2), and 15(1), respectively; ("contribution").

(Ch 33, 51(1)).

Public Hearing - 23 September 1991

Mr Dickson, when cross examined by the Chairman, agreed with the Chairman's comments that the legislation, (as it currently stands) neglects to provide any guidelines to determine what are in-kind gifts.

Mr Dickson maintained that the only exemption that he could see would be if a minimum threshold was established for disclosure - perhaps with a consumer price index variation built in.

Ms Kirkby reiterated her point that

"If somebody gives something in-kind to a candidate, either television advertisements or newspaper advertisements, they are, in fact, giving them cash so what is the difference between something in-kind being so declared and actual cash being declared?"

Mr Dickson agreed that it really was the same thing and it was merely a matter of record.

The problem as pinpointed by Mr Turner was not the question of disclosing minor donations (free sandwiches and cups of coffee) but how the line is drawn between a professional donating his/her services, an individual's time being donated by a company and the provision of minor free items.

Mr O'Grady agreed and he said that

"I think that we are really moving away from the essence of the issue that is at hand. I don't have a problem with non-disclosure of mandarins or cups of coffee but there is a former independent member

of this parliament whose electoral funding authority return I always found some interest in because I don't believe that services which were provided by, particularly advertising type of people, were in fact, recorded because there was no actual cost included.

That seems to me to be the sort of area that we should be looking at. Not whether someone goes and puts a leaflet in a letter box or delivers a box of "how to votes" or something, but professional type services which are being delivered to that candidate at no cost."

Similar questions were put to Ms Gladwin and she stated that the federal legislation requires gifts in kind to be disclosed.

As Ms Gladwin said

"Persons receiving a donation of a gift in kind are required to put a value on it and show on their returns a description of the gift and the value that they have put on it so that we can then ascertain whether that is a reasonable valuation or not."

She continued:-

"Details of donors are not required to be shown if the gift is worth less than \$1,000 or more to a party or \$200 to a candidate, and gifts that are made for administrative purposes under the Act as it currently stands are not required to be disclosed, but they have to be designated by the donor as being for non federal election related purpose."

Public Hearing - 25 November 1991

A number of questions were addressed to Mr Zervos and Mr Della Bosca on this issue. Mr Zervos' evidence agreed with the principle of disclosure while still acknowledging the existence of grey areas.

That is:-

"There is black and white and clearly there will be many grey areas. One could argue that they should or should not be declared. It is really a matter of formulating the best possible rule to deal with the situations you really want to capture."

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Mr Della Bosca's evidence was detailed and can be quoted in total.

"The service in kind argument is the hardest one to answer. When you are dealing with corporations, potentially trade unions and, for that matter, other community type organisations, whether they are incorporated or a substantial association or organisation—whether it be the National Farmers Federation or the National Roads and Motorists Association—such a discussion can have some real form. Whoever chooses to involve themselves in directly assisting the campaign of an individual candidate or candidates, including Independents and those representing a party, will be providing some services in kind. The real difficulty is deciding where you draw a line. We still have substantially a voluntary political process in this State and throughout the country. Much of the work is still carried out by honorary people. All secretariats of the three larger parties are relatively small entities; that is, the number of professional party officials is relatively small compared to the overall membership.

I am aware of members of the Labor Party who would give up the equivalent of thousands of dollars in terms of potential for income by taking their annual leave, long service leave or time off without pay to work in a campaign. I am sure that the same would apply to the Liberal and National parties, to some Independent candidates and members and to the Australian Democrats. You start to make people account for what is effectively their private decision to participate in the political process. Provided that you could draw a boundary around such activities, I have no objection to setting a figure and forcing some kind of disclosure. Again this is on the verge of intruding on what is effectively a private matter...

While I am not sure that members of other political parties are easily able to come to grips with the affiliation between the trade union movement and the ALP and the potential exchange of resources or whatever, it is also important to remember that in the context of trade unions, or potentially any other organisation wanting to canvass on behalf of a political party, they may be doing so in their own interests, not just in terms of getting the political party they prefer into office or maximising that party's vote, but also they may be doing something relating to their own public interests concerns. It may happen to be that they are using the campaign. Without willing to be direct, I can cite a hypothetical example. The Teachers Federation may have a view between the two choices of the major parties. It may have any

number of subsidiary views about minor parties and Independents. Participating in the campaign for it may revolve around not the election campaign outcome but getting across the point of view it wants to get across. This is a borderline instance of organisations putting resources into campaigns."

The Committee recommends the explicit formulation of a definition of in-kind donations in the legislation.

The Committee recommends that in-kind donations be declared and a monetary value based on market rates be determined for all in-kind donations.

The Committee recommends that disclosure of in-kind donations only occur if the value of the donation is in excess of \$1,500 or the aggregate value of the donation over one year is in excess of \$1,500.

The Committee notes that many individuals donate their time to political parties.

Subject to recommendation 15, the Committee does not classify this as an in-kind donation and does not wish to discourage political participation by individuals nor encourage discrimination on political grounds.

If however employers direct employees or agents to work or assist in campaigns then the Committee views this as in-kind donation. The Committee recommends the explicit formulation of a definition of in-kind donations in the legislation.

5.1.3 Thresholds

The question as to whether there should be a minimum/maximum figure on the size of donations which need to be declared was raised by a number of committee members.

Section 87 of the *Election Funding Act 1981* sets out the details of the legislation as it currently applies:-

Political contributions that are to be disclosed

87. (1) The political contributions to be disclosed under this Part by the agent of a party, group or candidate are gifts made to the party, group or candidate during the relevant period referred to in section 83, 84 or 85.

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- (2) A contribution to a group or candidate need not be disclosed in a declaration if the contribution was not given for the purposes of the current election referred to in section 84 or 85.
- (3) A contribution to a party or group need not be disclosed in a declaration if the amount of the contribution is not more than \$2,500.
- (4) A contribution to a party or group need not be disclosed in a declaration by the candidate if the amount of the contribution is not more than \$500.
- (5) Subsection (3) or (4) does not apply to 2 or more contributions made by one person, body or organisation during any period of 12 months during the period in respect of which the declaration related, if the contributions, in the aggregate, exceed \$2,500 or \$500, as the case may require.
- (6) Corporations that are deemed to be related to each other for the purposes of the *Companies Act 1961* shall be regarded as a single corporation for the purposes of this section.
- (7) For the purposes of this Act -
 - (a) a payment under this Act;
 - (b) an annual subscription of not more than \$200 paid to a party by a member of the party; and
 - (c) a payment made under the condition that the money not be used for electoral expenditure in relation to an election,

are not political contributions.

Public Hearing - 23 September 1991

Mr Dickson stated that, in his view:-

"I wouldn't see any exemptions from disclosure other than if you were to attach a minimum amount that didn't need to be disclosed. Such minimum amount would have some provision for it to increase with a CPI index. One assumes that the candidates contribution to the campaign fund is disclosed by its omission to a certain extent. It would probably satisfy the public if that was then put in print so it would concur that the candidate's contribution to any campaign would finalise that."

Mr J Turner followed on with this point and stated that the problem to be addressed was how this level would be quantified. That is:-

"I must say, I was going to follow on that. How would you quantify it now, what would you see as a low point, say, in non-pecuniary assistance as against a significant contribution?"

Mr Dickson's response was:-

"I think that is what you have got to decide - I am not suggesting that you put a monetary value on it, I am suggesting that you just disclose it. That might be one of the provisions which authorities can have. Basically the public may not be interested to know just monetary amounts, they may be also interested in who is, perhaps, a supporter so it might be decided that one way of getting out of it, rather than have a paper war started, and I am the last one that wants to establish a bureaucracy for this thing, it is just a commitment under the donation provisions, services provided by Joan Sutherland or services provided by such and such a company providing whatsaname and there is no monetary value provided."

The federal legislation, as detailed by Ms Gladwin sets substantially lower threshold limits.

Reverend Nile questioned Ms Gladwin on this and received the following answer:-

"There are no plans to increase those limits at the moment. The committee I am sure is aware that there are plans for major changes to disclosure provisions to the *Commonwealth Electoral Act*. It is in a bill that is now before a senate Select Committee and that will make substantial changes to the disclosure provisions as they currently stand, but increasing the threshold levels is not in that bill, so they would remain at \$1,000 and \$200."

Ms Gladwin also cautioned the Committee about the dangers in changing the ceilings too frequently.

"When you start changing them regularly I think people find it very confusing. Our legislation has been in effect since 1984 and I think most of the people that are dealing with it all the time are well aware of what the threshold amounts are for disclosing the details of donations, and it is something that most people are reasonably comfortable with, at least they know what the limits are."

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If you start changing them every 12 months or 18 months or every election even it does tend to make things more confusing for people who are actually completing the returns."

The Chairman queried whether she thought there should be a maximum amount, a ceiling, placed upon the total amount a candidate can receive.

Ms Gladwin's response was that:-

"No, I don't think there should be a ceiling. I don't see the need for it at the moment. Anyone who feels that they can afford to give a million dollars to a political party, good luck to them."

Public Hearing - 28 October 1991

Dr Chaples' evidence took up this point of large donations and queried why, in fact, enormous amounts of money are given by companies to political parties.

DR CHAPLES:

"On the question of limiting the maximum donation to campaign, I believe if effective disclosure of donations can be brought about, the problem may be solved. Otherwise I think all we do is open up another area where people will try, if they want to give 10 times the maximum donation, they will try to find a variety of other ways to go about doing just that. Then we need to have royal commissions with extraordinary powers in order to investigate those sorts of vehicles and it just reflects badly on the process.

I think we are now reaching the point where people just start to wonder why such enormous amounts are given by particular organisations. In some cases these organisations do not have such a favourable public image. My experience is that smart organisations that want to give lots of money find ways of breaking that money up in such a way that it doesn't become obvious they are giving so much - there are just too many vehicles to do that so, again, I don't think it is worth hiring very expensive lawyers and accountants in order to try to prevent somebody from giving what someone might define as an overly large contribution ultimately, it is too easy to get around that and the expenditure of time and energy that is involved in that is not worth it."

DR MACDONALD:

"I just wanted to pursue the question of the limitation of donation size and if I can just quote, there was a sentence from the ICAC report in 1990 that says:-

"So long as substantial donations can be made to political parties or candidates without public disclosure they can be used to purchase influence."

We need to compare that statement with your comments earlier about the fact that in the United States, even with disclosure, those who give public donations can buy influence. So, there appears to me that disclosure may or may not help us, that, in fact, it may only be through limitation of the amounts of those disclosures that we can avoid that influence. So, perhaps a bit of disclosure but also a limitation of sizes, could you comment on that?"

DR CHAPLES:

"I think on the whole I agree with you. I think in an ideal world that we would like significant actors not to try to buy inordinate influence. The problem is defining that and then after in enforcing that concept of unacceptable influence.

The definition will be very controversial I am certain. People on your side of the table will have much smaller figures in mind than people at the rest of the table will have in mind because they put on different kinds of campaigns and respond to different demands. You don't have to pay major television advertising budgets, for example, and there is a big difference there. The other thing is that I am very sceptical, to pick up Mr O'Grady's criticism of me, I am very sceptical that even with quite rigid and expensive enforcement procedures that we can find ways whereby an organisation that wants to channel very large amounts of money into a particular political candidate or campaign can be prevented from doing it.

Those potential influence buyers will split it up in a variety of ways and they will call it a wide variety of things and there is no way of finding where it comes from or, ultimately, they will just buy enough chances in that bottle of whiskey in the Town Hall foyer and how can we ever get at that? There just V any way to get at that and for us to

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chase our tail endlessly trying to do that seems to me to be a terrible waste of the taxpayers money. ...

On the very much more difficult point that Dr Macdonald put about putting limits on maximum donations within an election period, the idea has a certain appeal, but the practicality of administering it and the ease of getting around makes it so difficult that I am not inclined to support it. I think it encourages deviousness and what we need to stick to is a notion that it is all out there, that every cent that you and your candidates spend is out there and every cent that the Labor Party and its candidates and the Liberals - is open for examination.

Despite the reluctance, for example, of the Liberal Party to name its donors from the very beginning under this Act, it has, been very open in showing that it spends huge amounts of money on state political campaigns, way more than anybody else, and it is right there on the public record to look at. I think that is the really important fact."

Both Mr McGuinness and Mr Dempster agreed to the proposition that there should be no limit to the amount of donations a candidate can receive.

MR McGUINNESS:

"I don't think so, because how would you determine what was the appropriate limit. I think in some cases if the government were, for example, proposing to interfere in some basic liberties, then it would be objectionable to limit the extent to which people could contribute to oppose that."

MR DEMPSTER:

"I can't see any reason for any limit. Either way there is an argument about donations lower than, say, \$200 shouldn't be declared. You would have to look at the administrative procedures, the range of bureaucracy that would have to be set up to establish every declaration. There might be an argument for saying, donations below \$200 forget about it because it is just too cumbersome a procedure. But as far as maximums, no."

However, Mr Zervos of the ICAC disagreed and said that the North Coast Land Development report does

"... discuss substantial political contributions. What you say is correct. The more that is paid, the more likely that suspicion may be aroused as to its purpose for payment. Placing a ceiling on political donations may assist in controlling the problem, but people may break up the payment to avoid that particular restriction."

Another part was well illustrated by a discussion between members.

MR O'GRADY:

"What about the labour involved in letterboxing leaflets?"

MR ZERVOS:

"A person providing his service? That is part of the everyday political campaign, people volunteering their assistance."

MRS EVANS:

"What if a person volunteers to drive a candidate around Broken Hill and pay the petrol and accommodation expenses?"

MR ZERVOS:

"You will have grey areas. There is black and white and clearly there will be many grey areas. One could argue that they should or should not be declared. It is really a matter of formulating the best possible rule to deal with the situations you want to capture."

Senator Sowado's evidence before the Committee disagreed with the idea that the administrative burden would be a logistical nightmare and she stated that

"I would point out again the issue that parties and candidates have had to set up a regime to comply, an internal party regime to comply, with the existing funding and disclosure laws that are in place both in NSW and federally.

So, to extend the disclosure mechanism to cover all income would simply extend the organisational processes already in place."

The Committee recommends that the minimum threshold for a contribution to a party or group to be declared be raised to \$10,000.

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The Committee recommends that the minimum threshold for a contribution to a candidate to be declared be raised to \$1,500.

The Committee recommends that the Election Funding Authority have discretion to adjust this in line with inflation.

The Committee does not recommend the setting of any ceilings on the amount of money a candidate may receive in the form of political contributions.

5.1.4 Aggregation

Aggregation is the term used to

"Indicate when a candidate or committee has to report the name of an individual contributor. If a contributor gives a candidate \$50 on one date and \$75 on another, he has contributed an 'aggregate' of \$125 and the contributor's name, address, and place of employment must be reported by the committee receiving the contribution. If the first contribution has already been reported on an earlier report, only the amount of subsequent contributions needs to be itemised. The aggregate total should be reported in parentheses (\$125) following the itemised amount of \$75.

(South Dakota, Campaign Finance Reporting Guidelines 1992, p 7)

The Committee notes that overseas legislation refers to this concept regularly, for example Wisconsin requires that:-

- *(a) An itemised statement giving the date, full name and street address of each contributor who has made a contribution in excess of \$20, or whose contribution if \$20 or less aggregates more than \$20 for the calendar year, together with the amount of the contribution and the cumulative total contributions made by the contributor for the calendar year.
- (b) The occupation and name and address of the principal place of employment, if any, of each individual contributor whose cumulative contributions for the calendar year are in excess of \$100."

(Wisconsin Election and Campaign Laws 1991, § 11-06)

Campaign legislation also refers to this concept of aggregation in the *Canada Elections Act 1990*.

The relevant section (228(e)) states that any donor who makes a

"loan advance deposit, contribution or gift for the use of a candidate the amount of which exceeds one hundred dollars or that made loans advances, deposits,

contributions or gifts for the use of the candidate the aggregate of which exceeds one hundred dollars ..."

The Committee asked questions relating to aggregation to a number of the witnesses who testified at public hearings

Public Hearing - 23 September 1991

Mr Jeffery asked Mr Wasson for clarification of the existing situation and in particular he asked Mr Wasson how he would respond to group donations which are under the threshold as defined in the legislation.

Mr Wasson's response was:-

"If a company was to insist, say a large firm of solicitors was to say every one of the partners was to contribute \$200 to a particular party and they contributed singly, there would be no need to disclose. If the large firm of solicitors was to aggregate all the donations from various partners and was to present a cheque to a particular party for \$5,000 then that firm of solicitor would be shown as the donor even though it might not be out of the funds of the actual company, the firm of solicitors. That represents contributions of X amount of dollars for X number of partners in that firm.

To be able to do that we are getting into an area which I see is covered later on in the questions about the power of the authority to trace the real source of donations through an organisation or incorporated running corporate. To answer your question, there would be no way under this legislation if the employer or a firm was to persuade their employees to donate a certain amount of money to a particular campaign and it was done singly, then that would not attract the disclosure provisions of that - - it would attract the disclosure provisions but not the identifying of the donor."

Mr Dickson also answered this question and said

"The aggregation question I think you might have touched earlier too, Mr Chairman, I don't think we answered it. There seems to be, to me, a need to overcome that sort of problem again and your provisions may overcome that to a certain extent but, of course, when you are getting into the election period again you are in a situation where you might be giving a series of donations over a period of days or something or

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other. I would see that there would need to be some sort of an offence to prevent that."

The Chairman continued questioning in this line and referred to corporate aggregation. He stated:-

"Aggregation does work like for land tax purposes, your holdings are aggregated no matter how many companies they own in the land as long as there is a certain commonality in the shareholding or directorship and I suppose that is what you would have to address here. If you are going to have an allegation privilege then you have to have the same sort of requirements as you have in something like the *Land Tax Act*. Is that what you would think?"

Mr Dickson agreed. He said

"Yes ... a series of holding companies could make donations, any number of companies could make donations, which would be quite large in aggregate but would escape the disclosure provisions and, yes, the authority would need to go behind to see who the shareholders of the company were and have some criteria as to what constituted a commonality sufficient to warrant disclosure."

Mr Jeffery also pointed out that in California, employer details must also be included on disclosure forms so that aggregation can be easily quantified particularly in the scenario where one hundred donations from the one union/company/organisation are received. It could be a mere coincidence or it could be a case of a company apportioning its donation to its employees and their having the individual pass on this contribution to the candidate.

This scenario touches on issues raised in 5.1.5.

According to Mr Dickson

"This was a ploy that Nixon refined in the 70s and it brought about the enquiry into the system in America in that that system was adopted that marketing people from various companies were assigned from the company to work for the republican campaign. It is something that the authority would need to have power to ascertain whether or not this sort of thing was happening, you are getting the firm of solicitors or the floor of barristers who are paying a certain amount and then, say, the Bar Association or the holding company for the chambers also

contributed an amount which does not reflect truly the amount that those particular who are participating have donated."

Rev Nile's comments on this are reproduced as well.

"I am just wondering whether we could turn the obligation around to put the onus on the donor to have an offence which said there is an offence if any attempt is made to conceal the origin of any donation over a certain amount and even if that type of wording was printed on the receipts of the parties or organisation so when the receipt goes back for that amount of money the person may like to clarify the origins of the donation?"

MR DICKSON:

"In other words, place the onus on the donor?"

REV NILE:

"On the donor. If they are party to some, almost like, conspiracy to conceal the origin that that is an actual offence under the law. They would be nervous as to whether you might find out and not do it but at the moment it is not really an offence, is it, you could argue?"

MR DICKSON:

"What is that? If you split up the donations through a number of people and so on it is not an offence."

Public Hearing - 25 November 1991

Mr Zervos also had a discussion as to the splitting of donations which is also reproduced in total:

MR ZERVOS:

"To be consistent with what I have just said, I would have to say it should be complete disclosure. From recollection we had an incident during the course of the North Coast report where we found that a particular donation had been split up. Having a limit can sometimes create problems where for the sake of convenience people split up a donation to avoid the provisions."

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MR JEFFERY:

"Do you say everything, even say \$10, should be disclosed?"

MS GARDINER:

"That donation was not split to avoid disclosure. It was split to provide assistance to various candidates, who then reported it in their individual returns."

MR ZERVOS:

"The fact is that a donation was split up. Whatever the reason, the splitting of a donation is something that could create problems in the future, when one has to account."

5.1.5 Third Party Donations

Third party donations, a topic which was also entwined with third party expenditure, was an area which absorbed a great deal of the Committee's attention.

Public Hearing - 23 September, 1991

The Chairman asked Mr Dickson his opinion on this topic and Mr Dickson responded by saying that:

"I'd find it difficult to support in the context of the legislation where it is designed there to provide funding for the benefits of disclosure, I find difficulty in having a concept whereby an outside organisation outside of that is required to disclose."

Mr Dickson also said (after being asked a question by Mr Turner) that:

"This is again the same path which I am leading to. It is in the same area, Right to Life or Greenpeace set them up. They [third parties] might get in or call for a flood of donations to support a particular campaign during an election. They are going to get certainly donations come in of certain value."

Mr Dickson said that so far as disclosure of third party donations is concerned:

"I see a reason that they should be disclosed. I see a reason for them to be disclosed. I see a difficulty in the present legislation of being able to introduce it because it is cutting another path in the legislation which is, as I say, there is no rewards for so doing."

Mr Johnson queried the jurisdiction if donations come from interstate or inter-territory and Mr Dickson responded that there really was no jurisdiction.

The other related problem to this topic was amplified by Mr Dickson in his testimony and he cited the situation where a third party donates funds to a company which is established or incorporated by a particular political party. As far as the declaration of contributions is concerned, all that is required to be disclosed is the lost donor, not the original source.

Mr Dickson told the Committee that this angle is difficult to investigate and the EFA is virtually hamstrung by the existing legislation and has no power to investigate who is behind this corporate veil.

As to the federal side of this dilemma, Ms Gladwin told the Committee (in response to a question by the Chairman) that:

"Any third party that incurs expenditure of \$200 or more on expenditure for a political purpose, which is defined in our act, as required to furnish a return showing what they spent on the campaign and if they receive donations to incur that electoral expenditure they are required to furnish return of details of gifts received as well."

Ms Gladwin also made a salient point when she stated that:

"We are probably in a better situation than the states in that we do have Australia wide powers and we don't have the problems that states would have with sort of things going over borders and things like that. Our biggest worry is people going offshore and sort of extra territorial, if you like. But it seems to me that the commonwealth legislation at least has a better chance of working as far as these third parties are concerned because we don't have the problem with inter state and inter territorial boundaries and we can require someone in Tasmania to furnish a return in the same way as we require someone in the Northern Territory or Western Australia to furnish a return."

She continued:

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"My understanding is that as far as the Commonwealth Electoral Act is concerned any donation that a candidate or a political party receives is disclosable no matter where it comes from. The question is whether we could require a third party who was domiciled overseas but making substantial donations to political parties in Australia to furnish returns under our act. We could try, but when push came to shove I don't know whether we could actually force them to do it."

Rev Nile inquired whether the same difficulty in tracing donations could occur if a multi-national company made a donation through an overseas branch rather than through a New South Wales branch. Ms Gladwin agreed that problems would arise (if this multi-national company was acting as a conduit) in ensuring compliance with the federal legislation.

The Chairman canvassed the level of returns by third parties and asked Ms Gladwin whether these third parties do put in their returns as required by the legislation.

Ms Gladwin said that the majority of third parties do put in their returns but only after being advised of their obligations to do so. Ms Gladwin that in the majority of cases the AEC has to write and advise them of their obligations and said that after the 1990 elections, the AEC received in the vicinity of two hundred returns from participants who were not parties or candidates.

As for solicitors trusts Ms Gladwin said:

"Solicitor's trust accounts are the sorts of things that always make me prick up my ears. Whenever we see a firm of accountants or solicitors listed as a donor on the return the first thing we do is write back to the agent that furnished that return and say, "Could you please confirm that this donation was from the firm and not from the firm acting on behalf of somebody else", and I would say in probably a third of the cases where that has happened, the party has actually come back or the agent has come back and said, "No, the donation wasn't from the firm of solicitors" or whatever it was, made on behalf of one of their clients and they then provide the name and address of the client or the true donor, if you like, which is what we are really trying to get to, the true donor."

Ms Gladwin rejected the idea that people who donate should also be required to file returns and said that the third party provisions would probably catch up with individuals acting as collecting agents (or to use the overseas term -

bundling). She also said that if the AEC was aware of individuals making large donations then the usual course of action was to write to these contributors and ask them if they are donating out of their own pocket or whether they are acting as collecting agents.

She concluded by observing that:

"I suppose what it boils down to in the end is a question of economics and efficiency, whether you are putting so much effort into trying to stop something that is not really happening in any big way anyway. It can be a fairly expensive exercise in trying to police something like that, and depending on what sort of legislation is drafted you could be looking at putting big teams of people on to police this sort of thing and find that you might get one or two breaches over a disclosure period. Whether it is economical to do it or take the chance that a couple of thousand dollars is going to slip through the net. I guess that is a political decision, not one that I would want to be making."

Public Hearing - 28 October, 1991

Mr Dempster responding to Mr Jobling's question on whether there is a need to identify source donors said that:

"The source donor should be identified through the necessary declaration. Obviously, the spirit of it is that there be honesty within the system. As has been described, you can't legislate for honesty particularly, but it would obviate the secrecy that is apparent that has brought is into disrepute."

Mr Jeffery pointed out the difficulties in disclosing and said:

"Mr Dempster, wouldn't it just mean though if you have full disclosure that the independents or the parties or the candidates will try and find a way to shaft that anyway, whether it is by using a third party or some friends of whoever and therefore we are getting back to where we all started from, all they are going to do is camouflage it in a more devious way. And secondly, I as a candidate, could go into an election, raise all this money, have this excess after, knowing full well that I am not going to stand in the election after and therefore that the whole thing becomes a bit of a farce?"

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Mr Dempster agreed although he did say that this is not to say it is not worth doing.

Public Hearing - 25 November, 1991

Mr Zervos was also asked questions along this line and said that:

"At least we would clean up our own backyard and maybe set the standard for others to follow."

Mr Zervos declined to comment on the conduct of third parties during political campaigns and stated that it was beyond his area of knowledge.

Mr Mills asked Mr Della Bosca about the sourcing of interstate donations and asked him how he best thought it might be achieved.

Mr Della Bosca said:

"I will have to answer that question hypothetically. In order to attack the question we have to look at the true source of a political contribution. For example, if the Queensland branch of a certain political party had a fund which attracted donations and those donations were paid into that party's State branch at a subsequent point, what would be the true source of that donation? If that party collected a pool of money, be it \$100,000 or \$50,000—it could have been collected in one dollar amounts from 50,000 people or from one donor—there could be a significant time frame between the payment of the donation and the time the party actually uses it. I wonder about the real applicability of the true source of donations. What we are getting back to is why we are talking about disclosure at all. It is all about avoiding any public doubt about the linkage between donations and political platforms, policies and attitudes. That is really the question at hand. The issue of blind trust is an issue that we addressed in our original submission. Many potential mechanisms involve blind-trust type arrangements where people do not know the source of donations that they attract. Even the controversy about donations has largely been in that framework, that is, whether members of Parliament or party officials knew about the real source of donations and what relevance that had to the appropriateness of the donations being received."

Mr Della Bosca also pointed out the need for mutual legislation between the states and the federal government as means of control.

Mr Merton also explored the situation where an unincorporated association is involved:

"We can get into a different situation where you have an unincorporated association or group that have got not real legal status at all, apart from they use the expression group or friends of, or something like that. This is a real problem. For example you have a group or organisation saying that they are friends of Harris Park. The real problem you encounter is how do you identify who is behind this group. Do you think as far as disclosure is concerned that when a donation is made to, say, friends of Harris Park—which I do not believe exist anyway—that the people who make the donation should be compelled to say who is in the group, who are the leaders of the group, their address and other details so that we can identify who actually this group is?"

Mr Della Bosca responded:

"I think the legal tradition is that the person that enters into any legal arrangement on its behalf, whether it be contracting to purchase something or donate something or any kind of transaction, then the person who actually implements that transaction is the person who is accountable."

Mr Merton agreed and said that the individual would be personally liable but the question he was asking was rather how to identify those members behind this group.

Much discussion arose involving Dr MacDonald, Mr Merton, Mr O'Grady, Mr Turner and Mr Jeffery and the general conclusion reached as Mr Turner put it is that:

"Is there not some form of protection in the sense that if you got the donation from the friends of Harris Park, you do not really know who they are, so therefore if there is an imputation that your donation is going to help you can't help them anyway because you do not know who they are."

And secondly, as Mr Jeffery put it:

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"It could be used to embarrass you. It could be George Freeman and associates or X-rated videos and they will bring it out during the campaign and say "We have given them so much" to deliberately put you in a situation where you are then embarrassed, so it can work in two ways."

Mr Della Bosca responded by saying that:

"I think on the issue of people deliberately giving political donations to embarrass people, I cannot think of a specific example of that but one of the issues that I think at least two of the major political parties have run into difficulties with in both the State jurisdiction and the Federal jurisdiction is this problem of the ethical management of contributions. So, to take the view that party officials have to know who is giving donations but the politicians ought know is one way of protecting that party but it does not protect it from the allegation of corruption. It simply protects it from the substance of corruption and in terms of a political party the most important thing—perhaps not the most important but a very important thing is to also be protected from the perception of corruption. So, while parties might have these mechanisms internally to say, "Well, X,Y,Z politicians will not know we have X,Y,Z amount of money from a particular donor or donors" which might have some sensitive business with the government of the day or the potential government-of-the-day at some point in time, that protects the party from corruption but it does not protect it from the perception of that and in fact may advance the perception of that if it becomes a matter of public inquiry, so you are in a trap as a party official and also you are in a trap as a politician that is it better to know or not to know who is giving the donation."

Public Hearing - 9 December, 1991

Mr Maher's evidence to the Committee on this subject can be quoted as follows:

"I think they should come within the same parameters as what political parties do. Not that they are necessarily doing it on the basis all the time of support for particular candidates. It may well be a view of theirs that what happens, is coincidental with what a political party is putting forward. They certainly do participate in the process and they don't only participate in the process during elections either. So I think if you are looking at a whole regime of disclosure for political parties

over a period of time, you may need to look at what disclosure needs to take place for say, whether it be the Conservation Foundation or a business council or the Teachers' Federation over the same cycle of the election period because they, in fact are participating in that process all the time and not just at election time.

There are all sorts of problems with third parties and I allude to some of them in the paper in the sense that in Canada where they basically - in Quebec, they have banned the third parties out of the process for the election period which is 60 days. But even that doesn't stop people participating in the process beforehand.

I think they would have to come within the same rules and guidelines as would apply to a political party."

The Committee recommends the inclusion in the legislation of a definition of what is meant by the term third parties.

The Committee recommends that any third parties that incurs expenditure in excess of \$1,500 must file a return indicating whether this money was obtained by way of donations and if so, the true source of these donations.

The Committee believes it would place an excessive administration burden on the political parties, which are overwhelmingly volunteer based, to have different disclosure levels for the State and Federal systems.

The Committee recommends that if the amount of money to be spent is comprised of membership fees then all that is required to be disclosed is the number of members times the membership fee.

The Committee respects the rights to privacy members of an organisation may have but finds that if an organisation wants to compete in the political arena for public attention it must comply with the normal requirements for political disclosure.

5.1.6 Anonymous Donations

The question of how best anonymous donations can be regulated caused considerable controversy because of the difficult involved with policing any legislation on this matter. (See also 5.1.7)

Public Hearing - 23 September 1991

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For example, Mr J Johnson referred to situations where goods are sent anonymously to a campaign office. Mr Dickson's response was that as the donations are anonymous candidates are not allowed to accept them.

Further questioning by Mr Johnson point out the difficulties inherent in sourcing donations when these donations are either very small amounts or else donations in-kind.

For example:-

MR JOHNSON:

"You get stupid situations where goods will arrive at the party office of the campaign office. Where somebody has sent you 10 cases of cherries and you don't know where they came from."

Mr Johnson also pointed out difficulties in identifying unidentifiable sources and stated that any attempts to identify the sources of anonymous donations was a contradiction in terms.

Ms Kirkby also noted that donations really do not need to be anonymous.

"It does not need to be anonymous. As long as something is anonymous, people begin to feel concerned about it. There is nothing wrong in giving money to a political party, absolutely nothing."

Mr O'Grady affirmed this statement and pointed out that as far as the donor is concerned he/she has no rights to privacy.

Mr J Johnson disagreed and maintained that:-

"I would have thought that in a democracy if you wanted to give \$500 or \$600 or more whatever it is to a political it is your business."

Rev Nile pointed out the difficulties when a donor wants to conceal the identity for personal reasons and he gave the example of a spouse donating to a party and not wanting the other spouse to know of this donation. rev Nile suggested that the Electoral Commissioner could maintain a register of these donations so that the money was still reported yet it was not on publicly available record. The federal legislation was explained by Ms Gladwin and she stated that the federal legislation prohibits anonymous donations over \$200 to candidates and over \$1,000 to political parties. She also mentioned that there

are no exemptions to this threshold - it applies to donations in kind as well as to cash donations.

And as Mr O'Grady asked

"If the hypothetical brown envelope appears, what is a candidate or party supposed to do with it?"

The response by Ms Gladwin is that

"It is a debt due to the Commonwealth."

The problem however was pinpointed by Mr Jeffery when he stated that there is nothing in the federal legislation to prohibit a candidate receiving multiple anonymous donations of \$199. The amount falls under the threshold for declarations and is not aggregated as each donation could be from different individuals.

Ms Gladwin noted that it was not a major problem concerning the AEC in terms of efficiency and economics and in her experience there wouldn't be more than nine or ten anonymous donations in the last three federal elections.

Mr Murton highlighted the temptation facing recipients of anonymous donations. That is

"In reality you wouldn't really know how many anonymous donations people have made because in a lot of cases they would be for \$200 for a start and there would be a strong temptation I gather for someone who was getting \$200 to come back with more tomorrow, ask your brother to come back?"

MS GLADWIN:

"That is always possible but if you want to go to extremes you could say that taking around the hat or the bucket at meetings and so on is a whole series of anonymous donations but I think you will find that there are very few times when you find \$100 notes floating around in those sorts of things."

Dr Macdonald highlighted the cost-benefit associated with this and said

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"This question is actually quite important because the scale of the anonymous donations needs to be assessed because it has to then be measured, the problem has to be measured, against the cost of addressing that matter and, in fact, we are getting some quite important information here that, in fact, somebody who has had three commonwealth elections to deal with says that the anonymous donations doesn't appear to be a big problem. I guess that is something very important that we have to take into account because the actual cost for pursuing that any further could be absolutely enormous."

The Chairman queried the power to undertake spot audits in respect of anonymous donations and Ms Gladwin said that

"If there is a strong undercurrent, if you like, of anonymous donations coming into the parties and the candidates and the people that we will be spot auditing we should pick them up fairly quickly."

Public Hearing - 28 October 1991

Dr Chaples also pointed out to the Committee that what they were really trying to achieve was "a climate of openness."

He also noted the need for the media to be encouraged to pay attention to the political process.

"I think our best safe guard against such activity is to try to achieve this climate of openness and try to find a way that all of the campaign spending is on the public record and then maybe depend more on a responsible press. I suppose one of the aspects of public funding and disclosure I have been most disappointed with in the state sphere, not so much in the federal sphere is not very open, quite frankly, there isn't very much to report, and I have gone down and gone through those books many times, the NSW system is very much better in that regard.

Really, most of our media here in Sydney don't pay much attention to those reports they look for a few little glamorous bits and pieces, but they don't spent the time putting the facts together that would be interesting stories even from what is on the public record. Of course, now that we have put this administrative fund loophole in the law there isn't very much for them to find out so it discourages them from paying much attention to the process.

A climate of openness in which contributions are out there on the record which identifies who the donors are is our best insurance that no one will try to buy what might be defined as an overly great amount of influence in the political process by an excessive donation, is just have it there."

Public Hearing - 25 November 1991

Mr Della Bosca appeared on behalf of the Australian Labor party and his discussion of donations touched aspects of anonymous donations as well as establishing a chinese wall between public officials and donors hence shielding members from this knowledge of donations. That is:-

MR DELLA BOSCA:

"I would argue on how traditionally political parties have been set up, quite apart from my view on how that could be handled legislatively. To the best of knowledge the ALP for many years, and the National Party from evidence given in public forums, believe that public office bearers should not be advised of details as to amounts and who gave donations. To the best of my knowledge that has applied with the ALP since I have had any involvement in the party's affairs at a central level. I have no reason to doubt that it applies with other political parties as well. That has not helped when the matter has been brought to book publicly."

DR MACDONALD:

"Are you saying that major donations are not disclosed within the party, that the candidate would not necessarily know who made them?"

MR DELLA BOSCA:

"There is a view that it is better that politicians not know who made campaign contributions to their political party. That is ethically a superior outcome to them knowing. The problem is that no one can be certain that a politician has not guessed or has been told off the record that is what happened."

DR MACDONALD:

"In the ALP how do you manage that concept in practice?"

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MR DELLA BOSCA:

"It is very simple. No ALP MP would know other than those donations disclosed under the law for campaign purposes, from our return, who has given any money to the ALP."

MR JEFFERY:

"You believe that the law should be changed because under the present law a candidate may have an official agent. If he does not appoint an official agent, he has to carry out that duty himself. Therefore, he must know because he would be the official agent. Under the present law a candidate and official agent can be one and the same."

MR DELLA BOSCA:

"The observation I made just before applies in the case of central political party donations rather than candidate donations. Almost always candidate donations are from the local community. Candidates would normally know where a donation came from. There would not often be anonymous donations in the same vein as what I am talking about."

Thus Mr Della Bosca drew the distinction between candidate donations and party donations.

The Committee recommends that the reporting entity (agent, candidate or party) must report the name of a contributor, if known, even though the contributor may prefer to remain anonymous.

Anonymous contributions over the reporting threshold are essentially those which are received without any indication as to their source.

The reporting entity must fully explain the circumstances under which the contribution was received and explain why it cannot be attributed to a particular person.

5.1.7 Cash Contributions

The question of whether or not cash contributions should be prohibited was not addressed by the Committee at any of the public hearings held.

The Committee notes the fact that a number of overseas countries do prohibit contributions unless they are in a cheque (which allows a greater ease of sourcing the true donor).

The Committee noted this overseas development yet did not feel the Australian situation warranted this sort of regulation.

The question was indirectly asked by Ms Kirkby when she asked Mr Dickson whether or not he felt there was a distinction between various donations and Mr Dickson responded by saying that the point to be debated is whether the donation is on record.

For example Ohio laws prohibit any cash contribution to any person if the cash totals more than one hundred dollars (Ohio Laws on Campaign Finance, 1991, Division G, § 3517.13).

Ohio legislation also defines exactly what is meant by cash, that is "coined or paper money designated as legal tender and circulated from hand to hand as a medium of exchange." (§ 3517.13)

5.1.8 Fund Raising Functions

Problems associated with campaigning in general resulted in a number of questions being addressed to the expert witnesses on the subject of fundraising.

For example:-

Public Hearing - 28 October 1991

MR JEFFERY:

"Isn't it true, though, the politician then becomes a full time fund raiser rather than doing his job as a politician?"

DR CHAPLES:

"They are anyway. Campaigns last an inordinately long period of time in the United States. Involve an incredible amount of time on the part of candidates. I would not like to see us emulate that model and I

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suppose the fixed date for elections worries me the most because that it could very possibly force us into that scenario."

This issue also touched on the question of election terms and Dr Chaples evidence on this aspect was referred to the Joint Select Committee on fixed Term Parliaments.

Mr Quentin Dempster's evidence also raised the spectre of continuous campaigns and he pointed out the extent to which a politician's attention is focussed on this.

MR DEMPSTER:

"I am not a politician but I have heard a lot from politicians about how much they have to raise. I have addressed fund raising dinners for politicians of various persuasions, where they have had me there and I have discovered that they have sold tickets on my address to them.

They have to go through a variety of methods of raising money and that is a constant part of their attention, either personally for their own re-election or their own election or organisationally. Because we all know from the Royal Commissions that have been held at great expense to the taxpayers of Australia that the war chests have to be filled up to the maximum capacity so that people can wage modern political campaigns."

Mr Jobling's questioning followed a different line and he pointed out the ease with which major companies can hide their contributions through attendance at political fundraisers. That is

MR JOBLING:

"Does this open the way for major companies to disguise their contribution by having 10 members of the company attend or 20 members at \$1,000 a head? Should that be identifiable and, if so, how?"

MR DEMPSTER:

"Yes, it does. It would lead to that method of avoidance of disclosure and yes, it should be disclosed."

Mr Mills queried the point at which the cost of the ticket is a donation (or profit) and the point at which the ticket's cost relates to the food/beverage consumed. His questions to the Senator Karen Sowado were as follows:-

MR MILLS:

"If somebody comes and pays \$25 to a local fundraising lunch or barbecue, is that a donation when the value of the food is probably \$3.50 and the rest is a profit. Could you give me your views on some of those ideas, on the real source?"

SENATOR SOWADA:

"On that latter issue, my understanding of the Federal Act is that in respect of money raised at fundraising functions that it is not necessary to actually detail the specifics of who came and who gave what and who bought how many raffle tickets."

Mr Mills continued

"Not even if there is a \$10,000 a plate dinner? That is a fundraising function?"

SENATOR SOWADA:

"It is a fundraising function indeed, but I wouldn't like to comment on that. I think what we are talking about is sort of like small branch functions. That is certainly what I have in my mind, is small branch functions, where you might raise \$1,000 or something like that from having 100 people there who each pay \$10 to get in and then buy a raffle ticket....I would suggest that perhaps it is not so necessary for smaller functions, but perhaps for the examples that you have given with \$1,000 a head dinners it might be necessary to actually put a ceiling on where disclosure cuts in for very large events like that."

In Washington DC the entire amount of money paid to attend a political fundraiser or to purchase a fundraising item is viewed as a campaign contribution and must be declared.

For example a \$100 ticket to a dinner is treated as \$100 contribution despite the fact that the actual cost of the meal may have been only \$30.

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Similarly, the purchase of a \$20 t-shirt valued at \$5 is also valued as a \$20 contribution.

This is detailed in §100.7(a)(2) of the Federal Election Campaign Act.

Ohio legislation specifically delineates at which point a ticket to a fundraiser becomes a campaign contribution.

That is:-

16. Contributions and expenditures related to fund-raising events or social events at which donations are accepted must be reported separately from other contributions and expenditures on Form Nos. 31-E and 31-F. Separate forms must be completed for each such event. The event should be identified on the top of Form Nos. 31-E and 31-F by the name and/or date of the event. The total expenditures reported on Form No. 31-F must be subtracted from the total contributions reported on Form No. 31-E. This net contribution amount must then be transferred to the general statement of contributions (Form No. 31-A). Only the net contribution amount is included in total contributions and none of the expenditures for the events are included in total expenditures. If two or more candidates hold a joint fund-raiser, then each candidate or their campaign committees must report contributions and expenditures for the event on Form Nos. 31-E and 31-F the same as if it were not a joint fund-raiser. However, only the candidate's share of the net contribution amount is transferred to the general statement of contributions. If an event is a net loss, then this amount must be transferred to the general statement of expenditures (Form No. 31-B).
17. Contributions at a single fundraising or social event from an individual totalling \$25 or less are not required to be individually listed. All such contributions may be lump summed and reported on Form 31-E as "Contributions of \$25 or less" under the column "From whom Received". For purposes of this rule, ticket price is not determinative because a person may purchase more than one ticket and thereby contribute more than \$25. Although a reporting entity is not required to itemise these contributions on the report, it must maintain records with the name and address of each contributor and the amount, date and form of each contribution. The secretary of state or a board of elections may request to see such records. If a contribution is received on a check with more than one name printed on it (a joint account), then the full amount of the contribution should be credited to the person who signed the check, unless it is known that the contribution is intended to be a joint one, in which case it may be apportioned equally for the purpose of determining whether or not an individual contributor has contributed more than \$25 in total to the event. In the alternative to the procedure described above, the reporting entity may choose to itemise each contribution, including those of \$25 or less. Under this procedure, it is not necessary to maintain additional contributor records.

(Ohio Laws on Campaign Finance, 1991)

Californian law includes a specific definition of contributions which include:-

"the purchase of tickets for events such as dinners, luncheons, rallies and similar fundraising events"

(1990, § 82015, p 16).

The Committee recommends that consideration be given to inserting in the legislation a definition of what is meant by the term 'fund raiser'.

The Committee recommends that this definition state that the amount of profit received on each ticket (that is excluding the cost of food, printing and beverages) shall be declared as a political contribution on the candidates declaration form if the profit on each ticket is over the \$1,500 threshold.

5.1.9 Disclosure Period

A related concept is the timing of the disclosure of political donations. That is, whether disclosure should occur on an annual or a periodic basis and whether the information should be available before or after the election (see 5.1.22).

Election Funding Act 1981

The current legislation states:-

Obligation of parties to make disclosure

83. Within 90 days after the day for the return of the writs for a general election (referred to in this section as "**the current election**"), the registered party agent or each party shall lodge with the Authority a declaration of political contributions received and electoral expenditure incurred during the period -
- (a) commencing on the day following the polling day for the previous general election; and
 - (b) ending on the polling day for the current election.

Obligation of groups to make disclosure

84. Within 90 days after the day for the return of the writs for a general election (referred to in this section as "**the current election**"), the registered official agent of each group nominated for election at the election shall lodge with the Authority a declaration of political contributions received and electoral expenditure incurred during the period -

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- (a) commencing on the day of nomination for the current election; and
- (b) ending on the polling day for the current election.

Obligation of candidates to make disclosure

85. Within 90 days after the day for the return of the writs for a general election or by-election (referred to in this section as **"the current election"**), the registered official agent of each candidate nominated for election at the election shall lodge with the Authority a declaration of political contributions received and electoral expenditure incurred during the period -

- (a) commencing on -
 - (i) where the candidate was registered at any time in the Register of Candidates for the previous general election - the day following the polling day for that previous general election;
 - (ii) where the candidate was registered at any time in the Register of Candidates for a by-election (not being the current election) following the previous general election - the day following the polling day for that by-election; or
 - (iii) the day that is 12 months before the day on which the candidate was nominated for election at the current election,

whichever first occurs; and
- (b) ending on the polling day for the current election.

A submission by the Independents provided an opinion on the timing of the disclosure of donations which is as follows:-

"Donations must be disclosed before elections, not after

Problem: Apart from disclosure loopholes in the Election Funding Act, the timing of disclosures is critical. Disclosure after the election does not inform the community of sources for funds.

Solution: Amend the *Election Funding Act 1981* to require:

- (a) Disclosure of all donations made between the previous election and announcement of current election no later than two days after election announcement.

- (b) Weekly disclosure of donations (and promises, arrangements, understandings and agreements to donate thereafter) during the campaign.
- (c) Final disclosure at 9.00am on the Friday before polling day.
- (d) Prohibition upon soliciting, receiving and agreeing to receive funds from 9.00am Friday to polling day.
- (e) Disclosure to be posted outside all polling booths by the Returning Officer.

Cost: Significant to corrupt candidates.

Time Limit: Three months"

Pre or post election disclosure of political donations was an issue raised by the Committee at its public hearings.

Public Hearing - 23 September 1991

Mr Merton addressed a number of questions to Mr Dickson on this issue. That is:-

MR MERTON:

"Would you agree in the eyes or perception of members of the public that there is a considerable difference between a person who gives a donation of two or \$3,000 in a non-election period, say, just after an election has been held or even 12 months after an election has been held than a person who may well go in and give a donation of a similar amount the day before the election?"

MR DICKSON:

"They may perceive something different."

His comments highlight the importance of the timing of the donation.

This concept is also well known overseas and is referred to as either seed money or EMILY. The two concepts are the same - EMILY is an acronym for

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"Early Money Is Like Yeast" and essentially it means that the earlier the money is received by the candidate, the more beneficial; seed money is the same as it helps the candidate's "moneytree" to "sprout".

The Chairman questioned whether members or the public are really as interested in who is funding elections as they are about who is funding those in power.

Mr O'Grady totally disagreed with this and said

"I disagree with that. I think the position you have just outlined is fundamentally wrong."

Mr Dickson's response to the two questioners

"It could be that a candidate may announce a vigorous campaign for the purpose of - with not a great expectation of success but for the purpose of supporting another candidate, directing his or her preferences to that candidate and in that situation I would think that it could be classed as a de facto candidate for a particular party and, therefore, the contributors would be - I am sure the media would be interested and, therefore, the public would be interested in ascertaining where their large amounts of money came from to fund the campaign. ... The Act as it stands now, as you aware, Mr Chairman, covers from polling date to polling date. The loophole that does arise is if the candidate doesn't contest an election again or does not contest the next election. I think that the disclosure provision should be looked at with a view to amending them so that the declaration to contributions received covers everything in relation to that election campaign irrespective of whether it is contributed before or after polling date."

Mr Merton queried the difficulty involved in enforcing these declarations however Mr Dickson assured Mr Merton that the only real difficulty involved would be the determination of the cut off point.

Mr Merton also illustrated the difficulty in enforcing disclosure when candidates may spend in excess of the amount of money received. Declaration may be meaningless in this sense as Mr Merton explained

"That would be very difficult because all he would have to say to you is, "I am going to pay the money out of my own pocket when I get the

money", B, "I am going to raise some from the bank", or C, "I haven't paid the people"?"

Mr Dickson also illustrated areas of concern for the authority

"The authority has been concerned of course, if a candidate or a party delays the receipt of other donations or suggests to the donor that they defer it for a few days after the election period and escapes that disclosure in that election period. The authority would seem to think that there would be a fairly simple way around that by extending the legislation to cover, if you want to put a figure on it, three months afterwards or the time that the return was to be furnished and that the return should state then that these are the donations made in respect of that election and that return period.

One would think again, the onus is on the candidate or the party to operate within the spirit of the legislation."

Ms Gladwin's evidence to the committee reviewed the federal legislation as well as the proposed amendments to the *Commonwealth Electoral Act* (enacted in December 1991).

She told the Committee that returns are currently required to be filed within twenty weeks of the polling date but under the new amendments, annual returns will be required.

As Mr Dickson stated:-

"The Act as it stands now, as you are aware, Mr Chairman, covers form polling date to polling date."

Dr Macdonald addressed questions on this matter to Ms Gladwin and pointed out that the reason behind the idea was so that people know who is funding the candidates prior to casting of their vote.

Ms Gladwin felt it would be an "administrative nightmare" although she did suggest that the onus could be placed on each candidate to provide this information to each polling booth.

Mr Jeffery also indicated that:-

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"It actually does happen overseas, I don't want to harp on that, but it does actually happen there prior to an election as well as after an election."

Public Hearing - 28 October 1991

Mr Dempster also responded to this question from Mr Jeffery and Mr Jobling and he expressed a preference for pre-poll disclosure although he did note that potential bureaucracy which may be involved in obtaining the requisite information.

Public Hearing - 25 November 1991

Mr Zervos also canvassed the idea of more regular disclosure and stated that

"I am all in favour of regular disclosure. I believe that the present state of the legislation is inadequate where disclosure occurs for a period prior to an election. It could be that donations received after election, after the disclosure period will not be then disclosed many years later so I think it is important for the Committee to bear that in mind and in considering appropriate provisions ensure that there is regular and consistent disclosure of donations. I have not given the area of small contributions sufficient thought but my general belief is that it is probably best and it is for the community good that all funding should be disclosed. As to the manner and extent, that is something for the Committee to consider."

Mr Della Bosca also spoke on this subject

"This is not canvassed in our original submission, so it is largely a view based on my assessment of what the Labor Party view might be, and to a certain extent my own view as someone who has to administer the affairs of the party in that regard. From the second point of view, that is administering the party's affairs—and this would apply to all parties with a full-time secretariat—it would not make a lot of difference whether they had to account for it on a yearly basis or after elections. It would probably disadvantage the minor parties in terms of the amount of bureaucratic form work they would have to go through, and it might disadvantage Independent candidates. But I suppose it is no different than filling in your taxation return potentially. So I do not

see that there would be a great administrative argument against it, and I cannot see that there is any political argument against it. I do not know that there is a strong political argument for yearly accountability. It is a question on which I am open."

Mr Maher also spoke about this idea and pointed out a number of difficulties associated with disclosure before election day for each electorate so that voters know who has financed a candidate before they vote.

That is:-

"I would hate to be within a political party trying to put that together. I suppose with the electoral commission, I think that would be very difficult to do. I am thinking of just straight out administrative problems and if you have got to put certain information out on polling day, have that distributed, there comes a stage where I assume you will have to say that there are no donations accepted after a certain period of time.

I am not so sure that it achieves any useful purpose. What you are saying that if people give money, that is the only way and source of influence in politics. I am not so sure that is actually the case. It may be a factor for some people influencing how they were going to vote but if you are going to put that up, maybe you should put up all the other factors that might influence people on how they might vote and that would include down to policies.

I think it would be a very administratively difficult policy to give effect to, both from the point of view of political parties and also from the point of view of the statutory authority trying to run it. I was just thinking from the point of view of the central part. I was just thinking of candidates who are trying to work out - a candidate probably does not know where his or her money is coming from. Yet, you have got to get a process in train which allows all of those moneys to be brought to book at some stage before election day.

Good systems are simple systems. I am not so sure that that actually is all that simple to do and I am not quite sure if the outcome of it serves a useful purpose."

Mr Della Bosca was asked how he would respond to this idea - "point of sale information".

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Mr Della Bosca said:-

"I suppose I would have to say that my initial reaction would be that it is not the only relevant thing on which people have to make a decision when deciding how to cast their vote. It gets back to the whole principle of disclosure. The whole principle is the suggestion that it should be public information, in case there is any potential linkage between a candidate's decision or attitude to things and any donations they may receive; whether there is any corrupt suggestion about that linkage or whether it simply might reflect their bias or change their attitudes. The whole idea of disclosure is to provide a safeguard, making it publicly available. I should have thought it was only one of a range of issues that should be in the voters' minds when making a decision as to how they will vote. It would probably be impracticable, because under the existing accounting arrangements I could not see how it would be possible, for example, for the Electoral Commission or the Election Funding Authority to bring every candidate to book a matter of a couple of days before the polling date, print the material necessary, distribute it to the relevant polling booths and have it displayed. I can only give my practical concerns about it. I do not think it has been canvassed in the forums of the Australian Labor Party. I cannot give a view of my attitude to that as party secretary."

Mr Della Bosca highlighted the difficulties involved in pre-poll disclosure also.

"In two ways it would make things extraordinarily complex. The first issue would be that presumably there would be some sanction on the party endorsing the candidates to make sure they complied with any reporting mechanism involved in reporting to the Election Funding Authority or whoever, a matter of days before the election, as to the donations received at that point. That is problem number one. You would spend the last five or six days of an election campaign chasing that up and forcing candidates to chase it up.

The second more serious objection that I have had is whether political parties should be forced to come to book once every four months, once every 12 months or in between every election. It makes a tremendous amount of difference if a number of candidates receive relevant donations after elections. I am suggesting that someone could receive a \$25,000 or a \$10,000 donation which might be accountable under that procedure. Someone might receive a donation two weeks or five weeks after polling date; indeed, someone could receive a donation several

months after polling date. I do not believe it would be administratively practical from a public funding authority point of view, from the point of view of a political party, or from the point of view of the Independents or other political parties. In addition, it would not give a true picture."

The Committee notes that Ohio requires seven types of finance reports.

- (i) pre primary election (12 days prior)
- (ii) post primary election (38 days post)
- (iii) pre general election (12 days prior)
- (iv) post general election (38 days post)
- (v) pre special election (12 days prior)
- (vi) post special election (38 days post)
- (vii) annual (last business day in January)

The Committee also notes that the reports are deemed filed only on receipt - a postmark is not sufficient.

Michigan also requires pre and post election disclosure.

That is:-

Type of Statement	Closing Date of Statement	Statement Due Date
Pre-Election Campaign Statement	16 days before election	11 days before election
Post-Election Campaign Statement	20 days after election	30 days after election
Annual Campaign Statement	December 31	January 31

(Bureau of Elections,
Department of State, 1989)

Reporting waivers are also available if contributions and expenditure are under \$1,000. This waiver is obtained from the Bureau of Elections.

A further restriction is placed on candidates and political parties in Florida who may not

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"use or expend on behalf of any candidate, issue or political party [any contributions received less than 5 days before the election] in such election"

(§ 106.29, Campaign Finance Act 1989, Florida)

The Committee is of the view that it would be an administrative nightmare to attempt to establish a regimen whereby candidates are required to disclose their contributions and expenditure prior to polling day.

The Committee is satisfied that the present disclosure of 90 days after the return of writs works satisfactorily.

While the Committee is not of the view that annual disclosure is necessary it accepts the fact that this is now a requirement of the Federal legislation and recommends a system of annual disclosure be introduced and that disclosure at a state level be satisfied by filing a copy of the Federal return. The Committee further recommends that the reporting period be the same in NSW as it is in federal law.

5.1.10 What should be Disclosed?

The question of disclosure can also be further defined by analysing what should be disclosed. In the process a number of loopholes have become apparent.

Public Hearing - 23 September, 1991

For example

MR JEFFERY:

"Mr Dickson, what happens if Joe Blow is a candidate now, is a member of parliament and he raises from the election date and he is elected and he raises several hundred thousand dollars. That is a very nice little kitty. Then he decides not to stand at the next election. Under the act, it would appear to me that there is no obligation for him to disclose, is that correct?"

MR DICKSON:

Exactly right.

MR JEFFERY:

A party gets an advance on their expected return at the next election. What happens if that party does not then contest for some reason or other. It folds up, disseminated. We have looked at the aspect of how legally we can get that money back and we may not be able to."

Ms Kirkby followed this line and asked Mr Dickson if it would be legally possible to amend the act so if a party dissolves or does not stand at the next election there would be a possible recourse to the money.

Mr Dickson responded by saying that it could be done although consideration should be given to the legal provision.

The Committee recommends that in the event of a political party dissolving after receiving an advance on their expected return at the next election the Act be amended so there is a possible recourse to the money.

The Chairman also asked Mr Dickson if there should be some legal burden on people who make donations to also disclose - a means for cross referencing contributions and donors.

CHAIRMAN:

"Would it assist then if there was some requirement of law that people who gave donations also be required to make a disclosure? That adds to the paper war, obviously, I suppose, but let's say anyone who gave a donation of more than a certain figure, of \$500 or \$1000, even if that was just an equivalent in-kind perhaps, would also be required to file a return? Have you ever given any thought to that?"

MR DICKSON:

No, I haven't addressed that. I haven't seen any other system where that exists, to my knowledge. I haven't studied the American system closely. The Canadian system, I think, might have been looking down that path but I am not over sure."

Both Mr Jeffery and Mr O'Grady queried the difficulties associated with this approach and Mr O'Grady suggested that if this approach was to be followed there may need to be a link in with the Australian Tax Office.

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The Committee does not recommend that donors be required to file and believes this would result in a blizzard of paperwork for the EFA to administer.

The actual details which must be included on the candidates disclosure of contributions also became the subject of much discussion.

Committee members heard a number of opinions and testimonials on the various categories which should be included on the forms.

For example

MR JEFFERY:

"In California you also must state your employer and the address and the same with the unions so they pick up which particular union or employer and you can very easily see 100 similar amounts came in on the one day and they all belong to one company or one union."

And Ms Kirkby, also said that:

MRS KIRKBY:

"It was suggested that a big financial institution, for example, might give some of its senior staff a bonus on the proviso they gave it to the political party and it looks as if it was a whole series of small donations that would be within the limits which permitted the company then to give more money than was allowed by the limit?"

MR WASSON:

"This was a ploy that Nixon refined in the 70s and it brought about the enquiry into the system in America in that that system was adopted that marketing people from various companies were assigned from the company to work for the republican campaign. It is something that the authority would need to have power to ascertain whether or not this sort of thing was happening, you are getting the firm of solicitors or the floor of barristers who are paying a certain amount and then, say, the Bar Association or the holding company for the chambers also contributed an amount which does not reflect truly the amount that those particular who are participating have donated."

Mr Wasson responded to further questions by the Chairman on this and agreed that perhaps the current form could be amended so that instead of only declaring name, address and amount as is currently required, the form could require details of name, address, employer, member of XYZ Union and amount.

Mr Johnson emphasised that:

MR JOHNSON:

"I don't think we want to get into the stage where we have set up an old and ancient order of busybodies as happened with the pecuniary interest forms. We have got a dear old couple who come in each year and just drool over the returns for no purpose, it is a day out. You set up those sorts of things and all it does is increase the bureaucracy. Political parties, in the main, have got nothing to hide."

Mr Merton also said:-

"I think that what you say is right. We give the classic example of a firm of lawyers. There is 30 partners and someone goes in and says, "I am here on behalf of Liberal party or candidate X, Bob, would you like to give \$100?" Bob gives \$100 and Colin gives \$100, we're okay now but then we get to the third bloke, the fifth bloke, the sixth bloke, we're in strife under the rules that they are deemed to be giving the money on behalf of the firm. In reality these people could well be giving the moneys as individuals. Until we get to the sixth person we are right. I really think that it is a nonsense to try and group individuals who may, because they have the one place of employment or work for the same firm, and say this is a combined gift on behalf of that firm or some other entity. It is construing things in a lot of cases that may never exist."

Mr Wasson responded:-

MR WASSON:

"If you have got a situation where every donation from an individual you are going to ask to identify who is employer is on the basis that you would come up with a series of donations from a common employer that would solve the problem but it would also pose a lot more

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difficulties in that it might be that the person might be that the person might be employed by the Commonwealth Bank but has absolutely no interest in anything at all and there might be 15 people throughout the state who have donated \$100 to the Liberal party or the National party or the Labour party who have absolutely no common ally of any interest at all but, on the other hand, you do have the 30 partners in the law firm. They are the people who should be identified as being donors if there is a common ally of purpose with an intent to go behind the act. It is very difficult to legislate, apart from giving a wide discretion to the authority, in other words, do you think these blokes are fair dinkum or do you think they are crook, and then where do you go to from there?

The 30 partners could say, "Yes, we think we are not so happy with the government stance on whatever and, therefore, we decided that those of us who wanted to make donations would make donations. We didn't make it in the name of the firm of solicitors, we made it just a matter between myself and my conscience. Where you go from there just because they happen to all be working for the same organisation is virtually impossible to police."

The Committee recommends that donors provide details of their name, address, employer and/or union membership when donating an amount above the threshold to a candidate, group or party.

Public Hearing - 28 October, 1991

The question of whether membership lists of political parties need to be disclosed was raised by Rev Nile and he also noted that there has been some discussion in Canberra on this subject.

Rev Nile asked Senator Sowada whether or not she was in favour of this type of disclosure.

Senator Sowada responded by saying that the Australian Democrats would have some concerns about exposing membership lists but she said that she believed what was being referred to was a line entry of membership receipts rather than the actual names of all party members.

Senator Sowada also said that if the Committee felt that the burdens placed on the parties would be too administratively daunting.

MS SOWADA:

"It might be possible to select a nominal figure of, say, \$50 and donations received provided that an amendment was made to ensure that multiple donations of, say, \$45 made by the one person is disclosed as one amount."

Public Hearing - 25 November, 1991

This issue was brought up by Mr O'Grady as well and Mr Zervos was asked why membership fees should be disclosed.

Mr Zervos responded by saying that as membership fees are a form of financial support they should be disclosed.

Discussion ensued as to whether this was a loophole or not and Mr Zervos clarified his use of this term in connection with membership fees by saying that:

"It depends on how in the future a political organisation may classify a membership fee. In the future it may be that there will be a particular class of membership at a fairly high premium. I do not know. However, there could be problems, as I see it if you exempt a particular class of financial contribution. It will allow the ingenuity of people to see how far they can exploit that. Hence a possible loophole."

Ms Gardiner asked Mr Della Bosca for his comments on this topic and he responded by saying:

"ALP membership fees and, as far as I know, fees of other political parties are relatively modest. It is a reflection of the commitment to that political organisation. To me it indicates the reduction and absurdum of the extreme position on disclosure, namely, that people who are part of the organisation have to disclose the membership dues that they pay in order to be regular members of a party. My reaction is that it is unnecessary and, frankly, bordering on an invasion of privacy."

Ms Kirkby sought clarification of this issue and asked:

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"Mr Della Bosca, would you however agree that, if the membership form gave the person the ability not only to pay the membership dues but also to enclose with the membership dues a donation of whatever size the person felt he could afford and if that donation was over a certain size, that should be disclosed?"

Mr DELLA BOSCA:

I agree with that."

The Committee recommends that in the event of a political party dissolving after receiving an advance on their expected return at the next election the Act be amended so there is a possible recourse to the money.

The Committee does not recommend that donors be required to file and believes this would result in a blizzard of paperwork for the Election Funding Authority to administer.

The Committee recommends that donors provide details of their name, address, employer/employee associations or institutions and professional/business/trade associations or institutions when donating an amount above the threshold to a candidate, group or party.

The Committee recommends that any donation despatched with membership fees be treated as a political contribution and disclosed if over the disclosure limit.

5.1.11 Penalties and Enforcement

The *Election Funding Act 1981* details the penalties for failure to wage a declaration of contributions and expenditure in section 96.

That is:-

***Failure to lodge declaration**

96.(1) Where the registered party agent of a party fails to lodge a declaration as required by section 83-

- (a) the agent is guilty of an offence and liable to a penalty not exceeding \$10,000; and

- (b) the party is guilty of an offence and liable to a penalty not exceeding \$20,000.
- (2) Where the registered official agent of a group or candidate fails to lodge a declaration as required by section 84 or 85, the agent is guilty of an offence and liable to a penalty not exceeding \$10,000.

The Act also states that a person who knowingly lodges a false declaration is guilty of an offence and liable to a penalty not exceeding \$10,000 (s97).

The Committee raised questions relating to these penalties at public hearings and queried whether the penalties should be more stringent.

Public Hearing - 28 October, 1991

DR. CHAPLES:

"There are major problems that come with tight disclosure laws. First of all, it requires a large and expensive private bureaucracy both in the part of candidates and especially on the part of the enforcing agencies to make these laws work. I think one of the biggest problems for significant American candidates in meeting the disclosure provisions in many of the American jurisdiction, is they require things like 30 day reports on an on-going fundraising and expenditure of candidates. I think that is very difficult. It means that an awful lot of money and energy goes into what is really a fairly irrelevant activity in the overall campaign. If the laws are going to be enforced, there has to be highly trained, highly qualified staff on the part of the state or the federal government and it's enforcing agency available to look at those things virtually immediately. Some of that can be achieved by making those reports public because the press and others are very active in the United States. They face very few of the sorts of restrictions the media faces here in Australia in regards to libel and they tend to go very hard after candidates who look like they are playing funny games with raising campaign funds, particularly if those candidates are otherwise unpopular. I am worried that at a time when we are trying to both deregulate and spend less money in the public sector on high paid, technical employees, that we, not turn the Public Funding Authority of New South Wales into an employment agency for accountants and lawyers, it is already difficult to raise moneys which are very hard to raise in individual campaigns and in state-wide party campaigns has more and more got to be diverted into hiring people who are employed to keep the books and for people who are required to

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make government reports. the other problem with all of this is there are quite often, because of the pressures of these kinds of regular on-going reports during the campaign proper, there are often inadvertent mistakes that get blown up out of all proportion to what an incident is worth so that somebody looks like a crook, or looks like they are hiding something when they really don't intend to do that. It is just that in the overall pressure of trying to get around and trying to allocate staff and trying to account for wide varieties of moneys that are coming in from a wide variety of sources that something may be missed.;

Public Hearing - 25 November 1991

Ms Kirkby asked Mr Zervos if he believed that non-compliance with disclosure should result in the invalidation of a candidate's election.

Mr Zervos responded by saying that he was not sure how far the law should go but he maintained that each breach should be reviewed on its own circumstances. Mr Zervos also said that the penalties should match the offence.

Mr Johnson followed up Mr Zervos' statement by highlighting the number of individuals involved in a political campaign.

"during a federal election that in some constituencies you could have 30 different branches of a party, seven officials of each branch, a Federal electorate council which is the overseeing body, again with seven, possibly eight officials; that any one of those people or any party member could be given a donation and it would be a person in the bottom end of an electorate and a thousand miles away to the top end of the electorate, or whatever, would be the party's treater or agent in that, and they may see each other at the electorate council meeting before the election and three months after or nearly three months after the election would be the first time they would see each other."

Mr Johnson said that there was a need to ensure that an inadvertent mistake by a branch member should not result in a candidate losing their seat. He also said that he was not talking about dishonest actions, merely mistaken ones.

Mr Zervos replied that:-

"I am not saying there is anything dishonest either but it does create a climate where abuses can occur. It seems to me important from your point of view that you want to establish a set of procedures and ensure that there is a monitoring and policing of the situation so it does not happen and that there is not this sort of climate being established where abuses can take place and serious problems may emerge. Recent history and current inquiries, I would have thought, have spelt out a fairly powerful message to all and sundry that great care and attention has to be taken in this particular area, otherwise you may very well find yourself explaining your conduct, not only before an inquiry but also a court. What we are proposing is to assist our political organisations and our politicians in the exercise of their duty, taking into account the fact that people make contributions to the organisations they belong to and to candidates. So, we are not suggesting this to be a burden to you and we are not presenting this material to you with a holier-than-thou attitude. We are doing it with the intention of trying to assist and do something about a very serious problem that we believe has emerged in recent times in Australian history and one I think that the public at large are very concerned about. I am more concerned personally that the public maintain its support and confidence in the important institution of our Parliament and its elected public officials."

Public Hearing - 23 September 1991

The Committee also notes that the penalties for breaches of campaign finance law overseas tend to have all relevant offences detailed in the one area. For example, the Ohio law defines eighteen types of campaign finance prohibitions ranging from failures to fill statements to receipt of cash contributions over one hundred dollars; from use of campaign funds for personal benefit to the awarding of government contracts to donors to political campaigns.

The New York Board of Elections, which has the responsibility for numerous duties which relate to the overall administration of elections also has specific power relating to enforcement.

Specifically it must investigate all violations or perceived violations and, if a case exists, it must refer the matter to the relevant district attorney as well as to the police force.

The Board must also publish at least twice in the three months prior to an election a fair campaign code setting out ethical standards of conduct

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including prohibitions against political espionage and any instances of subversion of the political process. This code is sent to all relevant participants in the political process.

The Board has the power to impose its own fines in addition to criminal or civil penalties which apply.

Also

***§ 3 107. Powers and duties of the state board of elections respecting elections and crimes against the elective franchise.** Authority is hereby conferred upon the state board of elections to appoint a special investigator to take charge of the investigation of cases arising under the election law, and to appoint each additional special investigators and employees as it may deem necessary, and fix their compensation, within the limits of appropriation available therefore, and assign them to any election district for the purpose of enforcing the provisions of the election law. Moneys appropriated for carrying out the provisions of this section shall be paid out of the state treasury on the audit and warrant of the comptroller upon the certificate of the state board.*

OTHER PROHIBITED PRACTICES

Sec. 253.102. COERCION PROHIBITED

- (a) A corporation or labour organisation or a political committee assisted by a corporation or labor organisation under Section 253.10 commits an offense if it uses or threatens to use physical force, job discrimination, or financial reprisal to obtain money or any other thing of value to be used to influence the result of an election or to assist an officeholder.
- (b) A political committee assisted by a corporation or labor organisation under Section 253.100 commits an offense if it accepts or uses money or any other thing of value that is known by a member or officer of the political committee to have been obtained in violation of Subsection (a).
- (c) An offense under this section is a felony of the third degree.

Sec. 253.103. CORPORATE LOANS

- (a) A corporation may not make a loan to a candidate, officeholder, or political committee for campaign or officerholder purposes unless:
 - 1) the corporation has been legally and continuously engaged in the business of lending money for at least one year before the loan is made; and
 - 2) the loan is made in due course of business
- (b) This section does not apply to a loan covered by section 253.096.
- (c) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

Texas Election Code

The Committee notes that the Election Funding Act currently attaches the relevant penalties to each section in the Act. The Committee recommends that the penalties should be consolidated into a schedule of offences both statutory and regulatory as in the Environmental Offences and Penalties Act, 1989. This was suggested in advice to the Committee received from the Crown-Solicitor.

The Committee also notes that the penalties for breaches of campaign finance law overseas tend to have all relevant offences detailed in the one area. For example, the Ohio law defines eighteen types of campaign finance prohibitions ranging from failures to fill statements to receipt of cash contributions over one hundred dollars; from use of campaign funds for personal benefit to the awarding of government contracts to donors to political campaigns.

The Committee believes that by having a schedule of penalties, auditors and officials will have a greater clarity of understanding and ensure that these responsibilities are not taken lightly. It would also assist in policing legislation - as Ms Gladwin stated:-

"We suspect in some cases the parties don't understand the legislation, don't understand exactly what it is that is required of them, don't read the handbooks we put out to them, or if they do they don't understand or they don't follow up and ask us if there is anything in there that they find ambiguous. Just on the basis of the amendments that have to be made to the returns that come in after each election, I am

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absolutely convinced that the people who furnish those returns simply do not appreciate exactly what is required to go in their return, but we have no way of proving it one way or the other and we certainly can't satisfy ourselves that returns are in accordance with the provisions of the Act."

The Committee also notes *Independent Commission Against Corruption Act 1988* and the definition of corrupt charges included in section eight of the Act.

This section details twenty five instances of corrupt conduct and, in relation to elections, includes bribery, funding offences and fraud.

The Committee endorses these inclusions in the Act and recommends more expanded definitions of these breaches and inclusion of the penalties associated with them to be placed in the *Election Funding Act*.

The Committee also recommends that breaches of the law be more effectively enforced.

5.1.12 Administration of Register

The Committee received no testimony on the subject of the administration of a register of donations and expenditure. at any of the public hearings held by the Committee.

The Committee does not make any recommendations altering the administration of the register of political contributions.

5.1.13 Donations for administrative or electoral purposes

The *Election Funding Act 1981* provides that

***Political contributions that are to be disclosed**

87. (1) The political contributions to be disclosed under this Part by the agent of a party, group or candidate are gifts made to the party, group or candidate during the relevant period referred to in section 83, 84 or 85.
- (2) A contribution to a group or candidate need not be disclosed in a declaration if the contribution was not given for the purposes of the current election referred to in section 84 or 85.

-
- (3) A contribution to a party or group need not be disclosed in a declaration if the amount of the contribution is not more than \$2,500.
 - (4) A contribution to a candidate need not be disclosed in a declaration in a declaration by the candidate if the amount of the contribution is not more than \$500.
 - (5) Subsection (3) or (4) does not apply to 2 or more contributions made by one person, body or organisation during any period of 12 months during the period in respect of which the declaration relates, if the contributions, in the aggregate, exceed \$2,500 or \$500, as the case may require.
 - (6) Corporations that are deemed to be related to each other for the purposes of the *Companies Act 1961* shall be regarded as a single corporation for the purposes of this section.
 - (7) For the purposes of this Act-
 - (a) a payment under this Act;
 - (b) an annual subscription of not more than \$200 paid to a party by a member of the party; and
 - (c) a payment made under the condition that the money not be used for electoral expenditure in relation to an election,

are not political contributions.

That is, political donations which fall into the administrative/maintenance category need not be disclosed by the relevant political party according to this section of the Act.

Most of the political parties recognise this loophole and its use has been common knowledge within political circles. Indeed evasion of the law can be achieved by simply banking the donation into an "administrative account". Another method of avoidance could be achieved by diverting money donated for maintenance purposes into election funding. As the Act is concerned primarily with the original purpose misuse of these funds would be a matter for the donor and donee and not the EFA.

Public Hearing - 23 September 1991

Dr Macdonald queried Mr Dickson on this distinction and Mr Dickson responded by saying that:-

MR DICKSON:

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"Basically Commonwealth and State legislation has clauses in it which exempts [donations] from disclosure. In the Commonwealth it is clearly shown as being for administrative or maintenance purposes. In our legislation it is regarded that if the gift or the money is given for purposes other than for the conduct of an election, there are sorts of questions as to whether this means the same thing or not but basically the result is the same, that if you wanted to prevent disclosure then you would give a donation to a party or whatever it was in those terms.

This has created some criticism from the public and also from various other bodies and generally it seems to suggest that those clauses should be eliminated."

DR MACDONALD:

"How much of donations in fact is hiding behind administrative or maintenance purposes?"

MR DICKSON:

"We would never know. We don't have access to the party's books or income books or things like that."

Mr Johnson also pointed out that these sort of donations have been made to political parties "from immemorial. They are not something new."

Rev Nile summed up the questions addressed to Mr Dickson by referring to the embarrassing nature of some political donations (for whatever reasons) and said that the temptation to place a donation in the administrative account was quite strong in some cases. Mr Dickson agreed with this implication.

Mr Dickson commented that if you are seeking to enforce disclosure then this loophole should be eliminated. He also said that the consequences of this amendment would not create any problems for the EFA. This was in response to both Mr O'Grady and the Chairman's questions. Mr Wasson and Mr Dickson also said that this loophole was created as a result of subsequent amendments to the Act - 1988 was the first election year this emphasis was permitted.

Mr Wasson explained:-

"The concept of the Act is that funding is set off against electoral campaign expenditure. From what I have read when the Act was

passed in 1981, there was always this concept that there was a difference between administrative expenses and actual election campaign donations and so the Act has confined itself to those areas. It seems to be put in its simplest form, 'You tell us what you got and where you got it from and if you do that we will pay you your entitlement'. But it related solely to election campaigns. That has been subject to some criticism of which the authority is aware, in the ICAC report in the Northern Rivers matters. The main criticism being that if donations are accepted as being for administration, it then frees a certain amount of money to be used for election campaign purposes because the parties have and quite properly have, the right to allocate their own funds in whichever manner they wish.

If they have got money, which is in an administration fund which they need for election campaign purposes and supposedly has not designated specifically only for administration costs, then they can use that however they wish. The criticism is that it is a ruse by which parties can not be required to disclose the donor for money which they receive but can be offset against some other money they already have so in fact it does form an election campaign donation. That seems to be the thrust of the criticism in ICAC and in other places."

Mr Johnson queried whether this was a ruse.

Mr Wasson stated:-

"Could be a ruse, Mr Johnson. That is the concern of the ICAC report. If that be the case and this committee so move that the government is so moved, then perhaps consideration may need to be given to disclose all donations irrespective of whether they are earmarked for administration or rent or whatever on the basis that it frees other money to be used as election purposes. That is just something that you might like to think about."

Problems regarding the candidature of Independents was also touted by Committee members and the difficulties with enforcing disclosure requirements for donations of an administrative nature was referred to.

Ms Gladwin said that:-

"My own personal opinion is that it is a very artificial differentiation to make between administrative donations or maintenance donations

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and electoral donations because obviously if a donation is made to a party's administration account it is freeing up other funds to use for election purposes and I think that is a very artificial thing to have in the Act, and in fact the bill that is before the Senate Select Committee will take that differentiation out.

All income by political parties will require to be reported no matter what."

Public Hearing - 28 October 1991

Mr Dempster responded to inquiries from Mr Jobling and referred to the need for full disclosure and the need to delete artificial distinctions between political donations.

"There should be no method of avoidance of the spirit of the legislation by donation for administrative purposes. Donations to the party for administration or political campaigns should be declared so that there can be no doubt.

The scepticism is what I am driving at after all these revelations, that we have got to work out a method of removing that and the only way to do it is to have full disclosure."

Public Hearing - 25 November 1991

Mr Kevin Zervos agreed although he declined to comment on questions for the Chairman as to whether there should be public financing for the administrative procedures of political parties.

The need for complementary legislation between federal and state governments was emphasised by Mr Della Bosca.

Public Hearing - 9 December 1991

Mr Maher defined the difference between campaign and maintenance funds and remarked that there was a fine line between the two terms.

"Campaign funds are those funds which you expend in an election for election purposes and those funds that go into and are defined for that purpose. Maintenance is for the general running of the party ...

The party needs to maintain itself, to carry out federal type functions, state type functions, principally, in the Liberal Party, and you undertake an education process with your own membership, the community at large, all of which are general political education activities, and they don't necessarily have - whilst it may be an output of it - but it doesn't necessarily have as its aim winning an election, those types of activities ...

So I think you can draw distinctions between them. But I am not saying that there aren't possibilities of overlap. But I also think you can isolate moneys and say those moneys are really used for the maintenance of the party in its development and educational role."

The Committee recommends that the artificial distinction between donations for administrative purposes and donations for electoral purposes be repealed.

The Committee notes that whilst a distinction can be drawn in theory the reality is that all donations are a form of income and the purpose of the donation is irrelevant as far as disclosure is concerned.

5.1.14 Supporters register

The Committee raised the feasibility of establishing a supporters register as a means of determining who is assisting in campaigns as professional versus volunteer. The reasoning behind the suggestion? To identify in-kind contributions.

Identifying overseas information on this subject was exceedingly difficult. Most of the information gathered referred explicitly to the various types of contributions - some even defined personal services.

The Fair Political Practices Commission, for example, limited the definition of contributions so as not to include personal services. That is:-

"Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her."

(§ 82015).

No mention was made about any registering of these volunteers however.

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Public Hearing - 23 September 1991

The Committee addressed these questions to Mr Dickson.

MR TURNER:

"Could you take that even further, Mr Dickson, say a professional person decided to donate a week of his time to your campaign, just doorknocking or something along those lines, does that then in-kind in the fact that he is not being available to his practice for a week, is that a loss that is incurred in favour of your campaign? It comes into a very difficult area?"

MR DICKSON:

"It does that, it comes into the area of whether you are classified then as a party member or whether you are supporting, as an interest, that particular person and then are you disclosing, perhaps, how that person might vote or record his vote."

MR TURNER:

"It follows then, as you said earlier on, that a supporter's registry might be more appropriate in trying to keep a line on these - -a"

MR DICKSON:

"It may be. Much on the same things as the democrats republicans, a sort of register system or something like that."

CHAIRMAN:

"You would open up an extraordinary box, wouldn't you, because you would basically be asking everybody who hands out a "How to Vote" card to be registered?"

MR DICKSON:

"Yes."

MR MERTON:

"You see, Mr Dickson, I think what Mr Johnson is right. I understand Dr MacDonald's point but really, what we have got to be very careful to avoid is the fact that we have got people who are actively support members and candidates and the work in polling booths all day and they give out leaflets and things like that. A, I think we have got to look at something as far as the privacy of these people themselves are concerned and B, if you were to try and quantify the value of the work put forward by each of the supporters in election campaign from the day the campaign starts to the day it finishes, that would be an impossible task.

If we are talking about services being equated and rather quantified, that is exactly what you would have to do and I would think in a lot of cases that would be impossible?"

MR DICKSON:

"It would be impossible to do. I had a note about privacy over the page in regards to another question and I recognise that that has got to be taken into consideration. Again, I think the question still is of the method that is your way to do it. I still believe the public wants to know. If they are going to be giving out funds for supporting of parties or candidates then they want to know to a certain extent where the parties are getting funding from or support from.

If you say a supporter's register might overcome that, and that might overcome some of Mr Johnson's problems with regard to the various small little activities that are carried out or it is just a listing of support that you don't have to quantify."

MR JEFFERY:

"Mr Dickson, though isn't it better to have as many people as possible supporting a candidature because that shows that candidate has widespread support within the community, with the electorate and therefore that is healthy for democracy. If you are going to restrict that sort of involvement, are you not going to shrink the base and just make political parties or candidates more dependent on large donations?"....The thrust is, if you start setting a register of all political supporters of a candidate whether it is independent or a party person, are you not then restricting those people becoming involved and therefore democracy will suffer?"

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MR DICKSON:

"No, I don't see that as being a particular issue. We have had a few instances of what I call "false candidates". Candidates who are not there to pursue their candidature but I don't know that we are entering into a restricted area. At the moment, when a party registers they have got to nominate 200 people who are on the electoral roll to support the existence of that. I would not see that that goes beyond that, any further beyond that."

MR JOHNSON:

"You would run into all sorts of difficulties, with due respect, when you get a person of some eminence in a government department or instrumentality that will take their holidays during an election campaign, to come and give the expertise available to them to work in a political campaign. That person's name appears on the register, I think his career is finished. It wouldn't under some circumstances but I think it would be terribly detrimental to them. When you get down to the cups of tea and sandwiches and food, etcetera, on polling day, I would hate to think that Elizabeth Kirkby would have to declare the mandarin I gave her last polling day at the Town Hall booth. As invariably happens with the Labor Party at the Town Hall, we have got drinks and food available there. It is not unusual for me to offer them to all of the other political parties."

MS KIRKBY:

"That happens between "how to vote" helpers. The Labor Party will share their sandwiches or coffee and so does the Liberal Party."

MR MERTON:

What you are really saying is that, and I agree that we don't get involved with the cups of tea and sandwiches and things, but what we are really looking for is a register, a schedule of professional services which have been rendered to candidates for which no charge has been made?

MR DICKSON:

"That is right. That is effectively to what we are after."

The Committee does not recommend the establishment of a supporters register.

The Committee believes that the greater restrictions on disclosure will ensure those who are actively contributing to an election campaign will have their donations declared and further restrictions, may hamper the participation of individuals in the political process.

The Committee believes that participation in the political process is a truly health part of the democratic process.

5.1.15 Indexation of donations

Indexation of political donations was briefly addressed by this Committee at pre-hearing. (Related concepts are also addressed in Section 5.1.3).

General consensus seemed to indicate that an indexation of political contributions be included in the legislation.

Mr Dickson said:-

"Might I suggest that rather than have a CPI index that the amount be an amount prescribed which enables an amendment to the figure in much the same way as there is a prescribed amount in the regulations for which candidates can claim for audit fees."

5.1.16 Discounting of services

The discounting of services/bills was viewed by the Committee as a loophole which, if exploited, could escape disclosure provisions.

The Committee's comments in the section defining political contributions also touches on this aspect (5.1.1).

Public Hearing - 23 September 1991

Mr O'Grady pinpointed the issue when he talked about the discounting of professional services as an area which warranted attention:

Mr Jeffery continued this and asked Ms Gladwin how it was at all possible to police the issue, or at the least, identify a breach.

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Ms Gladwin's response:-

"I guess the bottom line is you may not and that is a problem. I don't know how you get around that, other than to - to get right into the big brother thing and investigate every single little thing that parties do and that takes you into ferreting through BHP's and the large companies to see whether they are charging normal commercial rates and things like that. It is horrifying when you think about it. I guess when it gets right down to it you take the view that people are basically honest in terms of providing the information they are required to provide under the Act and we pick up the more blatant ones.

I think you would probably find that if a large company was habitually singling out a particular political party or a particular candidate for favoured prices and services or whatever, that it would come to the attention of the media or other candidates or other political parties and eventually - it mightn't happen the first time it happens, but if it goes on for any period of time eventually it will become public knowledge."

Mr Della Bosca noted the comments and discussions on this however he did emphasise the inherently voluntary nature of the political process. He said:-

"We still have substantially a voluntary political process in this State and throughout the country. Much of the work is still carried out by honorary people. All secretariats of the three larger parties are relatively small entities; that is, the number of professional party officials is relatively small compared to the overall membership.";

and

"I am aware of members of the Labor Party who would give up the equivalent of thousands of dollars in terms of potential for income by taking their annual leave, long service leave or time off without pay to work in a campaign. I am sure that the same would apply to the Liberal and National parties, to some Independent candidates and members and to the Australian Democrats. You start to make people account for what is effectively their private decision to participate in the political process. Provided that you could draw a boundary around such activities, I have no objection to setting a figure and forcing some kind of disclosure. Again this is on the verge of intruding on what is effectively a private matter."

Mr Della Bosca also clarified the affiliation between the Australian Labour Party and the trade union movement for members edification. That is:-

"While I am not sure that members of other political parties are easily able to come to grips with the affiliation between the trade union movement and the ALP and the potential exchange of resources or whatever, it is also important to remember that in the context of trade unions, or potentially any other organisation wanting to canvass on behalf of a political party, they may be doing so in their own interests, not just in terms of getting the political party they prefer into office or maximising that party's vote, but also they may be doing something relating to their own public interests concerns."

5.1.17 Exemptions to disclosure

A number of miscellaneous issues were debated including donations that were exempt from disclosure issues.

Some of these issues are also addressed in other sections.

For example, Mr Merton talked about difficulties with thresholds for in kind donations (see 5.1.2) and gave the example of donors saying that they did not value the donation as highly as the candidate or the EFA.

Mr Wasson also referred to candidates who are not elected

"This is a problem that could arise if you had a candidate who embarks upon a vigorous campaign and is not elected and reckons, "I won't ever run again", and he has all his bills paid by contributors to his campaign after polling day. There is absolutely no requirement on that candidate to disclose any contributions at all under the present terms of the Act and his donors would be unknown for evermore because there is no requirement providing he doesn't run again."

Thus the loophole arises when a candidate doesn't contest the next election as the legislation requires disclosure from polling date to polling date.

Mr Wasson recommends that the declaration of donations be amended to include all contributions to the relevant election campaign

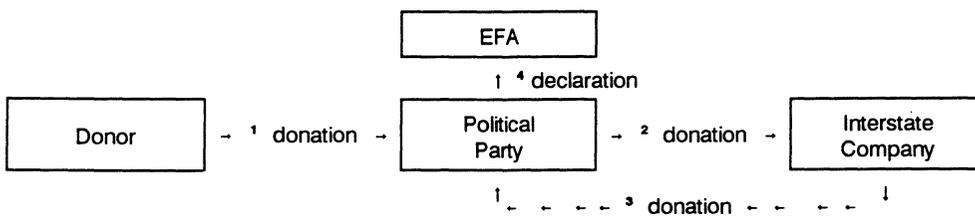
"irrespective of whether it is contributed or after polling date."

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Another loophole came to light when Mr Turner, talking to Ms Gladwin, noted that donations received offshore could also escape disclosure laws.

Also noted is the "Canberra shuffle" also referred to Mr Zervos comments in 4.2.6 and the ICAC report on North Coast Land Development.

Diagrammatically expressed as



Thus the donation is forwarded to the political party who then passes it interstate and then receive it back. The donation is duly recorded as being received from Interstate Company Pty Ltd and declared to the EFA accordingly. The original source of the donation does not have to be declared.

The Committee has no power to source political contributions if they are filtered by way of the "Canberra Shuffle".

The Committee recommends that all candidates must disclose political contributions and expenditures irrespective of whether or not they are successful in their campaign to be elected.

5.1.18 Effect of disclosure on donations

Some of the witnesses who appeared before the Committee queried whether restrictions on donations may discourage donors from contributing. A possible corollary was also mentioned and some witnesses also felt that there may be a need to increase the total amount of public funding available to parties to offset this decrease.

Dr Chaples was questioned on this issue by Mr Merton and Dr Chaples replied that, as far as his view was concerned, the current system of disclosure is essentially a system of voluntary disclosure.

Dr Chaples also noted that if a donor wants to avoid disclosure there are plenty of loopholes available for him/her to do so.

Public Hearing - 25 November 1991

Dr Macdonald raised this idea as well and asked Mr Della Bosca to explain the impact of full disclosure on donations to the Australian Labor Party.

Mr Della Bosca said:-

"That is an unanswerable question. One can only speculate, and certainly people do, that it would lead to a lesser amount and fewer donations; but it is purely speculation. I have no way of testing it."

He also said he could not determine if the impact of disclosure would be greater for any particular political party.

Public Hearing - 9 December 1991

Mr Maher stated in response to Mr O'Grady that if full disclosure of donations was to be introduced more public funding may be required. That is:-

"If I am making an estimate, I would say it is probably four or five times what is currently received in public funding. That is really a guess on the basis because you don't know what the impact is of something which is, in fact, going to occur and you can only speculate on the fall off in donations.

I don't doubt that there would be a fall off, simply because of what I am actually told. But when it comes to the crunch things change and how much that falls is a bit hard to say, but we do estimate it could be four or five times to allow for proper maintenance of ongoing activities."

Mr Maher also responded to further questions from Mr O'Grady as to whether this figure was based on past experience as a result of the introduction of public funding and said:-

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"I can't speak for the history of it and I don't have that information with me, but it is based on what we think we would need to maintain the sort of activities that we maintain if you had a fall off in your corporate funds. Bearing in mind that a major proportion of the Liberal Party's funds comes out of the corporate sector."

Ms Kirkby queried this statement and pointed to overseas experience on this effect and emphasised that there had not been a decline in donations despite this widespread fear.

Mr Maher said that:-

"I can only go on what is said to me and I think you would find that in the short term, I believe there would be a diminishing of donations from the corporate sector simply because I think our cultural relationships between business, politics, is quite different to what it is in the U.S. where companies are either prepared to stand up and say, "Yes, we support the Republican Party", or "Yes, we support the Democrat Party".

Also, in the U.S. disclosure legislation has led to a whole range of things. Political action committees and the like of which now, the House of Representatives and the Senate - certainly the Senate - wishes to have banned and the House of Representatives is putting control, or trying to institute legislation to put controls on how much money you can actually receive through PACs.

When you start down the path, you are never quite sure where it is actually going to lead you to. I still believe that in the U.S. the situation is different. There has not been a fall-off in sums being made available, but the moneys are going into different other groups and find their way back into political parties and by whatever processes simply because you have different levels of disclosure through the states as opposed to what you have the Congress, through the federal system."

The Committee believes that the effective functioning of the political party system is essential to the operation of the Westminster parliamentary form of government. The Committee acknowledges the concern that excessive disclosure may impose a counterproductive burden on political parties.

The Committee recommends that this Committee continue to monitor the effects of disclosure upon the political system.

The Committee believes that the important function of political education of the voting community is not presently assisted by the state in any real way but is left largely to the political parties.

As this imposes a considerable burden on them the Committee supports the creation of a political education fund based on the cost of one standard postage stamp per elector per year. This would be distributed each year by the Electoral Funding Authority in accordance with the formal vote received by each party (or where parties run as a group, then the endorsed ticket of a group of parties) in the preceding election for the Legislative Council (providing that no party shall receive funding assistance from the election fund).

This money may be expended on political education and educational materials only. The Committee considers the federal sales tax legislation which provides an exemption for educational material be used as the criteria to determine if state political material is properly classified as educational.

5.1.19 Independents

A number of issues which are discussed elsewhere rely upon the party structure for their relevance.

For example Ms Gladwin referred to difficulties in determining the disclosure period for independents.

She stated:-

"Independent candidates pose some difficulties as far as our disclosure legislation is concerned. We take the beginning of the disclosure period - it is different for different candidates. For a candidate who was a candidate in the previous election that runs from polling date to polling date is the disclosure period. For new candidates it runs from the declaration of their intent to be a candidate or nomination day or date of endorsement if they are endorsed by a registered political party until 30 days after polling date which is the disclosure period.

An area that gets a bit grey particularly where you have independent candidates and it basically depends on the candidate saying, "I decided and I publicly made an announcement that I was going to run as a candidate on X date", and his disclosure period then starts from then so any donations he receives during that period are required to be included

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in his or her return. What we find is that people tend to leave it to the last minute to start their campaign."

And

"There are a few independent candidates who are very high profile and who do run long campaigns that would be starting, say now, for the next federal election to become known in their electorate. We hope that our divisional returning officers would provide us with any information in relation to these high profile candidates that are really deliberately acting as potential candidates for the next federal election, which is 1993, hopefully."

Dr Macdonald questioned the relevance of this questioning as far as the Independents were concerned. That is:-

DR MACDONALD:

"I wasn't quite sure why the questioning as far as independents are concerned as to when they commence their campaign is important in the context of what we are talking about. Why is it important that line of questioning?---Why is it important to know when they start their campaign."

CHAIRMAN:

"A political party is going to file a return every year. Independents cannot file a return every year because they are not always in existence every year. When do you start acknowledging them to be a candidate? When they formally start?"

MS GLADWIN:

"That may be one point and that is what they are doing or the example I was given is where a person is raising his profile all the time but never actually announces that he is going to be a candidate."

The Committee recommends that Independents be required to file a retrospective declaration (for the last 12 months prior to their announcement of their intention to stand for election) of political contributions and expenditure.

5.1.20 Auditors

The legislation in New South Wales currently states:-

***Audit of declaration**

- 93.(1) A declaration under this Part shall be deemed not to be validly lodged with the Authority unless it is accompanied by a certificate of an auditor stating-
- (a) that he was given full and free access at all reasonable times to all accounts, records, documents and papers of the agent by whom the declaration is to be lodged, and of the party, group or candidate, as the case may require, relating directly or indirectly to any matter required to be set out in the declarations;
 - (b) that he duly examined such of those accounts, records, documents and papers as he considers material for the purpose of giving the certificate;
 - (c) that he received all information and explanations that he asked for with respect to any matter required to be set out in the declaration, subject to the qualifications (if any) specified in the certificate; and
 - (d) that he has no reason to think that any statement in the declaration is not correct.
- (2) Subsection (1) does not apply to a declaration made in relation to a group or candidate, if the Authority waives compliance with the audit requirement for the declaration.
- (3) The Authority may waive compliance with the audit requirement in either of the following cases:
- (a) where the declaration contains a statement to the effect that no contributions were received and no expenditure was incurred; or
 - (b) where the group or candidate to whom the declaration related is not eligible to receive a payment under Part 5.
- (4) Such a waiver is at the discretion of the Authority, and may be made before or after the declaration is received by the Authority.
- (5) The Authority may revoke a waiver at any time. Revocation does not affect the validity of the lodgment of a declaration already made, unless the required certificate of an auditor is not forwarded to the Authority within the time specified by the Authority."

Ms Gladwin was asked by the Chairman why the Australian Electoral Commission doesn't require auditors certificates. Ms Gladwin responded that she didn't really think it improved the quality of the returns submitted. The

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Chairman further queried Ms Gladwin on whether she felt that this requirement should be deleted from the NSW legislation.

Ms Gladwin asserted that:-

"It is hard to say but my feeling is that bringing auditors into it just brings an extra dimension, if you like, to a procedure that perhaps doesn't need them. In fact, in some respects, my experience with auditors has been that they are less likely to take due care in furnishing returns than an agent. The agent after all has the responsibility to make sure that the return is true and complete and the agent can be prosecuted for furnishing an incomplete return or for failing to furnish returns. Unless you write it into the legislation, you have got no comeback against an auditor."

Ms Gladwin also questioned the ability of auditors to understand the legislation:-

"My feeling is that basically auditors just don't have a great deal of interest in - so long as their name is not going on the line then they are not the ones that are going to be prosecuted. You have got no hold over them and I find that they don't have as good a grasp of the Electoral Act or the requirements of the provisions of the Electoral Act as perhaps party officials do ...

"..I don't have a great deal of faith in the auditors' ability to understand the legislation any more than anyone else, and I don't see that it is any more difficult to get a tame auditor to sign his name on a return than it is anybody else."

The question of whether organisations such as the EFA and the AEC should have the power to undertake spot audits is addressed in 6.3.1.

Finally Mr Della Bosca answered Ms Kirkby's questions as to whether the ALP would be happy to lodge an audited statement of the parties records and accounts on an annual basis. Mr Della Bosca affirmed that the party would be happy to do so.

Public Hearing - 25 November, 1991

Mr Johnson and the Chairman discussed the possibility of political parties being audited and investigated far more than independents and the Chairman paraphrased Mr Johnson by saying:

"Essentially, what Mr Johnson is saying is that it could reflect unfairly on the existing political party structure. Political parties could be subject to this random form of audit. I would not imagine that the Election Funding Authority, however reconstituted, would be going out examining some Independent candidate in Bankstown, for example. In the main it would be examining the three major political parties."

Mr Johnson continued and reemphasised his point:

"There is a perception in some people's minds that, because people belong to a political party, they are a bunch of crooks. I certainly do not hold that view and I am sure that Miss Gardiner, the former Secretary of the National Party, or anyone associated with the Liberal Party or the Australian Democrats, would hold that view. Donations have been made to political parties and candidates from time immemorial. No doubt they will continue to be made. Donations to political parties do not make them suspect."

Mr Zervos clarified his statements and said that he was referring to:

"Instances when donations have been made when, clearly, the intention has been to induce favourable treatment. That has been occurring—it has been uncovered in the North Coast report—in this State and elsewhere in Australia. There is a serious problem in relation to the payment of funds to political parties. It is my firmly held view that, if public confidence and the integrity of our public institutions are to be maintained, this problem has to be addressed."

Committee consensus in this could be summed up by the following exchange:

Mr ZERVOS:

What happens when you do know, when someone approaches you and says, "I will make a \$10,000 donation to your party and I would like you to look favourably upon a submission that I have placed before you"?

Mr JOHNSON:

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I would push him down a liftwell. We are not crooks.

The Committee recommends the retention of the requirement that auditors certificates be submitted as required by law.

The Committee notes that the agent is the individual who bears the burden in terms of the legislation. The Committee notes that what is inappropriate however is the fact that it is the agent, not the candidate, who is responsible for any errors.

The Committee believes the legislation should be amended so that both candidates and agents are responsible for proven individual errors and/or omissions.

In particular, that a candidate be guilty of an offence where he/she has knowingly withheld or given false information which has been included in the return lodged by the agent.

The Committee recommends that any breach of this section should incur a financial penalty only and the candidate's seat should not be declared vacant.

5.1.21 Pecuniary interests

Mr McGuiness received a number of questions by Committee members on pecuniary interests and how they are regulated within the journalism profession.

Mr McGuiness, in response to Mr Turner stated that:-

"There is a register in NSW of financial journalists which they are required to maintain lists of shareholdings and similar assets in the office. When I edited the Financial Review we took that very seriously, and every other editor of the Financial Review before and since, to my knowledge, has taken it seriously, that we did require both formally and informally declarations of interest from the journalists.

It was made clear that you must not write favouring or disfavouring a position in which you have a direct financial interest and you should tell the editor, in fact, if that kind of interest exists."

Mr Jeffery continued with questions on this line and also queried the level of impartiality of some journalists and asked Mr McGuiness whether these

records were available publicly as are politicians' records. This is detailed in two booklets published by the Parliament of New South Wales entitled *Register of Disclosures by Members of the Legislative Assembly* and *Register of Disclosures by Members of the Legislative Council*.

Mr Merton observed that the political agenda is set by more participants than just politicians. He continued:-

"Following on from that, Mr McGuinness, I realise that the political agenda is not only set by the politicians, realistically there is a whole lot of other participants and one of the major players in this other group would be journalists. I would suggest to you that the journalists in fact are political operators in NSW and they certainly can influence current political feeling and such being the case I would think that it is realistic and fair that any details relating to their pecuniary or financial interests should be made available to the public?"

MR McGUINNESS:

"I disagree...No, because, again, journalists are not elected nor are they - you are effectively saying that anybody who expresses their right to free speech can be held personally accountable in terms of their knowledge about their financial or personal affairs, that is what you are saying, isn't it?"

MR MERTON:

"No, what I am saying, simply, is this. Any one that makes a political statement about a particular issue one should be entitled to seek details of whether or not they have any vested financial interest in making that statement?"

MR McGUINNESS:

"I understand what you are saying but I am saying you are saying that nobody with any kind of vested interest or any kind of personal loyalties is entitled to free speech without exposing themselves to complete investigation.

MR MERTON:

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"No, I am not saying that at all. What I am saying is that if you do make a political comment you should be subject to that examination and then the effect of what you have to say becomes a matter of "goes to credit" as to what weight people can put upon it and, secondly, I think that other members of the public should be advised that Mr Bloggs who has come out heavily on a particular issue is, in fact, a shareholder of XYZ company."

5.1.22 Cost of disclosure

Committee members recognised the need for effective disclosure and true sourcing of political contributions yet felt it had to be weighed up against the costs associated with such an understanding.

A cost-benefit analysis must be applied - costs determined and benefits weighed.

Public Hearing - 28 October 1991

Ms Kirkby asked Senator Sowada about the costs associated with the processing of declarations, the publicising of the information and all the attendant paperwork required to be undertaken.

Senator Sowada advised Ms Kirkby that the resources required to quantify this type of request were beyond those of the Australian Democrats. She also reiterated that the cost would have to be weighed up against "public demands for disclosure of donations".

5.1.23 Tendering Procedures, Grants and Subsidies

Public Hearing - 28 October, 1991

Mr Merton raised the idea of governments being required to disclosure on an annual basis grants, subsidies and payments.

Mr Dempster responded and said:

"Yes. That would be helpful again. If it was done in a digestible form it would be very revealing and helpful in changing the culture. The taxpayers could see exactly how their money was being used and could question it, we could have more accountability from governments who

made donations or subsidies. Whether, again, that is an administrative nightmare or not I don't know."

South Carolina's *Ethics, Government Accountability and Campaign Reform Act of 1991* contains details of legislation governing tendering procedures and campaign finance. That is

"Persons awarded a non-competitive bid contract with the State or a political subdivision may not make contributions to or enter financial ventures with public officials in a position to act on the award. Solicitation on behalf or investments in exchange for the award or promise of an award of a contract is also prohibited."

(§ 8-13-1342)

The Committee recommends the prohibition of any solicitation for campaign funds in exchange for the awarding or promise of awarding of a contract.

The Committee however has noted advice received from the Crown-Solicitor and does not believe it is necessary to create a separate offence provided that members of the public and relevant participants in the public process can easily locate the section in the legislation regarding offences.

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5.2 EXPENDITURE

5.2.1 Definition of Political Expenditure

Numerous definitions abound as to what information should be included in a definition of the term political expenditure.

The *Electoral Funding Act 1981* says that a reference to expenditure for election campaigns:-

- (a) includes a reference to -
 - (i) expenditure for goods and services for those purposes;
 - (ii) expenditure for election campaign preparation purposes; and
 - (iii) expenditure incurred in respect of the audit of the relevant claim for payment under this Part and of the declaration lodged under Part 6 in respect of the period ending on the polling day for the election (in each case not exceeding \$200 or such other amount as may be prescribed); and
- (b) does not include a reference to -
 - (i) expenditure incurred substantially in respect of an election for a legislature other than the Parliament;
 - (ii) expenditure incurred substantially in respect of an election held before that in respect of which the relevant application for payment under this Part is made; or
 - (iii) expenditure of a prescribed class or description.

(s.55(1))

The Texas *Election Act* defines five related terms: more explicitly a campaign expenditure, expenditure, direct campaign expenditure, office holder expenditure and political expenditure.

In detail:-

- *1. **Campaign expenditure** is defined as "an expenditure made by any person in connection with a campaign for an elective office on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure".
2. **Expenditure** is defined as "a payment of money or any other thing of value and include and agreement made or other obligation incurred, whether legally enforceable or not, to make a payment".

3. **Direct campaign expenditure** is defined as "a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure".
4. **Officeholder expenditure** is defined as "an expenditure made by any person to defray expenses that:
 - (a) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and
 - (b) are not reimbursable with public money".
5. **Political expenditure** is defined as "a campaign expenditure or an officeholder expenditure".

(Sec 251.001)

Wisconsin law, is also explicit and refers political disbursements as:-

"(7) (a) "Disbursement" means:-

1. A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value (except a loan of money by a commercial lending institution made by the institution in accordance with applicable laws and regulations in the ordinary course of business), made for political purposes. In this subdivision, "anything of value" means a thing of merchantable value.
2. A transfer of personalty, including but not limited to campaign materials and supplies, valued at the replacement cost at the time of transfer.
3. A contract, promise, or agreement, if legally enforceable, to make a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value (except a loan of money by a commercial lending institution in accordance with applicable laws and regulations in the ordinary course of business) for a political purpose.
4. An expenditure authorized under s. 11.25(2)(b) made from a campaign depository account.

(b) Notwithstanding the foregoing meanings of "disbursement", the term does not include:

1. The use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for a purpose under par.(a)1 if no funds are raised with the knowledge of the host;
2. Any unreimbursed payment for travel expenses made by an individual who on his or her own behalf volunteers the individual's personal services for political purposes;
3. The costs of preparation and transmission of personal correspondence, provided such material is not reproduced by machine for distribution;

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4. Compensation or fringe benefits provided as a result of employment by an employer to regular employees or pensions of like status.
5. The reuse of surplus materials or utilisation of unused surplus materials not exceeding \$400 in value at the time of original receipt, in the aggregate, acquired in connection with a previous campaign for or against the same candidate, candidates, party or referendum in connection with which the materials are utilised, if utilised by the same registrant previously acquiring the materials and previously reported by that registrant as a disbursement under s. 11.06.

(§ 11.01(7), Wisconsin Election and Campaign Laws, 1990).

Thus the question for the Committee - whether or not various types of expenditure should be more explicitly defined.

The Committee considers that s88 of the Election Funding Act contains a sufficient definition of electoral expenditure and that the Election Funding Authority continue to monitor the definition.

5.2.2 Third Party Expenditure

The issue of expenditure by third parties was an area which resulted in considerable discussion by Committee members and witnesses.

Public Hearing - 23 September, 1991

Mr Jeffery first raised this issue with Mr Dickson who responded by saying that:

"Just make sure I understand what we are talking about, third party. It is the Right to Life associations, who aren't running a candidate but who want to be able to support a particular view of a party or a candidate or whatever it might be. At the moment, and just getting aside from the authority, they are captured in hoping to register their "how to vote" material on polling day and that is the only capture that is made of them. They can do anything they like prior to that within certain requirements of the P.E and E Act."

The Committee also discussed difficulties when a third party organisation places advertisements either derogatory or complimentary.

As the Chairman said:

"That is always a problem. I would not like to open up the paper and see the Nazi Party had endorsed me for political office."

Ms Kirkby queried the current law as far as authorisation is concerned and emphasised that what is still being hidden despite this authorisation is the source of funding for the advertisement.

Mr Dickson said in reply that:

"...all it does is give an indication of who authorised it. You are losing, of course, who has funded it. Who is the party behind the authoriser, if you like. I know it is interesting information."

Mr Merton clarified the problem by saying:

"What the problem is, if you are going to police and involve yourself in the inquisitorial on people who are not directly involved with the election (I mean candidates of political parties,) you can well involve yourself in a witch hunt."

Ms Gladwin was asked to explain the Federal Requirements in regard to Electoral matters by the Chairman. She explained:

"The returns have got to show who authorised the advertisement, who the advertisement was broadcast on behalf of, when the advertisements were broadcast or the period during which they were broadcast, the amount of charge whether the charge was the normal commercial rate which is where we sometimes pick up gifts in kind. And publishers are required to furnish returns if they published in total electoral advertisements, the value of which was \$1,000 or more."

The actual samples of material are not required (a difference between the Federal and State act) which saves storage costs. Also if access is required to check whether an ad actually appeared the information can be sources through the various libraries which maintain copies of newspapers on microfiche.

Ms Gladwin also said that:

"There have been occasions where government instrumentalities have had advertising campaigns that have come under the definition of political advertisements and we have got them to furnish returns".

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Ms Gladwin also told Mr O'Grady in response to a question of his, that his occurred in the early 1980's when the Education Department ran a number of political acts.

Public Hearing - 28th October 1991.

Senator Sowado, responded to Mr Jeffery continued discussion on the need for third parties to disclose expenditure

"We actually suggest that the funding act be amended to provide for the disclosure of all forms of income and expenditure by third parties. That is recommendation 19 of my submission.

Under the federal funding provisions, third parties already must disclose certain aspects of their political campaigning activities and I would refer the committee to the election funding and disclosure of the Australian Electoral Commission which does actually list on page 59 the advertising expenditure reported by third parties in relation to the 1990 federal election and it does make extremely interesting reading. For example, the Commonwealth Bank Officers Association spent in excess of \$284,000 on the federal election, that is just on electronic advertising. This doesn't include any direct mail that they might have engaged in or other things and likewise the Forest Industries Campaign Association spent in excess of \$1. 1 million just on electronic advertising in relation to the federal election.

I think it is very important that such expenditures be put on the public record and so people can see, so the public can see exactly who is helping fund candidates and parties by why of third party expenditure and how much they are actually spending, because I think the committee would all agree that \$1.1 million is a considerable amount of money."

Mr Jeffery queried how this type of regime could be enacted and Senator Sawado responded by saying that:

"I think it would be possible to enact a regime whereby the State Electoral Office could on perceiving a group participating in the electoral process by way of advertising or direct mail or whatever, to demand the address, the registered address of that organisation, the office bearers of that organisation, and that is something I think that could be quite easily written into the act and is something that has

been suggested for amending the Commonwealth Electoral Act. So that the Electoral Commission could see who these people were and actually demand to have a return of expenditure and donations received in respect of an election event. I don't think that that is beyond the realms of possibility. It just requires the political will, I would suggest."

Mr Mills highlighted one of the difficulties that the determination of what a third party donation is when he said that organisation may be merely umbrella groups for individual people and not just organisations acting on their own behalf.

Senator Sowada said that:

"The point I raised with the select committee in Canberra was, "Who do they represent?" They are clearly an umbrella organisation for a large number of groups who are industry for a large number of businesses and other people that we just simply don't know and I think the public does have a right to know on whose behalf they are acting.

With an organisation like the Wilderness Society, I don't see why they should be exempt from disclosure simply because the nature of the contributions they receive may well be different. I think you would find an organisation like the Wilderness Society would glean most of its donations from small contributions, from membership receipts and from small fundraising functions. I think that - getting back to this disclosure regime which has a level of integrity, that it is incumbent upon the parliament to institute a regime that is fair to all third parties concerned."

Public Hearing - 25th November, 1991.

The Chairman raised this with Mr Della Bosca who said in response that:

"Certainly in principle anybody participating in the campaign process should have one rule applied. There should be one rule for all who participate in the process. So there must be some kind of device. I have not developed or been able to turn my mind to the mechanism that would properly address that, either a legislative mechanism or an administrative one that would allow that to happen. In principle it is self-evident that anyone participating in the campaign process advocating votes in any way should be obliged to accept the same

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conditions as the political parties who actually endorse candidates in the campaign."

He continued:

"That is exactly the problem I am talking about, the legislative mechanism for making other organisations accountable, organisations that may never envisage being involved in a campaign but may have specific reasons, for instance with a lobby type of group which has an interest in a specific campaign because of one of the issues involved and may decide in a short time frame to allocate some of their resources to political participation. How would you force them to be brought to book for that, without limiting their capacity to get involved in the process if they choose to do so? I think all members of the Committee would assume that it is the right of any organisation or individual to get involved in the process. If you are going to set up a mechanism to make them accountable, you could not put in place something that was so complicated or bureaucratic that it prevented any organisation from getting involved in the process".

Public Hearing, 9th December, 1991.

Mr Maher agreed with the need for third parties to disclose the sources of their funding for advertising and, said to Mr Mills that the fact that they are active participants should require them to disclose.

Mr Maher disagreed that memberships should be disclosed and told the Committee that he did not put membership of organisations in the same category as memberships of political parties.

Ms Kirkby and Mr Maher also disclosed this distinction in depth that is Ms Kirkby:

MS KIRKBY:

"The majority of the environment advertisements that are put out either on a particular issue or at times of elections, are usually collected through reasonably small donations from individuals who support that particular environmental case and therefore they are usually authorising themselves. I myself have contributed to many of those advertisements and my name has appeared as have the names of many other dozens of members of the public who espouse that cause.

We are clearly identified byname and in my case, by my parliamentary position. there is certainly nothing hidden. The fact that I have put my name to that advertisement makes it very clear to members of the public that I am in favour of that particular environmental concern?

MR MAHER:

Mr Chairman, I am not sure, notwithstanding that, that the principle still applies. When ads are run, which are authorised by the ACF or by the Wilderness society or Forest Products, of just what the source of those funds are. Also in the case, say, of the Conservation Foundation to what extent receiving a government grant allows diversion of resources which should otherwise be used in administration to allow them to participate in the political process.

I think if the rules and the principles apply to political parties, I think they apply no less to other players who are participating in the political process and there are in fact, more of them participating in the process anyway each day. It is evident, if you look at campaigns over the last decade that more and more third parties do in fact, participate.

The Committee recommends that where the Election Funding Authority has a reasonable belief that a third party has been involved in the election process and has incurred electoral expenditure in excess of \$1500 then the Election Funding Authority, (if no return has been filed) may approach such third parties and require them to furnish returns of expenditure.

5.2.3 Disclosure by Others

The issue of disclosure by third parties in relation to expenditure was scrutinised by the Committee when it took evidence from the public.

Public Hearing - 23 September, 1991

Rev Nile raised this with Mr Wasson and said that the influence of third parties on the electoral process could not be underestimated.

"One of the areas that I have noticed, it is where radio commentators, take a very active part in an election. One year I made a joke that Mike Carlton should have registered himself as a political party. He was expressing very strong views for and against candidates which

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weren't advertisements. I was wondering where that would fit into some kind of control other than saying that only political statements on radio stations etcetera should be paid ones and the comments by the "on air" people should be not directly advocating candidates."

Mr Wasson agreed and also said that this endorsement is not limited only to radio commentators but also occurs in the print media.

Merton disagreed and said the distinction should be clarified as radio stations and other journalistic outlets are in the business of passing comment on current affairs whereas other groups may be simply concerned with the promotion of a political party.

Ms Gladwin detailed the federal requirements and said that broadcasters have to:

"Show who authorised the advertisement, who the advertisement was broadcast on behalf of, when the advertisements were broadcast or the period during which they were broadcast, the amount of charge, whether the charge was the normal commercial rate which is where we sometimes pick up gifts in kind. And publishers are required to furnish returns if they published in total electoral advertisements, the value of which was \$1,000 or more."

She also said that:

"There have been occasions where government instrumentalities have had advertising campaigns that have come under the definition of political advertisements and we have got them to furnish returns."

Public Hearing - 28 October, 1991

Mr Jeffery asked questions on this idea to Mr McGuiness:

"Without trying to sound facetious should broadcasters, publishers, printers and journalists be required to furnish returns disclosing electoral matters or what they may have reported on because there is a view out there that the media at times are very biased against one party or another and during that state election period do you think they should also have to disclose any things in that regard?"

Mr McGuiness said that:

"They disclose everyday what they have got to say on the subject and anybody can carry out an analyses of the public record."

Senator Sowado agreed with disclosure of expenditure by third parties during campaigns and said that:

"Under the federal funding provisions, third parties already must disclose certain aspects of their political campaigning activities and I would refer the committee to the election funding and disclosure of the Australian Electoral Commission which does actually list on page 59 the advertising expenditure reported by third parties in relation to the 1990 federal election and it does make extremely interesting reading. For example, the Commonwealth Bank Officers Association spent in excess of \$284,000 on the federal election, that is just on electronic advertising. This doesn't include any direct mail that they might have engaged in or other things and likewise the Forest Industries Campaign Association spent in excess of \$1.1 million just on electronic advertising in relation to the federal election.

I think it is very important that such expenditures be put on the public record and so people can see, so the public can see exactly who is helping fund candidates and parties by way of third party expenditure and how much they are actually spending, because I think the committee would all agree that \$1.1 million is a considerable amount of money."

Senator Sowado also said that it is not impossible to have a system where the:

"State Electoral Office could on perceiving a group participating in the electoral process by way of advertising or direct mail or whatever, to demand the address, the registered address of that organisation, the office bearers of that organisation."

To her, it is merely a matter of political will. (See also 5.1.5).

5.2.4 Limits on Expenditure

The issue of expenditure limits has raised its head repeatedly throughout the Committee's investigations. It is a contentious matter as members could see both advantages and disadvantages to the proposal.

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The Committee noted the recommendations of the Quinn Committee in this area. That is:-

"The Committee does not recommend any limitation on expenditure in election campaigns. The Committee recommends that the State Electoral Commission monitor all expenditures and from time to time include in its Annual Report a comparative analysis of expenditures over different elections and the proportions of funds received from private sources as against public funds made available under this Scheme."

There is a lack of any substantive information on the subject of expenditure limits in Australia despite the fact that a number of states have experimented with the concept and one State still retains it.

In 1969 South Australia repealed expenditure provisions.

Western Australia followed suit in 1979 after the recommendations of a Royal Commission.

Federally there was a maximum expenditure permissible for House of Representatives elections which was established in 1902. These figures were then revised in 1946 and in 1947 the Federal Labour Government tried to impose more realistic spending limits. These limits were subsequently repealed by the Senate.

Tasmania has had a number of experiences with expenditure limits and the entire Tasmanian general election was challenged on this basis. The challenge was ultimately reduced to one seven member constituency where the court upheld the challenge and the election was recontested.

The prospect of a similar situation developing in the future resulted in the repeal of this legislation for Lower House elections in May 1980.

The present election legislation in Tasmania does provide for limitation of electoral expenditure in regard to Upper House candidates, however,

s197 of the *Electoral Act* states:-

*(1) A candidate for election to a seat in the Council shall not, in respect of his campaign for that election, incur relevant electoral expenditure exceeding in the

aggregate the following amount (in this Division referred to as "the permitted maximum amount"):-

- (a) if the election is held in the year 1985 - \$5,000
 - (b) if the election is held in a later year - \$5,000 together with an additional amount of \$250 for each year after the year 1985.
- (2) A court which convicts a candidate of an offence against subsection (1) shall, at the time of conviction, make a finding of the amount by which the relevant electoral expenditure incurred by the candidate exceeded the maximum permitted by that subsection.
- (3) For the purposes of subsection (1), expenditure incurred by the election agent of a candidate shall be deemed to have been incurred by the candidate.
- (4) Where a candidate is seeking election to a seat in the Council, the candidate shall not authorise a person other than the election agent of the candidate to incur on his behalf expenditure with a view to promoting or procuring the candidate's election to that seat."

Also relevant is s199:-

"A person shall not incur any expenditure for or on behalf of a party with a view to promoting or procuring the election of candidates to seats in the Council, whether those candidates are endorsed candidates of the party or not."

And s202 which details the power of the Chief Electoral Officer to require information to be brought to his attention in regard to possible breaches of expenditure limits at council elections.

According to the Tasmanian Chief Electoral Officer, Mr C G Ball, prior to 1980, the *Electoral Act* contained a number of similar provisions for the Lower House Elections. However, after the 1979 elections a number of petitions were lodged in the Supreme Court alleging overspending of Assembly candidates. Some of these petitions were later withdrawn however three in one electorate proceeded to hearing stage and the initial plead by the candidates of not guilty was changed to guilty. The result was that the election was voided and a new election was called.

As a result of this a Committee was established to review a number of electoral issues including expenditure limits. The result was that no limits were imposed for Lower House elections, only for Upper House.

Public Hearing - 23 September 1991

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Mr Dickson was asked about this question and said that he didn't see any need for a ceiling to be established although he has aware of ceilings being implemented in the United States.

Public Hearing - 28 October 1991

Dr Chaples also responded to similar questions from Mr Jeffery and said:-

"Many times in Australia we have gone down this route of trying to limit expenditure on candidates and campaigns and it, again, has proved extremely difficult to enforce. There was a wide ranging discussion on this in 1979 when the original N.S.W. legislation was being formulated and thought to be relatively impractical. The prior Australian experience was that what we needed was to ensure that individual candidates and parties had enough money to put on a reasonable campaign and that after a certain point an awful lot of political spending was wasteful anyway. It didn't accomplish anything in particular, so from the point of view of political education it was more important to see that all significant contenders had a go rather than it was to prevent how many of them from wasting money."

Mr McGuiness was also asked this by Mr Jeffery:-

"There is a case for limiting expenditure in an election campaign. It is a very difficult one to make though, because it is so difficult to enforce."

Dr Macdonald followed through with Mr Dempster on this.

DR MACDONALD:

"There seems to be a line of logic that has emerged as a result of a number of questions, not only with yourself but previous, and that is that it seems that the concept the more you expand on a campaign doesn't necessarily mean that you will be more successful. In other words, expenditure doesn't necessarily bring results. If that is the case why don't we try and put limits on expenditure and if we do that would that not lessen the opportunities for influence through donations?"

MR DEMPSTER:

"It could but I don't see how you can impose an upper limit. The debate about the federal government was putting through about stopping television advertising. In return the quid pro quo for the public of Australia was that they would have full disclosure. Remember, that was the other side of the equation. That is because the cost of federal funding is astronomical and when you are in government I suppose the imperative is to stay there and spend an inordinate amount of money to get across the line."

Mr Jeffery also asked Senator Sowada this question:-

"I don't believe there should be a limit on expenditure. This was raised at the senate select committee in relation to the Labor Party's submission and I think it is quite clear when one looks at the American experience of the *Federal Election Campaigning Act* which was enacted in 1973 to deal with some of the excesses after the Watergate scandal, that the history of that Act has been that each time that ceilings have been put on expenditure that it has resulted in further holes in the dyke appearing, as it were, which has resulted in further legislative amendments and I think that that has been amended some four times since 1973 to attempt to plug up those loopholes. The experience in the states has been that simply limiting expenditure has resulted in other ways and more creative ways of expenditure by parties and by lobby groups in particular and, as you are all aware, you have all been to the United States and have had an opportunity to investigate the activities of political action committees and their activities have certainly increased dramatically, I think, as a direct result of the spending limits that were enacted under the *Federal Election Campaigning Act*.

So I certainly don't see that limits on expenditure are the way to go and I think, as I said to the select committee in Canberra, that if parties are finding it difficult to pay for elections then they should simply spend less and perhaps use a bit of good old fashioned budgeting to make sure that they don't spend in excess of what they can afford."

Public Hearing - 25 November 1991

MR DELLA BOSCA:

"There is some merit in that argument. Unless I am badly mistaken I cannot recall the Australian Labor Party taking a formal position in

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relation to ceilings. I refer the Committee to the United States of America. Some states have had ceilings for some time. There are ceilings at presidential elections. There has been a massive growth in political education campaigns. In fact, most people make political donations to their local education fund. That is the way in which much of the campaign money is raised and spent in those areas where there are ceilings. The notional ceiling for a presidential campaign in the United States of America is about 10 per cent of what is really spent. That is where the ceiling argument runs into difficulties. Without wanting to overstate the differences between the two major parties, one can imagine some kind of business organisation putting together a foundation for political education and using that as a device to attract general support in advertising, even if it did not specifically advocate a vote for a specific party. The Australian Labor Party might be able to do similar things by virtue of lobby groups attached to it. Any political party would be able to do that formally or informally. The ceiling argument runs into a serious trap."

Public Hearing - 9 December 1991

MR MAHER:

"I think the question of the expenditure limits probably would be looked at by the committee and it is our view that basically there is not a necessity for expenditure limits. If you do head down the path of full disclosure, we also think that it is the case that political parties will require more public funding, that we think there will be an impact upon the donations that are available to political parties in the short term from the corporate sector."

The Committee thus summarised that:-

In theory limiting campaign expenditure:-

1. Reduces imbalances
2. Reduces need for money
3. Reduces temptation to accept money from elsewhere to which either implicit conditions are attached

However, there are problems such as:-

1. Uncertainty as to what the public interest is in specifying which activities may be supported by campaign funds
2. Difficulty in determining what the limits will actually be
3. Difficulty in enforcement

An effective expenditure limit should include:-

1. Definitions of key terms by voluntary labour
2. Limits on allowance expenditure
3. Prohibition on unauthorised spending
4. Full disclosure

The law should also provide for:-

1. Valuation of goods and services
2. Third party advertising
3. Fund transfers within political structures
4. Line of personal funds by candidates
5. Inter election standards
6. Anonymous donations
7. Sourcing of donations
8. Disclosure of size and the identity of donors

The Committee recommends that expenditure ceilings should not be established at this point in time.

The Committee further notes that one of the repercussions of fixed term parliaments may be increased campaign costs and an increased election season.

The Committee feels this issue warrants further attention as the potential for electoral funding and expenditure to spiral may be large.

The Committee notes the submission of the Constitution (Fixed Term Parliaments) Committee in this respect. (See also 2.4)

5.2.5 Processes of Disclosure

As to the processes of disclosure of expenditure much of the overseas information obtained by the Committee relates to countries which have enforced expenditure limits. The amount of money available is usually

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determined by multiplying the number of electors in each district by a nominal amount of money (usually adjusted by the Consumer Price Index).

For example the Canada Election Act requires candidates:

230.(1) Within four months after polling day at an election, each candidate shall transmit or cause to be transmitted to the returning officer a declaration respecting the candidate's election expenses made by the candidate in the prescribed form, in this Act referred to as a "declaration respecting election expenses".

(Canada Elections Act 1990)

In the Committee's view the current requirements in NSW, should be amended in line with the Federal Legislation. That is, claims should be lodged in six major areas only.

This idea was originally raised by the Liberal Party when Mr Hynes said that the Commonwealth system operates by concentrating only on certain categories of expenditure which has the advantage of saving administrative dollars.

The federal legislation details these categories in section 308(1) which is as follows:-

- 308.(1)** In this Division, "electoral expenditure", in relation to an election, means expenditure incurred (whether or not incurred during the election period) on -
- (a) the broadcasting, during the election period, of an advertisement relating to the election;
 - (b) the publishing in a journal, during the election period, of an advertisement relating to the election;
 - (c) the display, during the election period, of an advertisement relating to the election;
 - (d) the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c);
 - (e) the production of any material (not being material referred to in paragraph (a), (b) or (c) that is required under section 328 or 332 to include the name and address of the author of the material or of the person authorising the material and that is used during the election period;
 - (f) consultant's or advertising agent's fees in respect of -

-
- (i) services provided during the election period, being services relating to the election; or
 - (ii) material relating to the election that is used during the election period; or
 - (g) the carrying out, during the election period, of an opinion poll, or other research, relating to the election."

Mr Wasson of the EFA agreed that there would be no problem if the Government were to adopt the federal system as long as there was some evidence that the money had been spent in order to ensure that there could be no suggestion that candidates were making a profit when running an election campaign by claiming expenditure which was not incurred.

Another point worth considering is whether the Consumer Price Index is Most effective index for ascertaining electoral expenditure. Indeed the CPI figure is comprised of prices for eight categories:- food; clothing; housing; household equipment and operation; tobacco and alcohol; health and personal care; and recreation and education.

Electoral expenditure relies on costs such as airtime, advertising, printing, travel, polling and so on.

The Committee recommends that the current requirements for disclosure of expenditure should be amended in line with federal legislation and claims need only be lodged in the same areas as are prescribed federally.

The Committee also recommends an Electoral Expenditure Index (EEI) be compiled and the Committee recommends the following areas be included in the EEI, ie.:-

- Communication
- Broadcast media time
- Newspaper advertising placement
- Billboard rental
- Printing and distribution of literature
- Advertising production
- Polling and research
- Travel particularly for country areas
- Fund raising
- Legal/auditing/accounting advice
- And any other matters as the Election Funding Authority may consider relevant.

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This index should be utilised when increasing or decreasing thresholds and may also be useful for research purposes.

5.2.6

See 5.1.13.

5.2.7 Administration of Register

No mention was made in the hearings and no evidence was received suggesting any alteration to the administration of a register of expenditure.

(See also 5.1.13)

The Committee makes no recommendations on this issue.

5.3 CAMPAIGN COSTS

Public Hearing - 23 September 1991

Mr Jeffery queried whether the introduction of public funding has lifted the threshold of spending and escalated campaign costs.

Mr Dickson responded by saying that:-

"I could not answer that in any true terms but certainly, the cost of running elections has increased. Whether those funds would have been spent otherwise, I don't know. All we can do is look at what has happened with regards to the expenditure records that we have been provided by."

Public Hearing - 28 October 1991

Dr Chaples also noted increased costs and said:-

"I am a bit worried about runaway campaign expenditure, but the sort of culture that prevails among the major political operatives that I know in Australia is a culture of, 'If I only had a few more thousand or a few more million I could win the thing', 'If I could only buy some more TV advertising or a few more direct mail letters'."

He also suggested that political parties are facing a number of problems:-

"One of the reasons that I think some of the parties are having so much trouble funding the kind of campaigns they think are necessary is that major political organisations in Australia and here in NSW in my time here, my 18 years here, have become increasingly elitist. They have suffered from major declines in membership and they just don't have the people to do the things on the ground that need to be done anymore or to give the small donations that need to be given anymore."

Dr Chaples also responded to questioning from Mr Turner about levels of funding and expenditure.

"In all honesty, Mr Turner, I think we have done a lot of that already. As far as I know the Labor Party and the Liberal Party and the National Party start polling within months of when the last election was completed and they carry out fundraising activities and many of the other election oriented activities are virtually year round anyway and I suppose that is the best supporter for

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the argument that there ought to be some ongoing support for the parties as election administrators anyway because to a certain extent at a lower level the election process is a continuing process. And certainly here in New South Wales all the major parties are on election footing and they have been on election footing since, what, a month after the campaign and will have to continue on that basis. It could very well make the shifting into high gear start at a much earlier time, the running of big television campaigns start at an earlier time, but again, let's face reality, that started with the major parties at a much earlier point already. One of the innovations of the Greiner campaign in 1988 was the quite early campaign and the testing of commercial viability of the themes and the dry-run or whatever, all that is on the public record with the graduate school of management forum that was conducted on this subject after the 1988 election. So again, we are seeing us moving more and more in that direction in any case, but I think this would virtually ensure that we had rather high gear, especially constituency oriented campaigns from a much earlier point than we have them now. I am not sure that that is a very good decision from the point of view of the parties or the candidates, but I think it probably is relatively inevitable. You have got to get your word around and again, the independent factor and the minor party factor plays into this because those people have got to get their name around at the local level in a much more difficult sort of fashion. They can't resort to big television campaigns and last minute impacts. So they can't wait until the five weeks before the election campaign. They have got to get out, do the job earlier unless they are just counting on the sitting member being so unpopular and so ineffective that they can walk it in on the basis of that member's ineffectiveness."

Public Hearing - 9 December 1991

Mr Maher also noted the increase in campaign expenditure and the need for focussed spending - lightening rather than a rainstorm approach.

"I think generally in campaign expenditure - and I think I made this observation before the committee last time - I think political parties, they have an obligation to think about what their budget is and they cannot be incontinent in their spending as far as political campaigns are concerned. I think there did come a stage when political parties, towards the end of the 80's certainly and say into the 90 federal campaign, and I suppose, more particularly, the ALP spent more than, say, the Liberal Party and the National Party, were spending a lot of money.

If you look at the 1988 campaign in New South Wales, both from the Labor Party's point of view and certainly the Liberal Party's point of view, we spent much less in 1991 than was spent in 1988 and I think maybe there is a realisation that you just cannot go on spending money on the basis that you hope it will arrive. I don't see that legislation making a difference to the disclosure or public funding side of it that we have had."

Mr O'Grady queried whether the reason that less money was spent by the Liberal Party in the 1991 election than in the 1988 election was due to incumbency and its advantages.

Mr Maher responded by saying that:-

"No, I don't think so. We made the decision that we would spend what we had. That we would not spend over and above that. It is no secret the Liberal Party after the 1988 election had a reasonable debt. It doesn't quite approach some of the other debts that I have read about in recent times but it was certainly a reasonable debt and that I think the question of incumbency, the incumbency does help and that is what a lot of the legislation in the U.S. is aimed at. Is how you restrict the advantages of incumbency where in the Congress, in the last election, 96 percent of those seeking election out of Congress were returned. It is not bad going. It is better than Supreme Soviets, in fact, when they operated and that is because of the advantages that flow with incumbency.

I do not think in this country, the advantages of incumbency have been exploited by the major party of either side to the extent that it has been in the U.S. I think obviously there are opportunities there. But, no, going back to your original question, I do not think that was the case but I cannot speak for it because I was not around in the time of looking at elections from the point of view of opposition."

The Committee makes no recommendations as to campaign costs.

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5.4 PRIVACY ISSUES

Privacy issues were raised by Ms Schurr of the Council for Civil Liberties.

Her concerns are as follows:

"First of all, disclosure by organisations as to their donations, we are concerned about the extent to which membership of organisations will be required under legislation and the reason for that is that international standards on information privacy require that people who collect information for one purpose may not disclose it and use it for another purpose without the consent of the persons who have given that information and that would include names and addresses of persons who belonged to unincorporated associations or other bodies.

When the committee is considering its proposals I would like it to refer to standards proposed for a bill, which yet has not been introduced, by the NSW Privacy Committee.

The NSW Privacy Committee is established under an act of NSW and makes recommendations for legislation and has now recommended that a privacy bill be passed in NSW along similar lines to the Commonwealth Privacy Act but different in that it also proposes to cover private enterprise as well as government information. In its report of July 1991 to the Independent Commission Against Corruption the committee has set out its information privacy principles and I have got here copies of principles nine, 10 and 11 which point out that record keepers or people who collect information like membership lists may not disclose it or use it for any other purposes without the consent of the people who have given that information, their members. It particularly incorporates European standards that "Information concerning political opinions, religious or philosophical beliefs, trade union membership, shall not be disclosed without the express written consent of the individual concerned", so that would certainly place a limit on disclosure by organisations of their members if that organisation was making donations to any political parties or political processes."

...The other short issue I wanted to look at is discrimination on the grounds of political donations. The Commonwealth Bill attempts to address that. The Commonwealth Human Rights' Commission can conciliate complaints about discrimination on the grounds of political

beliefs but it is not unlawful to discriminate on the grounds of political beliefs in the Commonwealth area. There is no provision in the New South Wales Anti-Discrimination Act to prohibit discrimination on the grounds of political beliefs.

The Commonwealth power arises out of the international labour organisation, convention number 111, which prohibits discrimination on the grounds of, I think it is political opinion and trade union membership. That is a concern in the Commonwealth and should be in New South Wales as to the impact of disclosure of donations by individuals."

Mr McGuinness also made some comments on the privacy aspects of the legislation.

"There is an issue of privacy to be taken into account, although I don't see why organisations like the ACF should not publish complete lists of their donors since they are participants in public policy, and those donors should be the real donors. That is tracing provisions need to apply so that if anybody misrepresents the source by setting up a string of donor organisations then fundamentally you should be able to trace the donation through to the original source which must be an individual or company with a specific set of accounts and a specific address. A company, of course, the shareholders of the company are known so that you are bringing it back to individuals all the time."

The Committee recommends that membership lists of political parties continue to be confidential and private to the parties concerned.

The Committee believes this will protect individuals from adverse political discrimination.

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5.5 ADVERTISING

A number of issues raised pertained to federal matters, for example, political advertising.

Public Hearing - 28 October 1991

Mr Jeffery queried Mr McGuiness on this subject and asked him whether he believed in the proposal to ban political advertising.

"Banning political advertising, just to take that one first, is first of all, I think, a quite unacceptable interference in the free speech of interest groups in the community who may want to express their views about conservation, the environment or whatever.

If you ban advertising of all kinds which might be remotely political, first of all you are going to have to define what is political. Just about everything these days is political in one form or another. Anybody who has got an interest or a view they want to push.

Secondly, if you ban political advertising, you are effectively giving immense power to the people who have access to the media now. That includes the journalists in the ABC for example. It includes journalists in the commercial television, the commercial newspapers, and so on. Their power, vis a vis, the rest of the community, is enormously increased. If you can place advertisements in a medium then it means that somebody can take a page or take a few minutes and say, "I disagree with the kind of political views being put here on this medium, in this newspaper, on this television station". Rather than banning political advertising, I think it should be made universal in all media."

Mr Dempster was also queried on this subject by Ms Kirkby and he replied that:-

"I don't want any ban on television political advertising, not for reasons of wanting less power but because I see it as a fundamental attack on freedom of expression of a political view."

Public Hearing - 9 December 1991

Mr Mills also posed an interesting series of questions to Mr Maher and asked him whether contributions to third parties, for funding their advertising campaigns should also be disclosed:

That is:-

MR MILLS:

"It was to follow really with a question I have asked of other people who have come before the committee. It really relates to the third party approach and you have organisations like Forest Products and National Farmers Association, the Tobacco Institute would be an interesting one. Do you believe that -- let's take the Tobacco Institute at the moment in New South Wales.

Should the contributions to their funding for their advertising campaign be disclosable?

MR MAHER:

"Yes, I would put them in the same categories, I think as the chairman asked me, that they really - if we are going to have disclosure of donations that they would come within the same category as a political party. They are a very active participant in the political process."

Ms Kirkby also queried Mr Maher on this and Mr Maher clarified his position by saying that:-

"I think if the rules and the principles apply to political parties, I think they apply no less to other players who are participating in the political process and there are in fact, more of them participating in the process anyway each day. It is evident, if you look at campaigns over the last decade that more and more third parties do in fact, participate."

This issue is also addressed in 5.1.5 and 5.2.2.

The Committee recommends that the Election Funding Authority continue to monitor the federal legislation on behalf of New South Wales.

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5.6 POLITICAL PARTICIPATION EG PACs AND UNIONS

A number of comments have been raised in regard to political participation - by individuals, by companies, by organisations, and by political action committees (PACs).

Political Parties

Dr Chaple's evidence before the Committee (28 October 1991) was that a weak party structure has been a detriment to democracy in the United States as well as making it difficult to hold politicians accountable for their actions.

Overseas evidence

This question was also addressed to a number of specialists which the committee met with on the overseas study tour.

Written responses to the questions are as follows:-

Q1 *Do you believe that the decline in the American party structure has in any way contributed to the problems being experienced regarding campaign finance legislation? That is, previously much of these activities were undertaken by party members and they are now being performed by paid consultants. The expense of these consultants must have placed pressure on the candidate to find additional money to pay for these activities. Also, candidates are running virtually independent campaigns from the party. Has this fact (ie. autonomous campaigning) affected the future of the Party system in America?*

John Surina
Federal Election Commission
WASHINGTON DC. USA

I believe there is a strong relationship between the relative demise of the American party system and present problems with our campaign finance system. Actually, many believe the cause and effect relationship may be reversed from the way you presented it. Personally, I believe the weakening of American political parties and the corresponding growth in the

independence of individual candidates are mutually reinforcing trends. The U.S political parties began losing authority over their candidates well before the campaign finance reforms of the '70's. In part this was due to the homogenisation of the two major parties' ideologies during the post-world War II years. This weakening continued as more and more jurisdictions put the candidate nominating process directly to the voters via primaries thus cutting the parties out of the candidate selection process.

The post 1974 limits on how much the political parties could contribute to, or spend on behalf of, their candidates further reduced the dependence and loyalty of candidates to their respective political parties. Interestingly, the benchmark Supreme Court case (Buckley -v- Valeo) which struck down expenditure limits as opposed to contribution limits may have contributed to this. The court said the law cannot limit spending by candidates (out of their own funds or as much as they can raise from valid sources); neither can it limit independent expenditures by PACs or individuals spending on behalf of candidates. In practical effect, however, this decision left intact both contributions and expenditure limits on parties. This is on the assumption that a party expenditure on behalf of one of its own candidates cannot, per se, be independent. Consequently, the only institutional players subjected both to contribution limits and expenditure limits are the political parties. This in turn directs the candidates to other, non-party, sources for funds.

If the candidate doesn't owe his or her selection as nominee to the party, is allowed to accept unlimited funds (in aggregate) from non-party sources, and the party platforms are not ideologically distinguishable, then the party affiliation become more nominal than real. Autonomous fundraising certainly further weakens the ties.

Furthermore, non-party sources are generally more inclined to support incumbent candidates since they hope to curry favour with people on influence. An insurgent candidate, by definition, has no influence. This, in turn, has tilted the fundraising advantage way over the incumbents. Only the political parties have an institutional motivation to support challengers and the amount of support they can give is limited.

**Mr Charles Leonard
Sawyer Miller Group
WASHINGTON DC USA**

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As to your first question, do I believe that the decline in the American Party structure has contributed to the problems of campaign finance? the answer is yes. However, I would like to explain that few people in America would argue that consultants had anything to do with the decline of political parties. If I may, let me re-phrase and answer each part of your first question.

A *What brought about the decline of political parties in America?*

I believe there are three overriding factors which have contributed to the decline of our two major political parties. They are: the reduction in political patronage, the enormous changes in communications technology, and state and federal laws which regulate party finance.

Throughout this century in America, political patronage has increasingly been replaced by a civil service system of government through competitive testing and owe no allegiance to any political party. And, a one time practice of granting government contracts to political supporters has all but been replaced by a competitive bidding system that allows anyone to compete for government work. In fact, at the federal level of government, most employees have been statutorily forbidden from political activity.

As the political parties have had fewer positions and government contracts to award to party loyalists, the incentive for party involvement has been greatly reduced. If you look at the historical trends in political parties in this country, particularly in the cities and in the context of the immigrant movements, you will see that political parties were once an enormous force in shaping government and politics simply because they controlled the gates through which government job seekers, at every level, including elected office, had to pass. As a condition of receiving a government job, or a promotion within government, people were required to work for and contribute to the parties. Most of these conditions have changed completely and the parties, as a result, have less to offer to workers and supporters.

Secondly, the explosion in communications technologies has almost completely eliminated the need for party workers to perform campaign functions. Broadcast television, radio, direct mail, cable tv, etc, have replaced the neighbourhood party worker, as primary source for delivering information to the voters.

Once it was almost impossible to get elected in America without party backing and organisational support. Today, however, candidates can go directly to the people through paid commercial advertising.

Thirdly, state and federal laws have greatly impacted our political parties. Not only in the area of reduced patronage, as outlined above, but also in the severe limitation of what activities the parties may be involved in and how they can spend their resources.

Under existing law, parties are restricted in terms of the types of contributions (individual -v- corporate) they may collect, the amounts they may receive from each source, and the way in which they may spend it. Only a very small portion may be contributed to candidates, a fact which in itself makes candidates and elected officials less dependent upon the parties.

B *Have paid consultants been a cause of the decline of political parties?*

I believe the answer is no. Paid consultants, in my opinion, are the result of, rather than the cause of, the decline of political parties. They are also the product of the enormous changes brought about in the field of communications.

As political parties became less relevant to the process (outlined above) paid consultants became essential to campaigns, both as a source of staff, which are no longer provided by the parties, and as technical professionals who produce advertising, perform polling and research, and train candidates in personal communications skills necessary in the media age.

Consultants may have pushed up the cost of campaigns, but not nearly as much as the actual costs of advertising and the laws which actually encourage contributions from Political Action Committees (PAC's).

C *Has the fact that candidates attempt to operate independent of the major parties affected the future of the party system?*

Obviously, this development has had to have had an impact, so the answer is yes. However, Americans are still very reluctant to support minor party candidates and still look to the major party endorsement as a litmus test for the credibility of a candidate. And, though candidates often attempt to run afield of party positions, they still seek the party endorsement and our primary process serves to both keep candidates and elected officials in check as well as to provide an ongoing process of defining the philosophies of the major parties.

In almost every state, and at every level of government, individuals may challenge party endorsed candidates or elected officials in a primary process

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and the essence of almost every challenge is that the party endorsed candidates is not a "real Republican" or a "real Democrat". Consequently, primary elections drive all candidates back to the core of the party's philosophies as they attempt to defend their positions.

I realise that the political parties play a substantially different role in Australia and that our experiences are not necessarily translatable to your model. That, of course, is yet another discussion.

In summary I do not believe that parties will decline much further, nor anytime soon, due to the nature of our campaign financing.

**Mr Frederick M Herrmann PhD
Election Law Enforcement Commission
TRENTON NEW JERSEY USA**

The alleged decline of the American party structure as well as the rise of the PACs is possibly closely connected to the major change in how campaigns are conducted. Elections are now money intensive not labor intensive. Traditionally, the backbone of conducting a campaign was volunteers. Parties were the primary vehicle for providing campaign workers. However, with the advent of new technology in the past two decades, this situation has changed.

**Mr Herb Alexander
Citizens' Research Foundation
University of Southern California
LOS ANGELES CALIFORNIA USA**

With regard to your questions, clearly, the decline of the American party system has contributed to the problems we have experienced regarding campaign finance legislation. Apart from the expense of paid consultants, which is undeniable, the American system seems increasingly to be candidate oriented. Each candidate must mount his or her own campaign first for nomination and then for election. Our candidate-centred culture has had impact on the regulatory system because it is more complicated than in a political system such as your where the politics is party-oriented.

Not only do candidates campaign independent of the party, for the most part, but interest groups participate independently and in parallel campaigns. This is particularly true of labor union organisations, but also a number of ideological and issue PACs. Their activities are protected by constitutional guarantees.

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- Q2** *Much of the arguments regarding full disclosure seem to assume that people care. Do they? Has full disclosure resulted in a more ethical standards of government? Has it affected the type of people who enter politics? Has disclosure had any affect on the party system? Has it contributed to its decay? Has there been any impact on the party's income?*

Current debate in Australia on this topic puts forward the view that full disclosure will increase the possibility of deals in return for donations. That is, the current objective of insulating Members of Parliament from donors would become irrelevant. Policy-makers would have access to knowledge about their income and may act in accordance with the wishes of the big donors. Also, donors may be loath to donate if they fear that there may be an adverse backlash if members vote in a particular way. And, how do Members of Parliament prove they intended to vote in a particular way. And, how do Members of Parliament prove they intended to vote a particular way before they received the donation - is the donation a bribe or a reward?

Mr John Surina
Federal Election Commission
WASHINGTON DC USA

Philosophically, I am a great supporter of full disclosure, perhaps because I do care who is bankrolling the candidates on the ballot on which my vote is cast. I share your rear that the typical voter may not care. I cannot comment on the fact that there is no empirical evidence that unethical conduct has been diminished by disclosure because one cannot disprove a negative proposition; who knows, things might have been worse. There are, admittedly, some downsides to full disclosure as you note. It may discourage publicity-shy donors from contributing in a big way, but that should hurt candidates or parties equally as the disclosure rules are the same.

A more subtle issue with disclosure is that overexposure may tend to inure the public to the conduct which initially may have been shocking. If so, by putting the spotlight on the apparent marketplace of influence for so long without it resulting in any ill consequences to the players, may help create a cynical and turned-off electorate.

I do not believe that disclosure breaks down some kind of insulation between donor and recipient. Over here, at least, the politicians know full well who

the "fat cats" are, with or without public disclosure. Please don't ask me to distinguish a bride before the fact or a gratuity after the fact from a legitimate campaign finance contribution.

Bottom line, I think the benefits of disclosure outweigh its problems.

**Mr Charles Leonard
Sawyer Miller Group
WASHINGTON DC USA**

A Do people care about disclosure of contributions?

Absolutely. Who supports who financially is a major topic of any political campaign or analysis. The media, elected officials and voters are very much interested in learning who is financially involved in politics.

B Has financial disclosure resulted in more ethical standards of government?

I think most people in American politics would agree that it has. Simply knowing that constituents will ultimately know how much money an elected official receives, and from whom, will certainly cause any official to consider their actions in relation to the taking of contributions. It may not be clear from financial disclosures whether an official is being "bought", but it will certainly be more apparent than a situation where there is no disclosure.

C Has it affected the type of people who enter politics?

Absolutely. Many journalists in this country will say that it has not, but I have been a recruiter for my party and have met with many individuals who will not become candidates precisely because of disclosure requirements and the limitations on outside income. In fairness, I must tell you that the media in this country, with an assist from negative campaigners, have now taken the issue of a candidate's personal life beyond mere financial disclosure. As a result, the examination of every aspect of a candidates life, including their finances and campaign funding, is a genie that cannot be put back in the bottle in America. I would strongly urge you to consider separating an individual's disclosure from disclosure of campaign contributions, if you wish to avoid some of the problems which we have experienced.

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D Has the disclosure had any effect on the party system?

It has had an impact, but not as great an impact as the restrictions and limitations. Simply disclosing who supports the parties has been more a matter of curiosities than a substantive issue, as it often becomes in campaigns. Remember, however, that parties do not play the same role in American elections as they do in Australia. In the Australian context, I can see how disclosure would have a far greater impact.

I do not believe that disclosure has significantly effected the income of parties. Party income continues to climb, so it is difficult, if not impossible to say that disclosure is having a negative effect on fundraising. Likewise, I do not believe that party financing has had any real impact on the slow decay of the party system.

I understand that your present system, whereby elected officials do not know where party contributions come from, is alleged to protect your system from some of the corruptions that have permeated our system. I hope you will pardon my cynicism when I say that I find it hard believe that your officials do not really know the sources funding, simply because there is no disclosure requirement. The fact remains that contributions are made and the details of who is giving to whom can cause both positive and negative perceptions.

There are political consequences and political rewards associated with financial support. For instance, labor groups are the biggest political contributors in America. In an urban Congressional district, or heavily unionised district, labor contributions are a political plus for candidates. In suburban or rural districts, labor support could prove a negative for a candidate. In America, the prevailing wisdom is that a candidate should have to defend his supporters the same way his must defend his political positions because they are invariably connected. Anything less is at best secretive and at worst, deceptive.

The same can be said for donors. There is considerable dialogue in America about business interests supporting Democrats over Republican in Congress, (even though Republican philosophy comes closer to the agenda of business), simply because Democrats are in control. Obviously, contributors realise that their contributions will be disclosed and have decided they do not want to offend those in power, even at the expense of contributing to individuals who do not support their agendas. Clearly, these groups are not using their contributions to express their political opinions (as was originally intended by

the law which permits political action committees in America) but are simply buying access and political favour.

Finally, the question you raise about contributions being "bribes" or "rewards", is one which we could discuss at great length. In the final analysis, America, those questions are ultimately decided at election time. Many campaigns themes in this country are tied directly to whether or not an elected official has been "bought". On this point, you may be surprised at the level of sophistication and fairness that voters will give to elected officials on such charges.

For instance, if a member takes a small (\$5,000 or less) contribution from an organisation that has an interest in the member's district and the member supports that organisation's agenda, voters will usually view that as entirely legitimate. (eg. a defence contractor has a plant in a member's district that employs several thousand workers. A member pushes in Congress for contract's from that contractor and also receives contributions from the contractor's political action committee. Most voters will agree with the member when they say they were supporting the best interest's of their district).

Consider another example. A member serves on a banking committee. The member receives not one, but many contribution from numerous banking interests. The member promotes legislation favouring banks over consumers. Voters will often not look favourable on such a situation. Why? Because there was no reasonable explanation for the member's behaviour, other than the contributions. If the member took those actions, but did not take so many contributions from bankers, they would be in a far more defensible position, even if they voted against the interests of their constituents.

I think you can begin to see why our politics tend to get a little rough and tumble, but you can also see why the strength or weaknesses of our system primarily the responsibility of the voters.

**Mr Frederick Herrmann PhD
Election Law Enforcement Commission
TRENTON NEW JERSEY USA**

Money not people is the fuel that drives campaigns. Television, radio, computerised direct mail, state-of-the-art polling, fax machines, mass-distributed video tapes, 900-numbers, and other examples of rapidly changing technology have replaced the time-honoured door-to-door campaign, lawn signs, buttons, and hand-processed mailings that depended on groups of loyal campaign aides. Modern campaigns need money to buy technology not the workers once provided by the parties.

This money driven campaign environment spawned the PACs, which are an excellent vehicle for aggregating the funds that campaigns need to purchase the tools of advanced technology. Interestingly though, there are signs that parties are reviving because they have started to change their role as a provider of labor to another source of money. If we manage to structure the political system in a way to encourage such party activity, my sense is that strong parties will be back. Since the parties represent broad coalitions of interests, their continued viability is important to the preservation of democratic government.

**Mr Herb Alexander
Citizens' Research Foundation
University of Southern California
LOS ANGELES CALIFORNIA USA**

Disclosure is the key form of regulation in the United States. It is not controversial any longer and candidates and political party committees simply know that they must file. In order to be effective, a system must be comprehensive and timely, in advance of elections, and with a government agency responsible to summarise and publicise the data. Certainly the people who most care about disclosure are the politically active, the media and academics. The person in the street may not care, but at least the data are available. I doubt that disclosure has contributed to the decay of the parties and it does not seem to affect party income or candidate income since both seem to be a never-ending increase.

In perspective, I think that donations are rarely bribes. More often they are rewards for past votes in the legislature. However, this is not derogatory because I interpret it as individuals and groups giving to candidates and parties whose views are congenial. Donors do not always need to lobby following each contribution because they know that the member will be likely to vote in their favour due to ideology.

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Q3 *Has the decline in the party system spawned the development of PAC's?*

We do not have any such committee here and the idea has also been raised of having a formal induction process for MP's rather than letting the older ones educate them.

**Mr John Surina
Federal Election Commission
WASHINGTON DC USA**

Yes, the decline in the party system encouraged the development of PACs to fill the void. As with the first issue, however, one can equally surmise that the rise of PACs may have been a factor in the decline of the parties. It's probably another case of mutually reinforcing trends.

**Mr Charles Leonard
Sawyer Miller Group
WASHINGTON DC USA**

No. PAC's did not come about through some natural evolution. PAC's were created by federal election law in the early 1970's. Prior to that time corporation's could make direct, almost unlimited contributions to campaigns and there was a very loose reporting requirement. (The new federal laws were made necessary by some very severe abuses during the 1960's).

The federal election law, as we know it today in America, limits the contributions of individuals to federal campaigns to \$1000 per candidate, per election cycle. Corporations are forbidden from contributing directly to candidates, but may make contributions to the "housekeeping" accounts of the parties (those used for non-candidate activities).

In place of direct corporate contributions, the federal law allowed for corporations and associations to set up voluntary political action committees (PAC's) that would allow members or employees to contribute up to \$1000 to their PAC. The PAC's may not accept any contribution from any corporate entity. And, unlike individuals, PAC's may contribute up to \$5000 per candidate, per election cycle. We have over 10,000 PAC's in America today.

The early abuses of the PAC system were schemes that attempted to "funnel" money into PAC's from companies that gave "bonuses" to employees who "voluntary" contributed. Audits by our Federal Election Commission (FEC) have all but eliminated that abuse.

What has happened instead today, is that PAC's often work in blocks. That is there are 20-30 major labor PAC's (Carpenters, Letter Carriers, Electricians, Teamsters, etc) that basically all give to the same candidates. The result is that it is not uncommon for a Congressional candidate to receive 30-\$5000 contributions from labor PAC's. Given that our primary and general elections each count as a single election cycle, they can actually receive 60-\$5000 contributions, or \$300,000 from one type of groups in a single election year. Obviously, you can see the dramatic effect it can have on an electoral system.

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**Mr Frederick Herrmann PhD
Election Law Enforcement Commission
TRENTON NEW JERSEY USA**

Finally, you ask about the utility of and need for creating a parliamentary ethics committee, a code of conduct, and a formal induction process. My sense is that all three ideas are not only good ones but critical ones. A code of ethics for the parliament would provide its members with guidelines for the "minimum" in ethical behaviour. How can we expect appropriate conduct if we do not clearly define what is expected? Legislative jobs are unique and there have to be specific rules for proper activity.

If a code of conduct is in place, a body must exist to enforce it if it is to have any meaning. Such a body should be as independent and autonomous as possible. For example, a parliamentary ethics committee should not be comprised of current members of the body and should not be dependent on the parliament for its funding or use parliamentary staff. Membership might be drawn from former members who would have the needed expertise but not the compromising ties that sitting members would have. A guaranteed base budget adjusted annually for inflation and its own staff would also be crucial for its success. Such a committee might prove the ideal vehicle for running a formal induction process for teaching ethical behaviour in the parliamentary setting.

**Mr Herb Alexander
Citizens' Research Foundation
University of Southern California
LOS ANGELES CALIFORNIA USA**

PACs did develop in part because parties declined, but the two trends were moving concurrently. I think what has happened is that our politics has shifted from neighbourhood precincts in which the parties contested, to socio-economic bases representing a common occupation or a common ideology. People give because they share ideas and concerns, and PACs representing those ideas and concerns seek to advance their viewpoints.

Public Hearing - 28 October, 1991

Dr Chaples also responded to a question about whether PACs are worthwhile features of the American political landscape and whether or not it is possible to avoid the negative features commonly associated with their proliferation.

Dr Chaples response was:-

"PACs are a funny sort of thing. They started off as being a relatively neutral vehicle but they are a really complex subject partly because the legislature has decided to regulate them in all sorts of very complex ways. So all these rules about what a PAC can do and how much money it can give to individual candidates at what particular period of time. They really add to the complexity of the problem in the United States. PACs which started off to be a way of organising interests, particularly financially. They have been corrupted; they have turned into very much more than originally intended. Now very powerful individual United State senators are candidates for President, for example, years and years before they are candidates for re-election and have their own individual PACs in order, to buy influence with other candidates. PACs have truly gotten out of hand in the United States. It is like Pandora's box, once PACs were allowed to proliferate they were used as an opportunity to mask, what I called before, an otherwise relative climate of openness about political contributors, I think the story about PACs is a negative one in the 1980s and 1990s. They are a problem for individual candidates for the US congress, because there is no public funding for US congressional elections. They are extremely expensive elections and many candidates for competitive House and Senate seats face both very long primary elections as well as general elections against the other party. The amounts of moneys that are involved are quite phenomenal and there is very little support from party organisations for most candidates. This is where PACs have an inordinate influence on election results."

Mr McGuinness agreed with Dr Chaples comments and also said that:-

"Donating for political purposes as a form of participation in political activity, that is, by definition, a public matter. The problem then is the way in which to ensure that disclosure is complete or is nearly complete as you can get it."

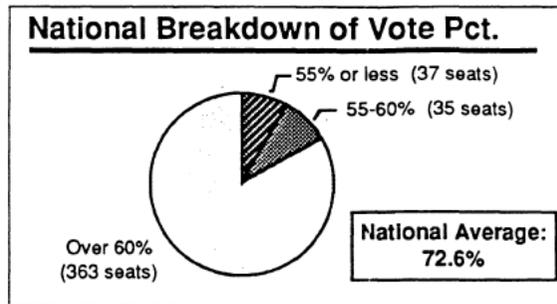
He also said that:-

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"Political Action Committees were meant partly to solve the problem of disclosure. In fact they have facilitated secrecy with regard to the way funds are channelled. Unless there is some way of going beyond - to use a phrase from another area - the corporate veil in that respect, finding out who the backers are, of the equivalents of political action committees are then you don't solve anything. You simply promote a more sophisticated way of making secret donations."

Thus whilst participation may have increased, secrecy has also arisen as to how the funds are channelled.

Larry Makinson's book *The Price of Admission* details just how pervasive the reliance upon PAC money has become in the United States.



(Makinson, 1989, p 35)

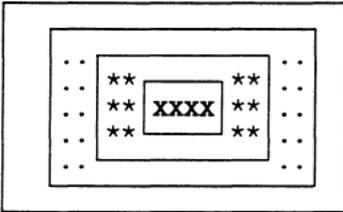
He also states that:-

"House winners in the 1988 elections drew nearly half their campaign funds - an average of just under \$200,000 - from political action committees. The figures mark a continuation of a trend that has been on the rise since the early 1970s when the PAC explosion began. PACs now are the single most important element of congressional fund-raising - far outdistancing party contributions, and in many cases eclipsing donations from individuals as well. In the last election, 210 House winners got at least 50 percent of their campaign funds from PACs."

5.7 CORRUPTION IN GENERAL

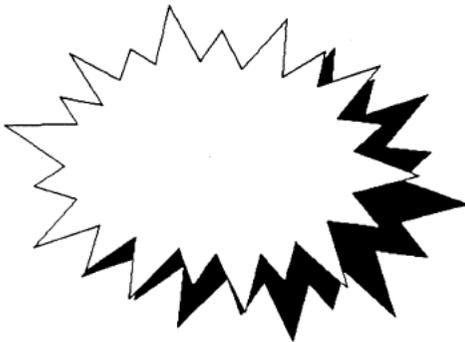
Corruption and bribery are concepts which are inherently difficult to define. Lowenstein uses the analogy of shades of grey behaviour and also notes that an intent to act in a corrupt manner or an intent to bribe is an even more difficult concept to define. (Lowenstein in Heidenheimer, 1990. p29)

The analogy can be expressed as:



- X - Crime of bribery
- * - Shades of grey behaviour
- . - Shades of grey behaviour
- Proper behaviour

The Committee notes that instances do occur where the lines are not so easily drawn and notes that the definition may be more explosive than linear. That is:



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Public Hearing - 28 October, 1991

Mr McGuiness raised the idea of corruption within the political process and noted that Australia is lacking in corruption if world wide standards are used.

Mr McGuiness also noted market influences on journalists and said that:

"If I, for example, continually served the interest of a particular political party I don't think anybody on any side of politics would take me seriously for very long and particularly not my editor. You have to accept that there are market processes, to use that terrible word 'market', which sort these things out over time and the best way to ensure that those market processes work is to maximise the disclosure to the extent that it is possible but to maximise the commercial sanctions. In other words, people will stop buying a newspaper which is consistently full of nothing but propaganda."

Mr Dempsters evidence concentrated on secret donations as opposed to industry policies (as expanded by Mr McGuiness) and Mr Dempster told the Committee:

"What I have been involved with is the secret donations. In fact, governments (governments only because they have the capacity to do this) selling favours basically, and in some cases soliciting the donation and facilitating the return of the favour. It is that process I think that has brought the political process into disrepute and it is that process I think is the major reason that your committee and the one before you is working on the subject. That is what has been exposed by the Fitzgerald Inquiry in Queensland, by the ICAC in New South Wales, by the West Australian Royal Commission, and it may be exposed by the Victorian Royal Commission. I am not sure whether that has got to the question of political party funding."

Mr Jeffery queried whether this sale of government promises occurred in different jurisdictions and levels of government and Mr Dempster detailed his experiences with the Queensland Hotels Association:

"I was always fascinated by the Queensland Hotels' Association.

We always used to describe it as the 'powerful QHA'. It was legend in Queensland that every publican would give \$1, 000 to the coalition party every election and there was a hell of a lot of publicans in Queensland.

The reason for that was that government policy which has been retained by the Goss Labor government is that they would not allow the retailing of liquor outlets, those bottle shops. If you had, if you were a hotelier in Queensland and you had a good site, you could get a bottle shop, drive-in bottle shop where you convert your product to cash immediately and there was no competition. There was a lot of publicans who were made very wealthy by that process.

Mr Hinze (the late Mr Hinze) in fact set up a bottle shop on the Pacific Highway and in his capacity as main roads minister, ran the Pacific Highway extension through his bottle shop. What I am saying is that the application of government policy by the Goss government, I suspect, I cannot prove, I don't know, I suspect that that policy did not change because the Labor Party in Queensland gave a nod to the powerful Queensland Hotels' Association and that policy would not change."

Mr O'Grady suggested to Mr Dempster that the combination of donations and political power is a dangerous combination and may have resulted in the breakdown of trust in the political system. [Mr Johnson queried Mr Dempster on inhibiting factors on journalists and Mr Dempster responded by talking about a number of recurring themes.] It is useful to quote his response in full:

"an old - what was called "old journalism" - where as a journalist, your job was to get close to the premier, get close to the cabinet ministers to get the information. You were only an effective journalist while you had good sources of information. That was an old school. The new sort of journalism, the changes that you are supposed to think through that process and indicate, realise yourself, become aware that you could in fact be used by the politicians and you had to come to your conclusions from a variety of sources.

Once you move away from being locked in to the old journalism, things take a different sort of course. The media failed Queensland for many years because they were locked into the old journalism, that what the

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minister told you made the front page regardless of what it was. That only started to change over the last decade or so where there was genuine questioning of what was going on.

When you say things were corrupt, yes, there was constant reporting of the scandals as I have indicated. In fact, they became themes and trends. The government's method of doing business became a trend in reporting which was very effectively battered off by the political regime as 'Look, we are cutting through red tape. We are getting things done. We are getting development moving'. An argument was put to the people of Queensland that there was a plus side to that. That was growth and development and regardless of the fact that a meritocracy within a tendering system was overcome.

It was only later, after a royal commission with coercive powers, that the comparison was made between the political donations because there was no disclosure. The comparison was made between the donations on one side, and all the favoured treatment on the other.

On police corruption, which is where this all started, on police corruption, yes, a lot of honest police officers said that the administration is corrupt. "The police commissioner is corrupt". They could not prove it. Only when Four Corners came out, did the penny drop for all those honest police who were trying to work out how the system operated when Four Corners reported what they knew as the "bag man". He was not called the bag man at that time, Jack Herbert, a former police officer had bought a house from some known organised crime figures and Four Corners - what was an exquisite piece of journalism from all their research was that Four Corners ran, almost out of context with everything else, a contract of sale document which had at the top of it, "The purchaser of this house at Bowen Hills, Jack Reginald Herbert and the seller, Geraldo Bollino and Vittorio Conti" and there, on the one exquisite document you had the key that a known friend of the Commissioner of police with links with organised crime figures. Once the honest cops saw that, to the other people it did not really make much sense, once the honest cops saw that, they said, "That is the key to it. Jack is back on the take and he has organised the whole of the corruption, the franchising of organised crime by the police department". If you look at the chronology that is what therefore led to what was revealed later as the corruption of the political process. It was police corruption first and the blatant nature of that, and the franchising of all those areas of organised crime going

right up there to the government's methods of doing business. It started from the cops, it led up to the poli's. Over the years, the media had failed to nail up the pattern.

In New South Wales, having been here for two years now, I am delighted to say that the cheques and balances in the New South Wales system with an effective, or a reasonably effective Ombudsman - I notice that the ombudsman is not afraid to give the government a kick in the shins every now and again. You have got an upper house. We have got an upper house here which is a vehicle for different sorts of views to get out. The cheques and balances in the New South Wales system are greater than existed in a unicameral, a one house parliament in Queensland. Unicameralism, I think, was the key to the corruption of Queensland, only one house."

Public Hearing - 25 November, 1991

Dr MacDonald asked Mr Zervos if he could define the point at which a donation becomes a bribe and Mr Zervos responded by saying that it depends upon the factual context.

Mr Della Bosca also discussed this issue and said:

"In any exchange involving potential benefit, prejudice or whatever, there is the possibility that people making the decision could be affected. That can range through a lot of ethical tangents. It is not just donations. It is access and all sorts of things that can change because politics is not bureaucracy. Politics is the area of uncertainty in public affairs. Therefore politicians by necessity campaign for votes. They undertake to do certain things and take a certain position. In itself, thankfully, that is not regarded as corrupt or unethical behaviour. Heaven knows whether it will be one day.

The simple reality is that I am not aware of any example, and obviously I would have to decline to answer the question at all except to say that I am not aware of any instance that I have been involved with or have observed in any of the major political parties—though I have not had much insight into the affairs of other parties about corrupt donations in the full blown sense. I am concerned that perception is the issue.

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While other people perceive corruption as a result of donations larger than an ordinary individual can afford to pay, there will be a special favour to people who pay the larger donations. That is undemocratic and something should be done about it."

Public Hearing - 9 December, 1991

Mr Maher also discussed this and said that he had a difficulty with the idea that:

"political parties seem to be held up as being the harbingers of really possible corrupt action and that is not necessarily always the case. Political parties, in fact, lay down what their agenda is. It is quite clear what their aims are to the general public which they are trying to convey views to and I think it is unfortunate, in fact, that political parties are basically put into the light that they are put in. I think that being a member of a political party should not necessarily expose that membership to scrutiny or ostracism which is not something which happens to other members in the community. In fact, they probably should be applauded for the fact that they indulge in the activity of politics, because that, in fact, is the life blood of the democratic system.

People who are indulging in corrupt behaviour, in fact, declare what their donations are and there is a recent case [in the USA] where they only got picked up by virtue of the fact that the FBI went through it and picked up someone on the basis of just straight out old fraud charges because of the way they had set up companies.

The Committee also notes that the ICAC is the appropriate body to deal with information or allegations of corruption.

5.8 PARLIAMENTARY COMMITTEES

Media Comment about the effectiveness of the Committee system prompted the Chairman to ask Mr Quentin Dempster whether or not he thought parliamentary committees were as effective as Royal Commissions.

Mr Dempster's response was:-

"I am hoping that they could be more effective than royal commissions ultimately but I think people poo poo parliamentary committees because they are comprised of politicians. You are all subject to that denigration that a parliamentary committee does not have the expertise and of course, we get into to and fro, typical Australian two-party push and shove. None of us want that. I don't believe that those people who have got the arduous task of sitting on these committees - you are not here wasting your time, I hope, I am sure you are not Parliamentary committees, properly assisted with sufficient staff and what have you, could do a substantial amount of work and it is a good way for back bench members to assist their ambitions and their careers but that would be more within the parliamentary system. Look at Fitzgerald. The quasi-judicial bodies that Fitzgerald has sent up because of the failure of the unicameral parliamentary system in Queensland. We have got two very expensive bodies, the Criminal Justice Commission and the Electoral and Administrative Review Commission. The CJC \$20 million annual budget because of the failure of the justice department of Queensland which had been identified.....I think it was Fitzgerald's view that these bodies, these quasi-judicial bodies have a limited life and that is why he put the parliamentary committees over the top of the quasi-judicial bodies. Anyway, in general terms, I hope that the parliamentary committee system evolves as an effective investigative method."

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5.9 OTHER PROBLEMS REGARDING EFA REQUIREMENTS

Public Hearing - 28 October, 1991

Reverend Nile noted that the Australian Democrats were critical of some of the EFA's requirements and, in particular, the need to provide hard copies of electoral material. Reverend Nile indicated that there may be some bureaucratic steps which have been inserted into the legislation which may not be necessary.

Senator Sowada responded by saying:-

"I agree. As someone who was the party campaign director in 1988 when that legislation first came into force, it is an absolute bureaucratic nightmare, especially as at the time the act involving the registration of how to votes had only just come into force like about three weeks before the election was called and the State Electoral Office were literally running around like chooks with their heads cut off and they didn't really quite understand how to effect the, how to put into place the new amendments. And certainly for the Democrats it was a very large bureaucratic nightmare and certainly it was a nightmare that didn't cease at the last state election when we had 85 candidates.

I think it does pose a problem and has, as we have seen with The Entrance, opened up other issues which would not have existed had that legislation not been in place and we certainly complained very bitterly after the 1988 state election that it really was an unnecessary bureaucratic intrusion onto the political process.

I would say, however, that as you are aware under the federal electoral laws there is no such registration requirement needed by political parties and candidates and what we have found there is the exact opposite. We actually complained to the Australian Electoral Commission about a how to vote that was issued in the seat of Robertson which, you might be aware, was a how to vote that was purported to be an environment how to vote with a picture of Peter Garrett on it and actually recommended a first preference vote to the Democrats and yet it was a how to vote that had been produced by the Labor Party if one actually read the very fine print. We complained to the Electoral Commission about this and that it actually breached a number of sections of the Commonwealth Electoral Act. An investigation was instituted by the Federal Police and it was found eventually that no charges could be laid.

We had serious difficulties with that because as far as we could see it was quite clear that the act had been breached and yet it appeared to be very difficult for a conviction to be recorded. The response of the joint standing committee on electoral matters to that was, "We should simply increase the penalties", but it is pointless increasing the penalties if the legal regime is not tight enough to ensure that that kind of activity can be prosecuted in the first place. So I do think that some balance can be struck."

Senator Sowada also illustrated the intimidation that some party workers feel when handing out how to vote cards and emphasised that:-

"We have always been very careful to instruct our workers statewide that they may well be intimidated by party workers and by workers who will say, "Your how to votes are not registered, therefore you are not allowed to hand them out" and I think that The Entrance shows that it was only a matter of time before that kind of thing actually happened."

Mr O'Grady also highlighted that whatever form of legislation is put into place is irrelevant as the costs have to be weighed up against the benefits.

Senator Sowada agreed with this statement and said:-

"Yes, I agree. As I said, I believe that the administrative burdens that are placed on parties by this legislation are enormous and especially when you are faced with the situation of having to produce a large number of different "how to votes" in a very short space of time. I think if you have been involved in that process, it is an absolute nightmare and you just don't get a wink of sleep for about four days."

Senator Sowada also emphasised that the Democrats recognised the rights of third parties to participate in the electoral system and she mentioned Ms Kirkby's views that:-

"If the government wants to ensure that the registration process continues, that it should be open to ensure that there was registration of third party electoral material on polling day as well so that everybody could participate in the electoral process and it not be just restricted to candidates on the day."

Senator Sowada also referred to the system of list voting in the Upper House and the decrease in formal voting as a result.

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"At the time when that was implemented, I was somewhat suspicious of those moves as I thought that it was simply a move by the parties to control their vote and to ensure that the preferences were allocated to the parties and candidates of their choice rather than the choice of the elector. However, I think that the experience of the list voting system has been that there has been a marked decrease in informal voting as a result of the list system and what I have noticed since it was implemented by state and federal level is that many voters do find the very large upper house voting tickets that we have in New South Wales are a very daunting prospect."

The Committee recommends that the Election Funding Authority be given the discretion to determine the types of original electoral material which must be lodged with them as detailed in Clause 11 of the Election Funding Regulations 1987 under the Election Funding Act.

The Committee further recommends that all documents retained by the EFA for the six year period as required by the law then be forwarded to the Archives Authority of New South Wales to be retained or disposed of as the Authority sees fit.

MISCELLANEOUS

6.1 ETHIC COMMITTEES

The question of ethics committees was raised with a number of specialists which the Committee met with during the overseas study tour.

The responses were as follows:-

Q *Do you see any use for a Parliamentary Ethics Committee? Would this achieve anything special? How about a code of conduct for Members of Parliament?*

Mr John Surina
Federal Election Commission
WASHINGTON DC USA

Parliamentary Ethics Committees and codes of conduct are probably good ideas. In the absence of any other rules, some institutionalised peer review is a definite plus. However, they may be viewed by a sceptical public as self-serving, pre-emptive measures to head off the establishment of an external organ enforcing real laws (as opposed to a code) on the same subject. The external organ might be the attorney general (or equivalent office in New South Wales). If such a department is too closely associated with the

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government in power, then a multi-party independent agency can be empowered to investigate and prosecute alleged violations of such laws.

**Mr Charles Leonard
Sawyer Miller Group
WASHINGTON DC USA**

3A Do I see the need for a Parliamentary Ethics Committee and an Official Code of Conduct for Members of Parliament?

Absolutely. How can you find that someone has done something unethical if there is no clear standard or set of rules with which measure someone's behaviour. Members need to know why they can or can't do, and likewise there needs to be some formal mechanism for citizens to bring complaints. Surprisingly, our ethics process has often worked to the advantage of elected officials who use it seek an "official" investigation into there actions when they are being publicly accused of wrongdoing. Ethics committees can often "clear" someone when an opponent and the media are alleging they have committed some unethical act.

Likewise, anyone interested in maintaining a high degree of ethics in government ought to support the notion of code of ethics as well as an ethics process for bringing complaints. Without either, their is no yardstick for measurement and no method of policing the process.

**Mr Frederick Herrmann PH.D
Election Law Enforcement Commission
TRENTON NEW JERSEY USA**

Do people care about ethics? Has full disclosure resulted in more ethical government? It is probably impossible to give an empirical answer to such questions. But, United States Supreme Court Justice Louis Brandeis perhaps responded best to such concerns in 1933 when he commented that "sunshine is said to be the best of disinfectants, electric light the best policeman". In a democracy, the people have an absolute right to know where public officials receive their money both for personal and campaign use. Citizens in a free society must constantly be assured that their government works in the public interest not for the special interests. It is a necessary burden of office in a democracy that public officials deal with such scrutiny. If they are honest

then such openness should not be a problem. Do they have a constant obligation to explain all their actions - you bet they do!

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**Mr Herb Alexander
Citizens' Research Foundation
University of Southern California
LOS ANGELES CALIFORNIA USA**

Both the United States Senate and House and many state legislatures have ethics committees. They make advisory opinions and on occasions undertake investigations, such as the Senate did recently with respect to the Keating Five. Each House has a code of conduct and constitutionally each House is the judge of its own membership.

The West Virginia Ethics Commission has published a number of information sheets detailing guidelines and advisory opinions on expected behaviour.

The Committee has included this information for the information of the public as information of this nature is difficult to find.

(See Appendix III)

The Committee did not address itself closely to this issue but believes it is an area warranting further consideration and one which should rightly be addressed by this Committee.

A number of comments on this issue were made by committee members including:-

MR JEFFERY:

"What about a Code of Ethics for politicians the, instead of going the other way, so that you have a self regulation on yourself and you know what is expected of you as a person, as an individual regardless ..."

and

REV NILE:

"You may need a - I don't want to be on the committee necessarily - but you may almost need to have a committee that is constantly monitoring these parliamentary committees because like tax evasion, as soon as you close one loophole a devious company or person finds another loophole so you don't want

to leave it for three years or five years before you - you need to monitor the situation somehow?"

Advice from Ms Gladwin regarding whether or not on an ethics committee should or could be formed was "We try to keep out of the ethical side of things".

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6.2 LOBBYISTS

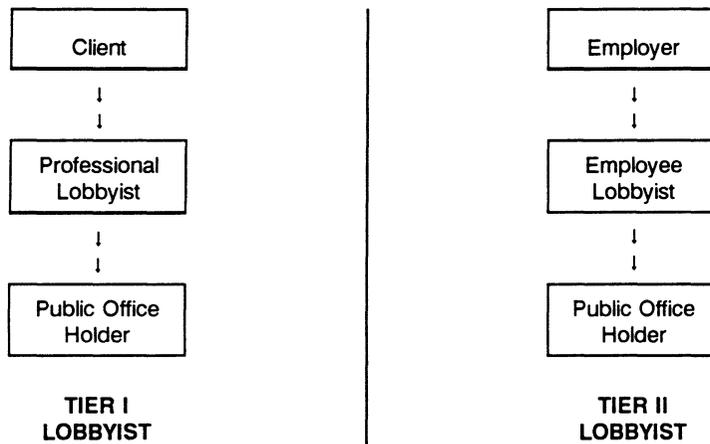
A great deal of information received by the Committee on its overseas study tour referred to the registration of lobbyists as a tool to ensure that the public and public officials were aware of who was attempting to influence the government.

This is not to imply anything negative about the profession - rather it affirms it as a legitimate activity and helps officials become aware of the views and concerns of individuals and organisations.

The Québec Government emphasises that the principles of lobbyist registration are:-

1. to recognise lobbying as a bona fide activity (not to be confused with patronage and influence peddling)
2. to ensure access to government remains free and open
3. to ensure access to information on lobbyists
4. to protect office holders from misunderstandings.

The Québec government achieves this by registration of lobbyists according to whether they are professional or whether the lobbying activity is merely a component of the normal job, ie.



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Reporting requirements vary according to the tier of the lobbyist. Tier I lobbyists must report - name, address, name of employing firm, name and address of client, name and address of parent(s) and subsidiary(ies) and subject matter.

Tier II must report - name and name and address of employer.

All changes to the information provided must also be reported.

Lobbying activities have also been analysed by the Québec government according to relative frequency.

ACTIVITY	FREQUENCY AS A PERCENTAGE
Legislative Proposal	9.1 %
Bill/Resolution in Parliament	6.8 %
Regulation	16.6 %
Policy/Programme	25.7 %
Grant/Contribution	12.6 %
Contract	16.0 %
Arranging a Meeting	13.2 %

Texas also registers lobbyists and information of this nature is detailed in the Texas Government Code. This Code explicitly details what is meant by the terms and what is not.

According to the Texans, the benefits are:-

1. Members would know if they were dealing with a lobbyist, ie. a person who
 - *(1) makes a total expenditure of more than \$200 in a calendar quarter, not including the person's own travel, food, or lodging expenses or the person's own membership dues, on activities described in Section 306.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action; and
 - (2) receives compensation or reimbursement of more than \$200 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

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(b) Subsection (a)(2) requires a person, other than a member of the judicial, legislative, or executive branch, to register if the person, a part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation on behalf of the person by whom he is compensated or reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for the regular employment."

(Sec 305.003 Chapter 305,
Texas Government Code)

This does not however include

- *(1) a person who own, publishes, or is employed by a newspaper, any other regularly published periodical, a radio station, a television station, a wire service, or any other bona fide news medium that in the ordinary course of business disseminates news, letters to the editors, editorial or other comment, or paid advertisements that directly or indirectly oppose or promote legislation or administrative action, if the person does not engage in further or other activities that require registration under this chapter and does not represent another person in connection with influencing legislation or administrative action;
- (2) a person whose only direct communication with a members of the legislative executive branch to influence legislation or administrative action is an appearance before or testimony to one or more members of the legislative executive branch in a hearing conducted by or on behalf of either the legislative or the executive branch and who does not receive special or extra compensation for the appearance other than actual expenses incurred in attending the hearing;
- (3) a person whose only activity is to encourage or solicit members, employees, or stockholders of an entity by whom the person is reimbursed, employed, or retained to communicate directly with members of the legislative or executive branch to influence legislation or administrative action;
- (4) a person whose only activity to influence legislation or administrative action is to compensate or reimburse an individual registrant to act in the person's behalf to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action;
- (5) a person whose only activity to influence legislation or administrative action is attendance at a meeting or entertainment event attended by a member of the legislative or executive branch if the total cost of the meeting or entertainment event is paid by a business entity, union or association; and
- (6) a person whose only compensation subject to Section 306.003(a)(2) consists of reimbursement for any wages not earned due to attendance at a meeting or entertainment event, admission to the meeting or entertainment event, and any food and beverage consumed at the meeting or entertainment event is attended by a

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member of the legislative or executive branch and if the total cost of the meeting or entertainment event is paid by a business entity, union, or association."

(Sec 305.004, Chapter 305,
Texas Government Code)

2. The Code also protects members in that it details prohibited activities, eg.

***FALSE COMMUNICATIONS.** A person, for the purpose of influencing legislation or administrative action, may not"

- (1) knowingly or wilfully make a false statement or misrepresentation of the facts to a member of the legislative or executive branch; or
- (2) cause a copy of a document the person knows to contain a false statement to be received by a member of the legislative or executive branch without notifying the member in writing of the truth."

(Sec 305.021, Chapter 305
Texas Government Code)

The Committee also notes that the House Committee on Ethics in Tallahassee, Florida, enacted legislation on 1 January 1991 regarding the acceptance of gifts to candidates. Its definition of lobbyists which appears to HB31-A is worth quoting:

"Lobbyist" means any natural person who, for compensation, seeks or sought during the preceding 12 months to influence the governmental decision-making of a reporting individual or procurement employee or his agency, or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee, or his agency. With respect to an agency that has established, by rule ordinance, or law, a registration or other designation process for persons seeking to influence decision making or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of registered or otherwise designated as a lobbyist in accordance with such rule ordinance, or law or who was during the preceding 12 months required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law."

Public Hearing - 28 October 1991

This issue of registration of lobbyists was addressed by Committee Members as follows:

MR JOBLING:

The Joint Select Committee upon the Process and Funding of the Electoral System

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"The growth overseas of lobbyists is a trend that appears to be emerging in both this country and this particular state. How would you perceive the identification of the lobbyists. Would you go as far as requiring them to be registered and such lists promulgated regularly. How would you envisage the control over them? At the other side of the spectrum question, how would you deal with the possible growth in bureaucracy and the incumbent costs if we followed a number of the answers that have been put forward this morning?"

MR MCGUINESS:

"There is a case for registering professional lobbyists. People who act on behalf of companies, or indeed, foreign governments or other organisations and having them at least provide a list of clients, who they are representing. The difficulty with that, however, is some large companies employ their own lobbyists. I could name a list of a dozen large Australian companies who have professional lobbyists on their staff full-time. Should those be registered? It is a little bit difficult to say. Then there is of course the fact that often the most effective lobbyists are those who never appear to be lobbyists at all. They can be employed through any kind of screen of organisations whether as expert consultants, engineering consultants, whatever. Again, it is a problem which in the long run is insoluble. I think, nevertheless, establishing a register of professional lobbyists is not a bad idea, simply because it brings part of the process out into the open..... Let me give you an example, in Britain there are a large number of members of parliament employed as lobbyists or employed as political analysts or parliamentary representatives on the payroll of companies and the classic example is when the decision was made to go ahead with the Channel tunnel that the majority of members of a House of Commons select committee that considered that were employed or on the payroll of either construction companies or material providing companies or ferry companies.

In Australia that would cause an uproar, that it would be considered totally unacceptable but the British say, "We are not corrupt", because they have an institutionalised system of corruption."

6.3 ELECTION FUNDING AUTHORITY

The Committee feels that the information compiled by the EFA should be more easily collated and quantified for research purposes.

For example the following information should be accessible to members of the public, academics, journalists and other interested parties without having to go through each and every election return.

The information should be computerised and the data should be easily rearranged and collated according to need.

For example the following information should be accessible:

1. Largest contribution by an Individual to a Party
2. Largest contribution by an Individual to a Candidate
3. Largest contribution by a Company to a Party
4. Largest contribution by a Company to a Candidate
5. Major Parties income and expenditure
6. Sources of contributions to Parties
7. Sources of contributions to Candidates
8. Number of average size of contributions by Individuals to Candidates
9. Number and average size of contributions by Individuals to Candidates
10. Corporate contributions to Candidates - number and average
11. Corporate contributions by Industry Group
12. Contributions of \$1,500 plus to Candidates

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13. Largest contributions to Candidates to Interest Group
14. Contributions of \$1,500 plus to Candidates
15. Estimated Leadership Campaign Expenditure
16. Average election expenditure per member
17. Average election expenditure per successful member
18. Average election expenditure per unsuccessful member
19. Expenditure by group per member
20. Expenditure by group per member
21. Percentage of people give political donations - statewide and federal

The Committee recommends the computerisation of all data (as listed in this report) which is held by the Election Funding Authority to make this information more accessible.

Returns should be accessible to the public and the current system of filing in manilla folders is obsolete and meaningless for research purposes.

This should occur as a matter of priority.

6.3.1 Role of the EFA

The Committee notes the existence of a number of overseas commissions and organisations devoted to ensuring political accountability and disclosure of donations to the public at large.

It notes the powers and duties of the Nebraska Commission. That is:-

***§ 49-14,123. Commission; powers and duties.** In addition to any other duties prescribed by law, the commission shall:

- (1) Prescribe and publish, after notice and opportunity for public comment, rules and regulations to carry out the provisions of sections 49-1401 to 49-14,138, pursuant to the provisions of the Administrative Procedure Act;

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- (2) Prescribe forms for statements and reports required to be filed pursuant to sections 49-1401 to 49-14,138, and furnish such forms to persons required to file statements and reports;
- (3) Prepare and publish one or more manuals explaining and duties of all persons and other entities required to file statements and reports by sections 49-1401 to 49-14,138 and setting recommended uniform methods of accounting and reporting for such filings;
- (4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of sections 49-1401 to 49-14,138;
- (5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;
- (6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;
- (7) Prepare and publish summaries of statements and reports filed with the commission to facilitate public access to such reports and statements and reports filed with the commission, and special reports and technical studies to further the purposes of sections 49-1401 to 49-14,138;
- (8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;
- (9) Preserve statements and reports filed with the commission for period of not less than five years from the date of receipt;
- (10) Issue and publish advisory opinions on the requirements of sections 49-1401 to 49-14,138 upon the request of a person or governmental body directly covered or affected by sections 49-1401 to 49-14,138. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or public body who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion;
- (11) Act as the primary civil and criminal enforcement agency for violations of the provisions of sections 49-1401 to 49-14,138 and the rules or regulations promulgated thereunder;
- (12) Receive all late filing fees and submit them to those authorities designated by law to effectuate the provisions of Article VII, section 5, of the Constitution of Nebraska; and
- (13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

Source: Laws 1976, LB 987, § 123; Laws 1981, LB 545, § 13; Laws 1981, LB 134, § 9; Laws 1983, LB 479, § 5.

49-14,123.01. Commission; duty to provide information. The commission shall provide copies of statements, reports, parts of reports, advisory opinions, and public information prepared by the commission to any person on request at a reasonable cost to be determined by the commission.

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Note: § 49-1401 to 49-14,138 refers to all the provisions contained in the Nebraska Political Accountability and Disclosure Act, 1989. These cover such topics as campaign lobbying practices and conflicts of interest as well as the operation of the Commission.

Currently the New South Wales Act states:-

'General functions

22. (1) The Authority shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (2) It is the duty of the Authority to exercise its functions under this Act in a manner that is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons, bodies or organisations."

In particular, the EFA must deal with applications for registration, claims for payment and declarations of contributions and expenditure (s23).

The EFA has discretion to issue guidelines as it sees fit (s24).

And, a recommendation by the previous Committee and now included in the legislation also states that:-

'Research

25. The Authority may carry out, or arrange for the carrying out of, such research into election funding, political contributions, electoral expenditure and other matters to which this Act relates as the Authority thinks appropriate and may publish the results of any such research."

The Committee notes the vague wording of the Election Funding Act 1981 and recommends the detailing of specific functions and duties.

Public Hearing - 23 September 1991

Dr Macdonald queried whether the existing guidelines permit the EFA to be involved in who funds elections or if they are restricted to only investigating the funding of elections.

Mr Dickson responded by saying that:-

"Under the legislation all we are interested in is who funds the election part of it. That is all the legislation gives the authority."

Mr Jeffery also asked whether the EFA should be an investigative or administrative body.

Mr Dickson replied that:-

"People regard us as an investigative body or an inspectorial body but they say we don't do it because we are hamstrung by the legislation."

Mr Dickson also said that, in terms of the added workload, if the EFA became more investigative:-

"You could well be looking at something like that [10 extra staff] in the short term exercise, yes, and it is not going to be cheap. That is the thing, to a certain extent, frightens me. Again, I repeat that it is difficult not to establish a bureaucracy. The question of the newspaper examinations, to me, that is an enormous task for the Commonwealth to do and I sort of wonder whether the rewards in doing it that way are worth while, are productive. To me the onus should be on the candidates or the parties to supply that rather than to have X number of people sitting there doing that. It would be, to answer your question, it would be expensive. I could not put a monetary figure on it or anything like that. I could see one way of doing it of having short term appointments, a blitzing of it and then they would either go back to their other departments or they would be done on some sort of a contract/ consultancy basis."

Mr Dickson also said that other political parties and media assist the EFA in its investigations - that is, there are checks and balances.

Ms Gladwin however said that the AEC was both an administrative and an investigative body. If a prosecution may result the matter is normally passed onto the Federal Police. Ms Gladwin also told the hearing that there are no full time investigations in the Commission.

Ms Gardiner also asked:-

"With respect to the gifts in kind, do you have any staff that are briefed to keep an eye out for the lady donating her singing services or isn't that part of their job, they just rely on secondhand information?"

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The response from Ms Gladwin:-

"We have contact officers in each of the commission state head offices, and one of their functions is to, if you like, keep their ear to the ground about things that might interest us from a funding and disclosure point of view, and people in the 148 divisional offices around Australia are also aware to a certain extent of the requirements of the funding and disclosure legislation and would hopefully report anything that they become aware of in their particular electorate."

Public Hearing - 28 October 1991

Dr Chaples commented on the need and/or effect of a national body and said:-

"I think in this area you really need professional expertise to tell you what would be needed. There are two schools of thought that I am aware of. One, is the school of thought represented by people like Colin Hughes when he was chairman of the Australian Electoral Commission that if you gave theoretical powers and relatively small staff and allowed the individual inspection teams to enter when something looks suspicious or to enter and have a look at the books based on just at random, draw, of just picking a few candidates of each election and the occasional party, more or less, out of the hat, then it is like random drug testing. Everybody has got to be aware because they know that they are always subject to this sort of entry."

"... Virtually everything else, I think, can pretty much be allowed. We did not legislate here a large bureaucratic requirement. The machinery is administered by relatively small number of people. I am not rapt in the way the three members who run the funding authority are appointed, but frankly, they do not have a whole lot to do with anything significant anyway, so it is not a big deal. A relatively small group of people is required in order to maintain the existing sorts of procedures. The constituency element, I think, is quite good. The requirement of filing materials that are used in elections, I think, is quite good and beneficial so it really is only this question of coming to final grips with naming significant donors that I think is outstanding.

I am really suggesting that if the existing situation applies, it is probably better off giving it away than trying to pursue it unnecessarily, especially if the only way to pursue it unnecessarily is to

triple the size of the bureaucracy down in Francis Street. I don't see that as at all valuable."

Public Hearing - 25 November 1991

The Chairman asked Mr Zervos if he felt that the power of random audit was essential for the EFA and Mr Zervos agreed with this need.

Mr Zervos also highlighted the fact that:-

"It was noted in the North Coast report that the Election Funding Authority has powers of inspection but it has not carried out one since its inception. There have been no prosecutions by the authority since its inception."

Mr JOHNSON:

"Should there have been?"

Mr ZERVOS:

"Clearly the North Coast report reveals that there are some serious problems in this regard. Obviously, from the experience of the commission, there should have been."

Mr Zervos also said that this did not usurp the role of the ICAC as its responsibilities are corruption based.

Dr Macdonald asked the ALP how they would respond to an organisation which had the power to conduct random audits and investigations.

Mr Della Bosca responded that:-

"As the Australian Labor Party complies with the law we would not have a problem with it. Obviously, it would depend on how often that body would want to conduct audits. If it arrived once a month it could get a bit tedious."

Mr Johnson prompted:-

"And costly."

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Ms Kirkby also asked Mr Della Bosca about the EFA's resources.

"On the question of the resources available to the electoral commission, I would have to underline that it is under-resourced and has been historically as long as I have had direct contact with it. It should be a priority to address that, but we get back to the problem that resources are scarce, and squeaky wheels. That is a correct observation, but it is not within the general realm of this Committee. The commission and the authority have a huge workload. Compared with the Federal bureaucracy it does not have nearly the level of human or monetary resources."

Mr O'GRADY:

"Is it under-resourced because of the sort of organisation that it is, with peaks and troughs?"

Mr DELLA BOSCA:

"That is the tradition, but as Ms Kirkby pointed out, more and more industrial organisations are obliged to hold what used to be called court-controlled ballots, which now the electoral commission conducts. More and more community organisations, such as the Aboriginal land councils, have their annual or triennial elections conducted by the commission. Its functions are expanding and it seems to me that its staff and other resources have not expanded accordingly."

The Committee recommends a listing of the specific functions and duties of the Election Funding Authority be prepared by that Authority.

The Committee recommends additional funding be provided to the Election Funding Authority in order that inspectorial staff be employed.

The Committee also finds that the responsibilities of the Election Funding Authority and State Electoral Office have expanded and the number of staff and the resources available to it have not increased at the same rate.

The Committee recommends that funding be increased appropriately.

6.3.2 Board of the EFA

A number of submissions received by this Committee made mention of the role of the EFA and, particularly, the composition of the Board.

Currently the composition is detailed in section 6 of the Act and the three members of the authority are comprised of:

1. The Electoral Commissioner
2. A nominee of the Premier, and
3. A nominee of the Leader of the Opposition in the Legislative Assembly.

Public Hearing - 28 October 1991

Ms Kirkby raised the idea of altering this composition and suggested a more independent body should be formed.

This was not to suggest nor cast aspersions on the members of the EFA but rather to reflect the political background of appointees.

Senator Sowada reiterated Ms Kirkby's point and said that in the Democrats' view the

"Election Funding Authority which ... is far too politicised and is heavily politicised under the act itself by virtue of formal appointment by the Premier and the opposition."

This point was further expanded after questions by the Chairman.

CHAIRMAN:

"What is your recommendation as to the reconstitution of the election funding authority in what you would feel a more acceptable way?"

SENATOR SOWADA:

"I will just point out that it is section six of the Election Funding Act which says that the authority shall consist of three members one of which shall be the commissioner. The other, a member appointed on the nomination of the Premier and the other appointed on the nomination of the leader of the opposition. I think that that is totally unacceptable and we would certainly like to see a much more

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independent funding authority put in place so that, again, the process has integrity and so that the public can have confidence in the integrity of the scrutiny process of disclosure and of expenditure. We have suggested that it would be possible to put on perhaps the State Auditor General. This is by way of suggestion and I am not saying that this is the way that the committee should go but one suggestion is that the State Auditor General or his deputy could be made a member of the committee and our other suggestion was that the ICAC commissioner or his deputy, but I did raise that issue at the beginning of the hearing here, that in the light of discussions that have been held since our submission was written, it was felt that the presence of the ICAC commissioner or his deputy could compromise an investigation."

CHAIRMAN:

"Also the ombudsman took the same view, I gather?"

SENATOR SOWADA:

"Indeed, and I think that is a fairly fair criticism and I would suggest that the committee could investigate other appointees that might be acceptable. The other option could be is if we are going to go with a fully politicised committee, let us have some fair representation on that committee and let us have an appointment on the nomination of the leader of the Democrats and one of a nomination appointed by the Call to Australia and one representing Independents.

If the committee feels that that is the way to go. We would suggest that for public confidence to be restored in the process, that it would be far better to have a politically independent committee and it would be better to amend these sections of the act to ensure that that is done."

Public Hearing - 25 November, 1991

Mr Zervos agreed with this (as a personal viewpoint) and said that:-

"It would seem to me that it is best carried out by an organisation that is independent in the true sense of the word and that there are not people sitting on the organisation who have interests aligned to the organisations that they are required to examine."

And

DR MACDONALD:

"On that particular subject, can you see any reason why the major political parties should be represented at all?"

Mr ZERVOS:

"No, I cannot. In fact the history of the problem in relation to political donations indicates that they are best not involved."

Mr O'GRADY:

"That does not in any way relate to the Election Funding Authority?"

Mr ZERVOS:

"I think it does to some degree. I believe that we have had a serious area of neglect in relation to political donations for some time now. The comments were made by Mr Roden concerning a law that is created by the law-makers and required to be policed by them, and there have been instances, as highlighted by the report, in which the spirit of the law has been ignored by our law-makers in dealing with political donations. There have been instances where devices have been used to get around the spirit of the law."

Mr Zervos also said:

"No, I do not. I am just saying that it seems to me that if you want to have a truly independent organisation and you want to maintain and enhance public support and confidence in the parliamentary system, it is important that you have an organisation that is not made up of people who have some vested interest in this particular area."

Dr MACDONALD:

"Do you believe that the major parties feel threatened by the sort of direction in which it may be moving?"

Mr ZERVOS:

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"I really cannot say. All I can say is that from my experience, and some of the comments I have made have been personal comments, it appears to me that there have been difficulties in the past. It would be prudent to avoid any future difficulties by ensuring that an organisation is established that is independent and there is no question in the minds of any member of the public that it is not properly and thoroughly carrying out its duties, whatever they may be."

Yet Mr Della Bosca said:-

"In my evidence I addressed that issue. I was in accord with certainly the Liberal Party and the National Party. I am not sure what other attitudes came out of it. My own view is that provided obviously the authority has a secretariat and a substantial representation of statutory public servants, obviously we must enforce the law, and I do not see any difficulty with having practitioners, that is nominees of political parties. I do not think there has ever been a suggestion in the history of the public funding authority that an ethical, legal or other difficulty has risen because nominees of political parties were on the authority. I would be very surprised if that ever came out. I suppose you could totally recast the notion of the authority to being a purely bureaucratic entity. But then I would suggest there would be no need for an authority if you did that. You could simply appoint the present incumbent or any future incumbent to the job and they could act in a purely bureaucratic way and not have any reporting authority, and report direct to the parliament. At the end of the day it is public money and I do not think the review process is necessarily advanced by having ICAC on it, which is one suggestion, which I think is self-serving. It seems curious that that would come out of it. I do not think there is any logical benefit in changing the nature of the authority's administration."

Public Hearing - 9 December, 1991

Mr Maher said:-

"Mr Chairman, in answer to the question, in the last part of it, no I do not believe that the electoral funding authority would operate any differently or any more efficiently if it was sort of totally independent as you say, rather than having a representative from the two major parties on it.

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I think that bodies that are totally independent - it assumes that there is no merit in political parties which is a view, as I think I have said earlier, I do not agree with. Political parties have stated aims, objectives for all to see and politics, to my view, should be no disbarment for anyone participating in any body. The question is whether it is the sole criteria for that participation. You may then raise questions.

I think the people who have been appointed to that body are certainly from - and I can only speak from the Liberal Party's point of view - I have heard no one speak and say that Sir Eric Willis is incapable of doing the task, would not do it honourably and objectively.

It is also underwritten by the fact that the person who is on it, I think, is the deputy electoral commissioner in this state the chief returning officer and I have not heard anyone say, except probably in one circle, that the body does not perform the way it is intended to by statute.

I don't think it would necessarily be improved by changing its nature. The Electoral Commission might be improved by having more resources but that is a different question."

The Committee notes the concerns expressed with the current composition of the Election Funding Authority but does not believe that any amendment is warranted as at no time has the Authority acted in an improper manner.

6 MISCELLANEOUS

6.4 PUBLIC FUNDING IN GENERAL - LOCAL GOVERNMENT

The question of whether local government should have to declare political contributions received was noted with interest by some of the Committee members.

Public Hearing - 23 September 1991

Mr Paul Chapman and Mr Ian McKendrie's testimony by the Committee illustrates the areas of concern to local government.

MR McKENDRIE:

"The system at the moment is far less formal than applies to state or federal elections. There is no formal mechanism at all for disclosure of campaign donations except in the period subsequent to a member of the council being elected he or she will be required when submitting a return on his or her pecuniary interests. There will obviously need to be some mention of funds acquired in that period but it doesn't cover the period before the election so there is a significant gap there.

... It is an area that is quite hard to get hard data on. The whole area of conflict of interest in local government is a fairly current one with ICAC doing an inquiry at the present time and it has received mention in previous ICAC inquiries, the north coast inquiry, for example. It is an area where the community is probably looking for a more rigid system than applies at the moment and our proposals that were distributed to members of parliament do suggest that there be a more formal mechanism in place for disclosure and that that be done through the state electoral commission who is responsible for the overall conduct of local government elections.

I should add that we have only had fairly preliminary discussions with Ian Dickson and his people and, of course, he has flagged some of his concerns and we have noted their resources in just how that might be done."

MR CHAPMAN:

"Essentially it says (Ian has eluded to) there is not in the local government's sphere any legislation which equates to the Election Funding Act which covers funding of state election campaigns. The reason for that traditionally has been, I suppose, and it has never really been seriously suggested, I don't think,

that there be funding of council candidates, not to my knowledge, anyway, because of the local nature of local government.

They are viewed as community representatives, the position as a member of a council is not viewed as more than a part-time community voluntary involvement and for that they only receive travelling and other emuneration allowances which cannot exceed \$3,000. They get meeting fees. These matters are discussed in the Local Government Act and ordinances. Getting back to the issue (more directly the pecuniary interests regime - that is, the written declaration of interests) does catch contributions to travel and gifts that are received by council members and the system was introduced in 1987 by way of requiring a written return, firstly, an ordinary return and then an updated return which is modelled along the requirements that yourselves as state parliamentarians are required to complete under the Constitution Act and regulations.

Hence, there are monetary prescriptions. Firstly, gifts in excess of \$500 or aggregated in excess of \$500 must be disclosed in a written return. Secondly, contributions to travel in excess of \$250 must be disclosed. There are certain exceptions there and there is an oblique reference to funding of a council member who similarly is also a state member of parliament where the gift or contribution to the travel was received as a campaign donation by a political party. To that extent there is a certain amount of disclosure but only once they are successfully elected to their local council."

Further to this Mr Chapman also stated that:-

"... It is also proposed in this reform in the Local Government Act to address the conflicts of interest question or, alternatively, to possibly strengthen the pecuniary interest disclosure provision. So to that extent a requirement to facilitate more open access of campaign information would not be inconsistent with the thrust of previous governments in this area."

Mr Jeffery highlighted some concerns regarding privacy and the fact that individuals may feel that there are so many requirements and restrictions on standing that they may not even offer themselves as candidates.

Mr McKendrie denied this and emphasised that:-

"There is a perception that it is a changing world, that the idea of being elected for four years and then running that community without reference back to it in the intervening period is going. The new generation of

6 MISCELLANEOUS

community representatives, I suspect, will be rather more plugged into that community because the community expectations are growing, the community is getting much more conscious of its own power in affecting decision making and making the representatives accountable on specific decisions and they are looking for action on individual DA's, that sort of thing."

Mr McKendrie and Mr Chapman also indicated to the committee that they had not fleshed out the individual elements of whether they favoured specific types of disclosure and at this point, were looking at the overall picture. They were taking a "macro" view as opposed to a "micro" view.

Mr O'Grady also raised the question of disclosure for local government with Senator Sowada who responded by saying:-

"I think that we probably all recognise that there is a need for some kind of public disclosure of contributions made to local council candidates and we would see that amendments could be made to the Local Government Act to ensure that some kind of disclosure regime along the lines of the state of that which operates now for state elections could be implemented for local government elections. The way we would see it operating is, say, a disclosure period be established 12 months before an expected poll or perhaps from the day after the last council elections, as it were, and then the disclosure period extended to, say, 120 beyond a council election to ensure that any donations made to a candidate after the election were also disclosed as campaign donations. I don't think it is beyond the realms of possibility to establish but, as Ms Kirkby suggested, obviously that would entail greater burdens on the State Electoral Office and the financial considerations of that would have to be taken into account."

The Chairman queried the justification for disclosure at a local government level and Senator Sowada responded by emphasising the large number of decisions made at the local council level and the fact that these decisions often involve large amounts of money. She also said that:-

"Whilst I don't really want to point to any specific issues here one only needs to look at the recent history of investigations at the ICAC commission on the activities of local council that there are clearly a lot of questions being asked about what is happening at a local council level and there are suggestions that money is changing hands or that donations are being made for favourable consideration of development applications and political activities.

I think if we are to have a disclosure regime that has integrity it must extend down to the local government level as well."

The Committee notes that the issue of public funding and disclosure requirements for local government has been referred to the Local Government Legislation Committee.

The Committee makes no recommendation on this subject.

CONCLUSION

A number of broad campaign finance themes can be distilled from the following overseas research and, to a lesser extent, the evidence received by this Committee.

Firstly, campaign spending is increasing sharply in many jurisdictions. Overseas experience indicates increases of over 1300% in ten years in some electoral districts.

Secondly, money from real estate and property developers is playing a major role in fundraising.

Thirdly, incumbents in the USA (or sitting members) dominate fundraising to an enormous extent. They outspend challengers anywhere from a ratio of 4-to-1 up to 9-to-1.

Fourthly, most overseas incumbents begin fundraising much earlier than challengers. Most begin fundraising in their first year of office.

Fifthly, challengers are relying increasingly upon their personal finances as a boost to this early fundraising by incumbents.

Sixthly, businesses are also becoming the dominant campaign contributors in large jurisdictions.

Next, the amount of money actually spent on communicating with voters is surprisingly small considering the overall increase in campaign spending.

Also, non-compulsory voting in the USA is decreasing as campaign spending increases.

Finally, campaign finance regulations and legislation seems to have failed in its efforts to stem the increases in campaign costs.

Parliament of New South Wales

**JOINT SELECT COMMITTEE UPON
THE PROCESS AND FUNDING OF
THE ELECTORAL SYSTEM**

Second Report

Appendix I

September 1992

EXHIBIT 14

(B) Page ____ of ____ Pages

**SCHEDULE 1B
OTHER RECEIPTS AND IN-KIND CONTRIBUTIONS**

(See Schedules 1 and 1A for Other Types of Receipts)

See Instructions on Reverse Side

(A) Name of Account _____ (C) Campaign Fund Account Number _____

(13)	(14)	(15)	(16)	(17)	(18)
Date Received	Complete Name and Address of Payor	Other Receipts		In-Kind Contributions	Remarks
		Loans Received	Other, e.g., Refunds, Rebates, Items Sold, Interest, or Other Miscellaneous Receipts (Describe in Column 18)	Fair Market Value of In-Kind Contribution Received (Describe in Column 18)	
		Aggregate to Date		Aggregate to Date	
		\$		\$	
		Aggregate to Date		Aggregate to Date	
		\$		\$	
		Aggregate to Date		Aggregate to Date	
		\$		\$	
		Aggregate to Date		Aggregate to Date	
		\$		\$	
		Aggregate to Date		Aggregate to Date	
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		Aggregate to Date		Aggregate to Date	
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		\$		\$	
		Aggregate to Date		Aggregate to Date	
		\$		\$	
		Aggregate to Date		Aggregate to Date	
		\$		\$	
		Aggregate to Date		Aggregate to Date	
		\$		\$	
TOTALS THIS PAGE		(15)	(16)	(17)	

**INSTRUCTIONS
SCHEDULE 1B
OTHER RECEIPTS AND IN-KIND CONTRIBUTIONS**

(See Schedules 1 and 1A for other types of receipts)

ALL FUNDS MUST BE DEPOSITED IN AN ACCOUNT PROPERLY IDENTIFYING THE NAME OF THE CANDIDATE, COMMITTEE OR SLATE ACCOUNT PURSUANT TO ARTICLE 33, SECTION 26-5(b).

- A. List name of account as registered with election office.
- B. Number pages only when all schedules of the entire report are completed.
- C. Enter Campaign fund account number assigned by the election office.

Column 13 — Enter date funds received or date services rendered.

Column 14 — Enter complete name and address of payor.

- Column 15 — Enter amount of loan received. Also complete Schedule 4.

Column 16 — Enter amount of refund, rebate, items sold, interest or other miscellaneous receipts. Describe in Column 18.

- Column 17 — Enter amount of in-kind contribution. Use fair market value. Describe in Column 18 the nature of the gift or service made available for use by the candidate, committee or slate.

An in-kind contribution is anything of value, goods or services, given to or made available for use by a candidate, committee, slate or representative of any political party to be used in promoting or aiding the success or defeat of any candidate, political party, principle or proposition submitted to a vote at any election, i.e., printing, use of office space, automobiles, aircraft, boats, mobile units or any other thing or service made available.

In-kind contributions are charged against the overall contribution limits outlined in Article 33, Section 26-9 (d).

Column 18 — Use this column if needed for remarks relating to entries.

Total amounts at bottom of each page. Do not include aggregate amounts in totals.

- For aggregate amount received from payor to date: List total monies from contributor to date. This is to determine the total amount the contributor has given to a campaign account in connection with a particular election cycle (total for primary and general election).

Parliament of New South Wales

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Appendix II

September 1992

EXECUTIVE SUMMARY - USA

STATE	ELECTION COMMISSION	INDIVIDUAL	EXPENDITURE LIMITS	PUBLIC SUBSIDY	CREDIT	DEDUCTION	TAX PROVISION CHECK OFF
CALIFORNIA	✓			✓		✓	S/chrge Provision ✓
MARYLANDS	✓	✓	✓	✓		✓	S/chrge Provision ✓
MASSACHUSETTS	✓	✓		✓			S/chrge Provision ✓
NEW JERSEY	✓	✓	✓	✓			✓
NEW YORK	✓	✓					
OREGON				✓	✓		✓
PENNSYLVANIA							
DISTRICT OF COLUMBIA	✓	✓			✓		

* All States have disclosure requirements

Parliament of New South Wales

**JOINT SELECT COMMITTEE UPON
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Appendix III

September 1992

A SUMMARY OF THE WEST VIRGINIA GOVERNMENTAL ETHICS ACT

The West Virginia Governmental Ethics Act passed in February 1989 states "the Legislature believes that a code of ethics for the guidance of public officials and public employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their public officials and public employees."

WHAT IS THE ETHICS COMMISSION

The Act established minimum ethical standards and created the West Virginia Ethics Commission to advise those covered by the Act and to investigate and adjudicate complaints of ethical misconduct. The Commission is a group of 12 part-time citizen members appointed by the Governor to serve five year terms. Commission members meet the first of each month at the Commission offices in Charleston to conduct business. A mid-month teleconference is also held to handle routine matters.

Before the Commission's advisory opinions are made public, any material which identifies the subject of the ruling is, to the fullest extent possible, deleted and his or her identity is not revealed.

MEMBERS OF THE COMMISSION

Lee Feinberg, Chm. (Charleston)
Justice Fred Caplan, V-Chm. (Charleston)
Michael Nogay, Secty. (Weirton)
Rev. Ronald English (Charleston)
John Wells Sr. (Charleston)
Roland L. Hobbs (Wheeling)
James McCartney (Morgantown)
Mary Neely (Huntington)
Irvin Queen (Logan)
Robert Sayre (Beckley)
John Shank (Vienna)
Robert Steptoe Jr. (Clarksburg)

WHO IS COVERED BY THE ETHICS ACT

Public officials and public employees, whether full-time or part-time, who are elected, appointed or hired to serve in State, county or municipal governments and their respective departments, agencies, boards and commissions, including county school boards.

ADVISORY OPINIONS

The primary responsibility of the Commission is to help resolve questions of ethical propriety by rendering "advisory opinions" in response to questions from public officials and employees covered by the Act. Any person covered by the Act may make written application to the Commission for a ruling on whether certain conduct is permissible under the Act. If the Commission rules that the conduct is ethically permissible, the person making the request is immunized against any subsequent complaint of violating the provision of the Act.

Rulings of the Commission, set out in "advisory opinions", become public records. Copies of opinions are available to the public from the office of the Secretary of State. [Phone (304) 345-4000] The cost is \$2 plus ten cents per page. Any person covered by the Act can

rely on the published opinions and any person acting in good faith reliance on such opinion is immune from the sanctions of the Act.

Persons covered by the Act may request advisory opinions by writing to the Commission at 1207 Quarrier St., Charleston, WV 25301. There is no particular form necessary to make a request and no specific format which must be followed. The request must be in writing.

Although the Commission is not permitted to make advisory opinions in response to phone requests, the staff can discuss any question you may have over the phone. If there is an existing advisory opinion or guideline which controls the question they can make you aware of it at that time.

COMPLAINTS

The other major responsibility of the Commission is to investigate and resolve ethical violations. Any citizen may make a complaint with the Commission if he or she is aware of a violation of the requirements of the Act. Once the Commission receives a verified complaint it initiates an investigation of the charges in the complaint.

If the Commission finds that there has been a material violation of the Act, it may impose one or more of the following sanctions:

- (1) Public reprimand;
- (2) Cease and desist orders;
- (3) Orders of restitution for money, things of value or services taken or received in violation of the Act; or
- (4) Fines not to exceed one thousand dollars per violation.

In addition to imposing such sanctions, the Commission may recommend to the appropriate governmental body that a person found to have violated the Act be terminated from employment or removed from office.

If the Commission finds that there has been no violation of the Act and that a complaint has been brought in bad faith, it shall order the complainant to reimburse the person complained against for all actual costs incurred, including, but not limited to, attorney fees and, in addition, the person complained against shall have a cause of action and be entitled to compensatory damages, punitive damages, costs and attorney fees.

FINANCIAL DISCLOSURE STATEMENTS

The Commission is responsible for obtaining Financial Disclosure Statements from specified public officials and public employees. The Statements, required to be filed annually, disclose the nature and source of income, employers, any contacts with governmental entities, the source of gifts from persons having a special interest in government and other information.

LOBBYISTS

The Commission handles the registration of all lobbyists who engage in legislative and or administrative lobbying at the State level. The Commission collects periodic reports of the lobbying activities of the registered lobbyists - primarily financial information.

These last two areas of responsibility are primarily the concern of the Commission staff. All information collected in regard to lobbyists and contained on the Financial Disclosure Statements is a matter of public record and open to examination by the press and public.

For more information on the WV GOVERNMENTAL ETHICS ACT please contact the WV Ethics Commission, 1207 Quarrier St., Charleston WV 25301 PHONE (304) 348-0664.

A SUMMARY OF
PROHIBITED INTERESTS IN PUBLIC CONTRACTS
ESTABLISHED BY THE WV GOVERNMENTAL ETHICS ACT

The West Virginia Governmental Ethics Act places certain restrictions on public contracts. The Act says that no

- public official or employee; or
- member of his or her immediate family; or
- business with which he or she is associated

may be a party to or have an interest in a contract over which he or she may have control or direct authority to enter into.

If your official responsibilities do not include some influence, control or direct authority over awarding contracts or making purchasing decisions for your agency you are not affected by this provision of the Act.

If you do have such official responsibilities, then neither

- you; nor
- a member of your immediate family; nor
- a business with which you are associated

may be a party to or have an interest in a contract with your agency.

If you fit into one of the exemptions created by the Act or if the Ethics Commission grants an exemption in response to your agency's written request, such a contract may be possible. *** County employees and officials should see note on Criminal Provisions. ***

Who are the members of your immediate family? The Act defines them as your spouse residing in your house and any dependent child or dependent parent. These persons cannot have an interest in a contract with your agency.

What sort of interest can you have in a business without causing it to be prohibited from contracting with your agency? Your interest as an employee or Board Member of a business does not prevent the business from dealing with your agency. It is only your interest (or that of a member of your immediate family) as an owner or creditor of a business which creates the prohibition. The business cannot have a contract with or sell to your agency if you (or a member of your immediate family) have

- an ownership interest of:
 - . more than 10% of a partnership or the outstanding shares of a corporation; or
 - . more than \$30,000 in the profits or benefits of the contract.
- an interest as a creditor of:
 - . more than 10% of the total indebtedness of the business; or
 - . more than \$30,000 in the profits or benefits of the contract.

If your interest (or that of a member of your immediate family) as owner or creditor of a business is less than the limits above, then the business is not affected by this provision.

EXEMPTIONS TO THE PROHIBITION AGAINST INTEREST IN PUBLIC CONTRACTS:

1. A part-time appointed public official can avoid the prohibition if he or she:
 - . makes a prior public disclosure of the interest he or she has in such contract (or that a member of his or her immediate family has or a business with which he or she is associated has); and
 - . takes no part in evaluating or deciding on the contract; and
 - . is excused from and takes no part in voting on the contract.

[#1 is not available to part-time elected officials - just part-time appointed officials.]

2. This prohibition does not apply to the members of the WV Legislature. (See note on Conflict of Interest)

3. This prohibition does not prevent or make unlawful the employment of any person with any governmental body. (See note on Nepotism).

4. The Ethics Commission has the power to grant an exemption to your agency upon its written request, if found to be necessary to prevent excessive cost, undue hardship or other substantial interference with the agency's operation.

EXAMPLES:

a. Mayor Sam Jones is the sole owner of Jones Electrical Supply. Since Sam has control over contracts as a Mayor and he has more than a 10% ownership interest in the business, it would constitute a violation for Jones Electrical Supply to sell to the City. If the prohibition would constitute a financial or other hardship on the City, it could request an exemption from the Ethics Commission.

b. Assume the same facts above. It would not be a violation for Sam's company to sell to county or State agencies, since he would have no control over contracts awarded or purchases made by these agencies.

c. Assume that Jones Electrical Supply is owned by Sam's uncle and Sam is merely an employee of the company with no ownership interest. There would be no prohibition against the company selling to the city - although Sam exercises contract control. This is because Sam has no ownership interest in the business. (See note on Conflict of Interest.)

d. Assume that Jones Electrical Supply is owned by Sam's son, a self-supporting adult who has his own family. There would be no prohibition against the company selling to county agencies - although Sam exercises contract control over them. Sam's son is not a member of his immediate family as defined by the Act. (See note on Nepotism.)

SPECIAL CONSIDERATIONS:

Conflict of Interest. The Act includes a Legislative directive that part-time public officials and employees avoid conflicts of interest or the *appearance* of conflicts in situations not specifically prohibited by the Act. This provision encourages the part-time official or employee to avoid participation in actions which will create the appearance of impropriety - although not specifically prohibited by the Act. ["Such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter"] WV Code 6B-1-2(c).

Nepotism. Official actions, not otherwise prohibited, involving friends, relatives or business associates must be handled carefully to avoid the appearance of impropriety. Public officials and employees have a responsibility to avoid giving the impression that their public office or position has been used to advance their private gain or that of another.

CRIMINAL PROVISIONS:

Independent of the ethical prohibitions set out in the Ethics Act, WV Code 61-10-15 makes it a criminal offense for County employees or officials covered by the Ethics Act to have any pecuniary interest, direct or indirect, in any contract or service over which they have voice, influence or control in their official capacity. This criminal prohibition, which applies only to County employees and officials, is in addition to and separate from the Ethics Act. The Ethics Commission does, however, have the power to grant exemptions on a case by case basis to the provisions of WV Code 61-10-15.

For more information on the WV Governmental Ethics Act please contact the WV Ethics Commission, 1207 Quarrier St., Charleston WV 25301, phone (304) 348-0664.

A SUMMARY OF
SOLICITATION AND ACCEPTANCE OF GIFTS
PROVISIONS OF THE WV GOVERNMENTAL ETHICS ACT

SOLICITATION OF GIFTS. The Act limits the solicitation of gifts to insure that persons covered by the Act do not appear to be using their office or position to gain private benefit for themselves or their immediate family members and to insure they do not exert undue influence on their subordinates.

The Act states: "A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family; *Provided*, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee."

ACCEPTANCE OF UNSOLICITED GIFTS. The following unsolicited gifts may be accepted by persons covered by the Act - regardless of who gives the gift.

- meals and beverages
- ceremonial gifts or awards of insignificant value
- gifts of nominal value [must be less than \$20]
- reasonable expenses incurred in appearing at a speaking engagement
- free tickets to political, charitable or cultural events customarily given as a courtesy to the office (tickets to sports events are not included in this category)
- purely private and personal gifts
- gifts from relatives by blood or marriage or a member of the same household

The "meals and beverages" exemption is the most prominent of the exemptions listed above. "Meals and beverages" may be accepted from anyone - *regardless of the value of the meal*. Accepting a hot dog at the ball park or dinner at the Greenbrier are both OK.

The second most significant exemption relates to gifts of "nominal" value. "Nominal" has been defined by the Ethics Commission as being \$20 or less. Anything with a value over \$20 will not be considered "nominal".

Unless a gift falls within one of the exemptions listed above, persons covered by the Ethics Act may not accept it, if it comes, *directly or indirectly*, from a person with a special interest in their governmental activity - that is, they may not knowingly accept a gift from a person who:

- (1) is a lobbyist;
- (2) is doing or seeking to do business of any kind with his or her agency;
- (3) is engaged in activities which are regulated or controlled by his or her agency; or
- (4) has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

The rules of the Ethics Act covering the acceptance of gifts reflect the importance the Legislature places on the appearance of propriety in the actions of those involved in public service. Acceptance of gifts is limited to avoid the perception that public servants are rewarding or giving preferential treatment to those who have given them gifts. The public must feel its representatives exercise impartial and independent judgment in their actions.

Several decisions of the Ethics Commission dealing with the solicitation and acceptance of gifts are described below.

Direct or indirect gifts. The Act provides that covered persons cannot accept gifts which come directly or indirectly from a person with a special interest in their governmental activity. A decision dealing with door prizes illustrates that provision.

The Commission ruled that the members of an association of public employees could accept door prizes paid for with association funds, regardless of the value of the prizes. However, they could not accept prizes paid for or donated by a person with a special interest in their governmental activity, unless they were of "nominal value" - valued at \$20 or less.

Meals and beverages. Although meals and beverages are generally considered permissible gifts, there could be situations where they would not be. For example, the Commission noted in one opinion that if a public law enforcement officer were to eat three free meals a day at a local restaurant the Commission might consider that the officer's independence and impartiality of action had been affected.

Gifts of nominal value. The Commission has consistently ruled that only those items with a value of \$20 or less are to be considered of "nominal value". The Commission ruled that a State Department Director could accept separate, unsolicited gifts of a book, framed picture and penlight even though they were from persons who were regulated by his Department, since each was valued at less than \$10.

A recent decision of the Commission affirming a long line of earlier decisions ruled that greens fees at a golf course valued at \$39 would not be a gift of nominal value.

Gifts to agencies. The Commission ruled that a law firm could make a gift of a coffee pot or toaster to a County Clerk's officer for the use of all the members of the office's staff. The gift would be acceptable because it is made to the "office" and not to an individual.

On the same point, the Commission ruled that unsolicited contributions to a County for the sole purpose of providing required training for Deputy Sheriffs was acceptable. That opinion stated that the prohibition against the acceptance of gifts applies to officials and employees only, and not to governmental agencies as such.

Gifts to supervisors. The Commission ruled that although it would be a violation for employees to solicit contributions to be used to purchase a Christmas gift for their supervisor, an employee may make such a contribution - so long as it is voluntary and not the result of persuasion or persistent pestering by fellow employees. [The Commission stated that the supervisor should not be informed which employees chose not to contribute or the amounts contributed by those who did.]

Private and personal gifts. The Commission ruled that, since the Act permits the acceptance of gifts which are "purely private and personal in nature", it would not be a violation for the employees of an office to exchange Christmas gifts with each other.

The Commission ruled that a gift of flowers [with a value in excess of \$20] given as a thank you for a social engagement from one with whom there was a long established social relationship is "purely private and personal in nature" and would be exempt from the Act's prohibition against accepting a gift from a lobbyist.

For more information on the WV GOVERNMENTAL ETHICS ACT please contact the WV Ethics Commission, 1207 Quarrier St., Charleston, WV 25301 Phone (304) 348-0664.

July, 1991

A SUMMARY OF
MINIMUM ETHICAL STANDARDS
ESTABLISHED BY THE WEST VIRGINIA GOVERNMENTAL ETHICS ACT

WHO IS COVERED BY THE ACT

Public officials and public employees, whether full-time or part-time, who are elected appointed or hired to serve in State, county or municipal governments and their respective departments, agencies, boards and commissions, including county school boards.

MINIMUM ETHICAL STANDARDS ESTABLISHED BY THE ACT

PRIVATE GAIN:

Those covered by the Act shall not use their public office or position for their own private gain or that of another.

GIFTS:

They shall not solicit gifts, except for charitable purposes from which they derive no direct personal benefit. They shall not solicit a gift for any purpose from a subordinate.

They shall not accept a gift from a person with an interest in their governmental activity, except that the following gifts are presumed to be acceptable:

- meals and beverages
- ceremonial gifts or awards of insignificant value
- unsolicited gifts of nominal value
- reasonable expenses incurred in appearing at a speaking engagement
- free tickets to political, charitable or cultural events customarily given as a courtesy to the office (tickets to sports events not considered acceptable)
- purely private and personal gifts
- gifts from relatives by blood or marriage or member of the same household

Honoraria may not be accepted by elected officials, although reasonable honoraria may be accepted by all other covered persons.

Nothing in the Act prohibits the solicitation, giving or receipt of a lawful political contribution.

INTERESTS IN PUBLIC CONTRACTS:

The Act places certain restrictions on public contracts. It says that no

- public official or employee or
- member of his or her immediate family or
- business with which he or she is associated may

be a party to or have any interest in a contract over which he or she may have control or direct authority to enter into in his or her public capacity.

CONFIDENTIAL INFORMATION:

Covered persons may not, during or after government service, knowingly and improperly disclose confidential information acquired in the course of official duties or use it to further their personal interests or those of another.

PROHIBITED REPRESENTATION:

Covered persons may not, during or after government service, represent another in a

- contested case
- rate-making proceeding
- license or permit application
- regulation filing or other specific matter

which arose during their government service and in which they personally participated in a decision-making, advisory or staff support capacity.

LIMITATION ON PRACTICE:

No elected or appointed public official or full-time staff attorney or accountant shall, while, or within six months after, serving with a governmental entity authorized to hear contested cases or make regulations, represent another person before that entity in the following matters:

- contested case
- rate-making proceeding,
- license or permit application
- regulation filing
- to influence the expenditure of public funds

The Ethics Commission has the power to grant exemptions to the six months prohibition for good cause shown.

EMPLOYMENT BY REGULATED PERSONS PROHIBITED:

Full-time public employees and officials may not seek employment with or be employed by a person or company that is or may be regulated by the governmental body by which they are employed. This prohibition applies only to those employees and officials who exercise policymaking, nonministerial or regulatory authority.

The Ethics Commission has the power to grant exemptions for good cause shown.

LICENSING AND RATEMAKING PROCEEDINGS:

Covered persons may not take part in any license or rate-making proceeding that directly affects the license or rates of

1. a company in which they, or the immediate members of their family, have more than a 10% interest or,
2. a person or company which has during the past year purchased more than \$1,000 in goods and services from:

- the covered employee or,
- the covered employee's immediate family members or,
- a company in which they, or the immediate members of their family, have more than a 10% interest.

The Act does not prohibit a covered person from performing purely ministerial functions in regard to such proceedings. The covered person may participate in non-ministerial functions affecting a person or company identified in 2 above, if a written acknowledgement of the customer relationship is filed with the rate-making or licensing agency.

DOUBLE DIPPING - EXPENSE REIMBURSEMENT:

Covered persons may not seek or accept reimbursement from any governmental entity, for expenses incurred in the course of their public duties which have actually been paid by a lobbyist or any other person.

HIGHER EDUCATION BLANKET EXEMPTION:

Certain members of the faculty and staff of public institutions of higher learning have been exempted by the Legislature from the Act's provisions relating to Private Gain, Gifts and Interests in Public Contracts. Those who would rely on this exemption must conform to the standards established by the Board of Trustees or Board of Directors.

For more information on the WV GOVERNMENTAL ETHICS ACT please contact the WV Ethics Commission, 1207 Quarrier St., Charleston WV 25301, phone (304) 348-0664.

A SUMMARY OF
PRETERMINATION & POST EMPLOYMENT RESPONSIBILITIES
OF THE WV GOVERNMENTAL ETHICS ACT

The Ethics Act restricts the way in which certain public officials and employees can seek employment outside government with persons who are, or may be, regulated by their governmental employer. It also places some post employment restrictions on former public officials and employees.

EMPLOYMENT BY REGULATED PERSONS PROHIBITED:

Full-time public employees and officials may not seek employment with or be employed by a person or company that is or may be regulated by the governmental body by which they are employed. This prohibition applies only to those employees and officials who exercise policymaking, nonministerial or regulatory authority. **The Ethics Commission can grant an exemption from this prohibition for good cause shown.**

CONFIDENTIAL INFORMATION:

Persons covered by the Act may not, during or after government service, knowingly and improperly disclose confidential information acquired in the course of official duties or use it to further their personal interests or those of another.

PROHIBITED REPRESENTATION:

Persons covered by the Act may not, during or after government service, represent another in

- * contested cases
- * rate-making proceedings
- * license or permit applications
- * regulation filings or other specific matters

which arose during their government service and in which they personally participated in a decision-making, advisory or staff support capacity.

SIX MONTHS LIMITATION ON PRACTICE:

No elected or appointed public official or full-time staff attorney or staff accountant shall, while, or within six months after, serving with a governmental entity authorized to hear contested cases or make regulations, represent another person before the entity in the following matters:

- * contested cases
- * rate-making proceedings
- * license or permit applications
- * regulation filings
- * to influence the expenditure of public funds

The Ethics Commission can grant an exemption from this prohibition for good cause shown.

The full text of these four provisions of WV Code 6B-2-5 is set out on the back of this sheet. The Ethics Commission can grant exemptions from two of the four - (h) ***EMPLOYMENT BY REGULATED PERSON PROHIBITED*** and (g) ***SIX MONTHS LIMITATION ON PRACTICE***. The grounds for granting exemptions are described in detail there. Although requests for exemptions must be in writing, no particular form or format is necessary.

For more information, or to request an exemption, please contact the WV Ethics Commission, 1207 Quarrier St., Charleston, WV 25301 PHONE (304) 348-0664.

WV Code 6B-2-5. ETHICAL STANDARDS FOR ELECTED AND APPOINTED OFFICIALS AND PUBLIC EMPLOYEES

(h) *Seeking employment with regulated person prohibited.* - (1) No full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

(2) No person regulated by a governmental agency shall offer employment to a full-time public official or full-time public employee of the regulating governmental agency during the period of time the public official or employee works or serves in such agency.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition against seeking employment with a person who is or may be regulated, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide upon each application on a case-by-case basis.

(e) *Confidential information.* - No present or former public official or public employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interest of another person.

(f) *Prohibited representation.* - No present or former elected or appointed public official or public employee shall during or after his or her public employment or service represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other specific matter which arose during his or her period of public service or employment and in which he or she personally participated in a decision-making, advisory or staff support capacity.

(g) *Limitation on practice before a board, agency, commission or department.* - (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations appear, in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed regulation;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

(2) As used in this subsection, "represents" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: *Provided*, that nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist, or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within six months after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at anytime in a representative capacity before the Legislature, a county commission, city or town council or a county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state, or of county or municipal governments including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection (g) may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

A SUMMARY OF
INVESTIGATION AND ADJUDICATION OF COMPLAINTS
BY THE WEST VIRGINIA ETHICS COMMISSION

At the present time the Commission has authority to investigate only in response to the filing of a verified complaint. The Commission has no authority to undertake an investigation of a possible violation of the Act, until someone files a written complaint verified by oath or affirmation.

INVESTIGATIVE PANEL

Once a verified complaint has been filed, the Commission appoints an investigative panel to determine whether there is probable cause to believe that a violation of law has occurred. The investigative panel is comprised of three of the twelve members of the Commission.

The panel's proceedings are not open to the public. The person complained against may make a personal appearance before the panel and make written response to the complaint, but may not take any other part in the proceedings.

If the panel finds probable cause, the Commission's staff prepares a Statement of Charges against the person accused. This is much like the indictment returned by a grand jury in a criminal case.

HEARING BOARD

The remaining nine members of the Commission constitute a hearing board to adjudicate the case. These members perform the role of the petit jury in a criminal case by determining the guilt or innocence of the person accused. None of these members can have taken part in the proceedings of the investigative panel. Evidence is taken at public hearings.

If six of the nine members of the hearing board find beyond a reasonable doubt that the accused has committed a material violation of Ethics Act, the board can impose any of these sanctions:

1. Public reprimand;
2. Cease and desist orders;
3. Orders of restitution; or
4. Fines not to exceed \$1,000 per violation.

The Commission may also **recommend** to the appropriate governmental authority that the person be discharged or removed from office.

If the Commission finds at any stage in the proceedings that a criminal violation may have been committed, the Commission can defer its own action and refer the matter to a county prosecuting attorney for criminal action.

BAD FAITH COMPLAINT

If the Commission finds in favor of the person accused **and** that the complaint was brought in bad faith, the Commission will order the person who made the complaint to reimburse the accused for all actual costs incurred, including the accused's attorney fees. The Act also gives the aggrieved party a civil cause of action for compensatory damages, punitive damages, costs and attorney fees.

CONCILIATION AGREEMENT

The Act authorizes the Commission to enter into Conciliation Agreements with persons who are the subject of an investigation. This Agreement permits a person to acknowledge having violated the Act and accept a specific penalty or a range of penalties provided by the Act. The inconvenience, expense and attendant notoriety of public hearings are avoided.

Such Agreements can be entered into at any stage of an investigation. The cooperation of the accused and the savings of time and expense are matters to be considered by the Commission in establishing the penalties to be imposed. Although public hearings can be avoided by the Agreement, the Agreement itself must be made public.

CONFIDENTIALITY

The Act protects persons against public disclosure of unwarranted or frivolous complaints by requiring that all information relating to a filed complaint be, to the extent possible, confidential until the investigative panel has found probable cause and the accused is served with the Statement of Charges.

The Commission is not permitted to disclose even the existence of a complaint until the investigative panel has determined that the complaint has sufficient merit to justify further action by the Commission. The proceedings of the investigative panel itself are not open to the public.

The Commission may, however, release any information relating to an investigation at any time if the release has been agreed to in writing by the person complained against.

The complaint and the identity of the complainant must at any time be disclosed to the person complained against upon his or her written request.

Investigations by the Commission's investigators are conducted as discretely as possible. The necessity of interviewing witnesses and obtaining records will, however, alert some members of the public to the existence of an investigation.

MAKING A COMPLAINT

Any person can make a complaint with the Ethics Commission if they believe the minimum standards of the Ethics Act have been violated. There is no form or special format necessary to make a complaint. It must however be in writing and verified by oath or affirmation.

Violations of the Act are subject to a one year statute of limitations. This means that a complaint must be made within one year of the violation or the Commission loses jurisdiction and can not act.

The Commission will conduct the investigation needed by the investigative panel to determine the question of probable cause. If probable cause is found, the matter will then proceed to the hearing board for adjudication.

A member of the Commission's staff will prosecute the complaint before the hearing board at public hearings. It is not necessary for the complainant to appear at the hearings, except as a witness. A complainant need not be represented by counsel in the proceedings.

For more information please contact the WV Ethics Commission, 1207 Quarrier St.,
Charleston, WV 25301, phone (304) 348-0664

(DECEMBER 1990)

NEPOTISM

GUIDELINES ESTABLISHED BY THE WV ETHICS COMMISSION

The Ethics Act provides that "A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person."

Nepotism is defined by the Ethics Commission as "favoritism shown or patronage granted to relatives or close friends without consideration of other applicants or qualifications required to perform the job." Nepotism is a violation of the Ethics Act.

There is nothing inherently wrong with a public employee or official hiring a close friend or family member to fill a job in his or her office. However, those in public service do have a responsibility to follow reasonable and impartial hiring practices.

If a close friend or family member is to be considered for a job you have the authority to fill, you have a duty to follow procedures which will make it clear that you act fairly, that those interested in the job have an opportunity to be considered and that the successful candidate is qualified for the position.

The WV Ethics Commission will expect the following guidelines to be adhered to by those public employees and officials who are confronted with the possibility that a close friend or family member will be considered for a job which they have the authority to fill.

1. Give the public reasonable advance notice of the availability of the job.

- a. The notice should include a description of the job responsibilities, the qualifications required, the pay and the manner in which application for the job can be made.
- b. The method of giving notice will of course vary from job to job but there must be reasonable public awareness of the availability of the job. Newspaper want ads and notices on the bulletin boards in public areas of the building are the most obvious and effective methods.
- c. The notice must be made soon enough to give those members of the public who are interested an opportunity to make application.

2. Involve an objective, independent third party in the selection where a close friend or family member is among those who have made application for the job.

- a. To the extent possible, stay out of the selection process altogether. If you are one of several people with the authority to hire, let the others with authority make the selection. If appropriate, have the matter handled by your supervisor, or in the case of an elected official by a qualified person in another office.
- b. If you don't feel you can, or should, totally avoid involvement in the decision, you should at least have some independent person(s) take part in the selection. Avoid using a subordinate for this independent person.
- c. If you must share in the decision, exercise your best objective judgment in making the selection, and be prepared to justify your selection.

Bear in mind that you will have a continuing responsibility to exercise the same degree of impartiality and fairness in matters of increased pay or advancement for close friends or family members under your authority. Your public position requires that you act on such matters in a way that is, and will be perceived as being, fair and impartial.

These guidelines are established to insure compliance with the minimum ethical standards of the Ethics Act. Other WV Code requirements, independent of the Ethics Act, prohibit certain types of employment situations, e.g. WV Code 6-10-1. Employment of wife at public expense prohibited; WV Code 17-19-8. Unlawful to employ relatives on roads; exception. Such other prohibitions are unaffected by the decisions of the Ethics Commission.

GUIDELINES FOR
VENDOR FINANCED TRIPS BY PUBLIC OFFICIALS & EMPLOYEES
PREPARED BY THE WV ETHICS COMMISSION

The WV Governmental Ethics Act provides that those covered by the Act shall not use their public office for their own private gain. It further provides that they may not accept any gift, directly or indirectly, from a person who does or seeks to do business with their agency.

The Ethics Commission has approved the practice of permitting public officials and employees to accept free attendance of vendor sponsored events which are designed to enhance their job related skills or knowledge. The approval is limited to reasonable expenditures on travel, food and lodging incidental to attending the event.

This departure from the Ethics Act's prohibition against accepting a gift of more than nominal value is based on the recognition that the employing agency and the public will benefit significantly from the employee's attendance. Although the employee benefits, it is not the sort of benefit which violates the Ethics Act. It is not the use of their office for private gain.

There is implicit in the Commission's ruling a requirement that the time and expense involved in attending such an event are commensurate with the increase of the employee's job related knowledge or skill. It must appear that the trip is a good investment of the employee's time - that the benefit gained justifies the agency's loss of the employee's work time.

Persons responsible for approving an employee's trip must insure that the trip is designed to enhance the employee's job performance. There must be a logical connection between the information to be imparted by the trip and the job responsibilities of the person invited. *Trips which create institutional goodwill for a vendor, but result in no significant benefit for the agency would be improper.* Visits to vendor corporate offices or factories for demonstrations should be closely scrutinized. Events with a structured educational format less so.

PURCHASING INFORMATION Is the primary purpose of the trip to gain knowledge to be used in making agency purchasing decisions? If it is, the person responsible for authorizing such a trip should be able to establish that:

1. the agency needs the information the event will provide,
2. the trip is the best way the agency can obtain the information, and
3. the appropriate person is to attend - one who has the expertise necessary to critically analyze and evaluate the information.

In addition, the agency needs to consider how the trip will be perceived by the public and other, competing vendors. It is important for all agencies to create and maintain public understanding that purchasing decisions are made objectively. All vendors need to feel that they are being evaluated on the merits of their product and services and not on the amount of money they have invested in "perks" for agency decision makers.

Trips which appear to undermine the agency's impartiality and objectivity should be avoided. In such a situation, a more evenhanded approach to acquiring necessary product knowledge should be adopted by the agency.

For more information on the WV GOVERNMENTAL ETHICS ACT please contact the WV Ethics Commission, 1207 Quarrier St., Charleston, WV 25301, phone (304) 348-0664

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10.1.1 DISTRICT OF COLUMBIA

LEGISLATION:	District of Columbia Code 1981
REPORTING REQUIRED BY:	Candidate and Committee
DETAILS REQUIRED:	For contributions - name, address, amount (threshold is \$50), date and employer. For expenditure - name, address, amount (threshold is \$10), date and purpose.
FILING REQUIREMENTS:	Filing for own primary and general elections must occur 8 days prior and 60 days after an election. Also is an election year prior must occur on the 10th of March, June, August, October and December; in non election years, files must be lodged annually on both 31st January and 31st July. Contributors who donate over \$50 must also file a statement. Any contributions over \$200 received after the last report before the election must be telephoned in to the relevant authority with 24 hours of receipt.
TIME RECORDS ARE KEPT:	5 years
AVAILABILITY OF RECORDS:	Public inspection
TYPE OF FUNDING:	Tax check-off (\$50 for a single or \$100 for a joint return).
LIMITATIONS ON EXPENDITURE:	All expenditure (except those less than \$50) must be authorized and paid by cheque. All advertising etc. must bear the words

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"paid for by..."

All committees and candidates should include on the face or front of all literature accounting funds "A copy of our report is filed with the Board of Elections".

LIMITATIONS ON CONTRIBUTIONS: Contributions by individuals and companies must not exceed \$4000 per election.

Otherwise the following limits apply.

CANDIDATE	AMOUNT - \$
Mayor	\$2000
Senator	\$2000
Representative	\$2000
Chairman of Council	\$1500
Member of Council	\$1000
Member of Board of Education	\$200
Advisory Legislation Commission	\$25

Cash contributions over f\$50 are prohibited as are contributions in someone else's name.

PENALTIES: Filing of a false report - \$10,000 fine; other violations - \$5,000; non compliance with disclosure - \$50 per day to a maximum of \$500.

WASHINGTON, DISTRICT OF COLUMBIA**Federal Law - Legislative Background**

Until 1971 most of the Federal Law dealing with elections was codified in the "Corrupt Practices Act of 1925". This Act required disclosure of contributions and expenditure by candidates in both Houses. It did not apply to political action committees (PACs) set up by the candidates or presidential candidates.

The Act also established spending limits on interstate committees. This was later evaded by presidential candidates setting up numerous committees in their own names.

In 1940 Congress passed the "Hatch Act" which restricted political activities by Federal employees and PACs. The spirit of the law was broken yet again as under this Act a \$5,000 contribution limit was enforced. Yet by merely setting up additional Committees, each was allowed to receive \$5,000.

A further legislative tightening was created when the "Federal Election Campaign Act 1971" (FECA) was passed. The Act was designed to:

- 1 Tighten disclosure and reporting laws for all federal candidates.
- 2 Limit money which could be spent on an advertising campaign.
- 3 Limit the amount of money a candidate and his/her immediate family could spend in a campaign.

As a corollary, the "Revenue Act 1971" was also enacted which enabled taxpayers to claim 50% credits of up to \$12.50 or deductions of up to \$50 for political contributions. This also provided a system in which taxpayers could provide finance for candidates by checking a box on their income tax form to place \$1.00 in a fund for federal elections.

With the Watergate scandal in 1974 much pressure was placed on Congress to reform campaign finance legislation. The result were the 1974 Amendments which many believed were the most ambitious reforms in the U.S. These amendments established the Federal Election Commission (FEC) - an independent agency which would assume administrative functions previously divided between the General Accounting Office (GAO) and Officers of Congress.

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Essentially these amendments:

- 1 "Limited the amount individuals could contribute to federal candidates to \$1,000 per election (primary, general election, or run-off) and a cumulative total of \$25,000 per year.
- 2 Retained the 1971 limit on contributions by candidates to their own campaigns.
- 3 Limited to \$1,000 the amount an individual could spend independently to influence an election (such spending is termed an "independent expenditure").
- 4 Limited what candidates could spend to get elected.
- 5 Amended a 1940 Hatch Act provision prohibiting contributions from federal contractors to make it clear that contractors could form PAC'S.
- 6 Limited PAC contributions to \$5,000 per candidate per election, with no cumulative limit.
- 7 Limited expenditures by political parties on behalf of a candidate (over and above contributions) to \$10,000 per candidate for the House in general elections, \$20,000 or two cents per eligible voter, whichever was greater in general elections for the Senate, and two cents per voter in the presidential general election.
- 8 Established formulas for disbursing public funds to match contribution of up to \$250 for presidential candidates in pre-nomination contests.
- 9 Used flat grants to cover the full expenses of the conventions of the two major parties and the major presidential general election campaigns, with proportional formulas for post election grants to qualified candidates of minor parties.
- 10 Required candidates of major parties who choose to accept flat grants for general elections to forgo private financing and limit their expenditures to the amount of the grant (regulations later permitted candidates to raise money privately to pay for the cost of complying with the law).

-
- 11 Created an independent, six-member Federal Election Commission (FEC).
 - 12 Strengthened disclosure and closed previous legal loopholes by requiring any federal candidate to establish a single central campaign committee through which all contributions and expenditures would have to be reported."

(Malbin, 1984, p8).

According to Herbert Alexander the FEC was racked by conflict from an early point. Long standing friendships between the newly appointed Commissioners and Members of Congress and the increased need for impartiality created numerous tensions.

Also, recommendations by the FEC had to be submitted to Congress for approval. If neither House disapproved so the recommendations became law in a period of 30 legislative days (days the House is in session). This system however threatened concepts of impartiality.

Constitutional Background.

Most important however was the constitutional challenge of Buckley v Valeo, 424 U.S. 1 (1976).

The Buckley v Valeo case immediately challenged these amendments as unconstitutional. The lawsuit was filed by appellants in the U.S. District Court and the plaintiffs included a United States Senator who was a candidate for re-election, a potential contributor, a political action committee and a number of political parties. The defendants were the Secretary of the Senate Francis R. Valeo and the Clerk of the House of Representatives. The FEC was also named as a defendant.

A decision was handed down by the Supreme Court on 30 January, 1976.

Essentially, the Court held that contribution limits were legal as they helped to ensure and safeguard integrity in the election process. The Court said that as far as expenditure limits were concerned, "it is clear that a primary effect of these expenditure limits is to restrict the quantity of campaign speech by individuals".

The Court held that these restrictions in effect amounted to a threat to political expression and struck at the core of the electoral process and the freedoms enshrined by the first amendment.

According to Alexander the basic question which was raised by Justice Potter Stewart during the case was "Is money speech and speech money?".

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That is, if expenditure is required to reach large audiences through purchasing media time then, by limiting expenditure, is one in effect limiting freedom of speech?

The majority held limits on expenditure were "direct and substantial restraints" on the amount of political speech. (Alexander, 1984, p 41.)

The Court also raised a number of questions in relation to independent spending - an issue which has been raised in Australia recently as a result of moves federally to ban or restrict electronic media advertising - also known as third party advertising.

That is "the Court made it clear that independent spending by individuals and groups could be considered a protected form of free speech only if the spending were truly independent. Independent spending, then, could not be co-ordinated with candidates or the campaign organisations nor consented to by candidates or their agents." (Alexander, 1984, p 41.)

The Court however held that these limits were nonetheless constitutional as presidential candidates still had the option of rejecting public funding if they chose and accordingly they would then not be subject to these expenditure limits.

As a result of this ruling Congress passed new amendments in 1977 reconstituting the FEC in accordance with this decision.

This ruling, essentially a carrot - and - stick approach (Matlack 1988 p 592), was later reaffirmed in Republican National Committee v FEC 445 v.S 955 (1980).

A further development also occurred in 1978 when the Revenue Tax Act repealed the 1975 Tariff Schedules Amendments and doubled the maximum amount of money available to be earmarked for tax credit purposes to \$100.

In 1979, 1982, 1983 and 1984 further clarifying amendments were made to the FECA. Reporting requirements were simplified and public funding was increased.

The Legislation

1. Contributions

A contribution is a payment, service or anything of value given to influence a Federal election (s.100.7(a)(1)).

Contributions also count towards the threshold which determines firstly whether or not a candidate is qualified (that is whether they and their agents have raised contributions or made expenditure in excess of \$5,000), s.100.3(a) and secondly the

level of contributions determines whether the acceptance of them is governed by the FECA.

Essentially there are eight different types of contributions:

(i) Gifts of Money

Cash contributions are limited to \$100. There is also a \$50 limit on anonymous donations. If the anonymous donation is larger than this it is not allowed to be used for federal election purposes (s.110.4(c)(3)).

(ii) Earmarked Contributions and Bundling

In order to avoid contribution limits to candidates a common practice has developed whereby PACs and party committees collect donations from a number of sources and "bundle" them together (s.110.6(b)). This system also has the added effect of ensuring that the size of the contribution is much larger and the effect of the donation tends to be felt more strongly. That, is 100 contributions of \$1,000 compared to one contribution of \$100,000.

The FEC considers that an "earmarked contribution is considered to have been made by the original contributor, this counting against his or her contribution limit for the recipient candidate." (FEC, 1988, p 51).

(iii) In-Kind Contributions

An in-kind contribution refers to a contribution of goods, service or property offered free or at less than the usual charge (s.100.7(a)(1)(iii)).

This definition also extends to expenditure made in co-operation or at the request of a candidates committee.

The value of in-kind contributions is the same as the value for monetary contributions and in-kind contributions are valued on the normal commercial rate charged at the time the services are rendered.

The only exception is when these contributions are voluntary for example when services are volunteered they are not considered to be a contribution (s.100.7(b)(3)).

(iv) Loans

A loan is viewed as a contribution to the extent of the amount still owing on

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the loan - the unpaid balance.

Bank loans do not fall into this category.

Loans must also be continuously reported until they are repaid in full (s.100.7(a)(1)(i) and s.104.3(d)).

(v) Endorsements and Guarantees of Loans

Once again an endorsement or guarantee of a loan is a contribution to the extent of the outstanding balance of the loan (s.100.7(a)(1)(i)(C)).

(vi) Proceeds from Sales

The entire amount of money paid to attend a political fundraiser or to purchase a fundraising item is viewed as a campaign contribution and must be declared.

For example, a \$100 ticket to a dinner is treated as a \$100 contribution despite the fact that the actual cost of the meal may have only been \$30.

Similarly the purchase of a \$20 T shirt valued at \$5 is also viewed as a \$20 contribution.

This is detailed in FECA s100.7 (a)(2).

(vii) Extensions of Credit

An extension of credit which is longer than that established by normal banking practice is viewed as a contribution unless the creditor makes reasonable attempts to collect upon the debt (s100.7 (a)(4)).

(viii) Contributions from the Candidate

Personal funds of the candidate are not subject to any contribution limits (s100.10(a)). This exemption does not include to family members however.

2. Contribution Limits

A campaign is prohibited from keeping any contribution which exceeds the relevant limits set by the FECA the options are to either ask the contributor to redesignate the contribution so it counts towards a different election (S110.1.(b)(5)) or to re-

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contribute a portion of the contribution to a joint contributor (110.1(k)(3)(i)).

The following chart simplifies an inherently complicated system and a number of definitions may further assist in an understanding of this chart.

Contribution From	To Candidate or His/Her	To National Party Committee per calendar year	To any other Committee per calendar year	Total Contributions per calendar year
Individual	\$1000 per election	\$20,000	\$5,000	\$25,000
Multi-candidate Committee	\$5,000 per election	\$15,000	\$5,000	No limit
Party Committee	\$1,000 or \$5,000 per election	No limit	\$5,000	No Limit
Republican or Democratic Senatorial campaign Committee or the National Party Committee or a Combination of Both	\$17,500 to Senate candidate per calendar year in which candidate seeks election	N/A	N/A	N/A
Any other Committee or group	\$1,000 per election	\$20,000	\$5,000	No Limit
Corporations	Banned	Banned	Banned	Banned

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(i) Definitions
Political Action Committees (PACs)

Essentially a PAC is a group of like minded individuals such as union members of a company or professionals who make voluntary contributions to a body which pools this money and then redistributes it to candidates. The amount of money available for distribution thus tends to be larger and arguably is more effective in commanding attention.

PACs are varied in membership and motivation however they are essentially in the business of buying post election influence. This is the opposite of the individual who is far more likely to contribute in order that the favoured candidate win - the donor is interested in the outcome of the election as opposed to the post election political environment.

Proponents of PACs would argue that they increase participation in the political process by encouraging a more active awareness and involvement. This is easily refuted evidence to date which indicates that PACs tend to be run along the lines of a hierarchy rather than a kibbutz - a lack of consultation with the contributors results in a freeing up of the individual from personal involvement. Little time or effort is required to sign a cheque - far more is required to donate personal services or assistance.

PACs have also historically lavished huge sums of money on sitting members in safe seats and on seats where there is no challenger.

They have helped to entrench incumbents to the extent that a 96-98% incumbency rate is becoming the norm in US elections.

Thus, the prime motive of PAC's becomes the purchasing of either influence or access or both. And, to a large extent, the problem is that this influence is not limited to the electorate which the PAC is based. Contributions span state boundaries and can effectively target large sums of money to specific seats.

Stern refers to the dilemma in accepting these donations and says that Judges are not allowed to accept financial contributions - it would be viewed as professional misconduct and "violate the canons of judicial ethics". Yet politicians can accept these contributions (Stern, 1988, p57). This then bags the question, "Why the destruction?".

The problem of the rise in PACs is of course related to the cost of campaigning.

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Stern says the situation is now so serious in the US that the Senate has established a practice of providing "windows" during periods in which the Senate is sitting in which no roll will be called in order to enable politicians to devote more time to fundraising (Stern, 1988, p105).

The difficulty is determining on which side of the line the contribution falls on - campaign donation or legal bribery.

Matlack also refers to soft money as money which is not subject to federal disclosure laws. That is, since the 1980's the FEC has allowed the donation of money to political parties as long as the use of the money is confined to party activities and, as such it is exempt from the normal legislature requirements re disclosure and limitations. Under this banner corporations can donate freely (Matlack, 1988 p592).

Makinson says that because of this disclosure loophole it is difficult to estimate the amount of soft money circulating through the political system although conservative estimates put the figure in the vicinity of \$40-60 million.

Authorised Committee

This refers to a committee authorised by a candidate to receive contributions. These are also referred to as Campaign Committees or Candidate Committees (s100(f)(1)).

Affiliated Committee

This refers to committees affiliated with the same candidate or controlled by the same person (s100.5(g)(1) and (2)).

Multicandidate Committee

This is a Committee with at least 50 contributors registered for at least 6 months and which has made contributions to at least 5 candidates (s100.5(e)(3)).

National Party Committee

These are Committees maintained by a National Political party. (s110.1(c)(2)).

Political Committee

This is another term for an authorised Committee, a party Committee or a branch of a party which receives contributions over \$5,000, makes expenditures over \$1,000 or makes payments which are exempt from the definitions of contribution and

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expenditure of over \$5,000 p/a. (s100.7(b)(9)(15)(17) and s100.8(b)(10)(16)(18).

3. Prohibited Contributions

It should also be mentioned that campaigns are prohibited from accepting contributions of any sort from corporations, labor organisations, National Banks and any federally chartered organisations. (s114.2(a) and (b).

If a committee receives a contribution of questionable legality the committee must within 10 days, either deposit the contribution or return it (s103.3(b)(1)).

If it decides to deposit this money, the money must not be spent in case a refund is necessary. Many Committees establish a separate bank account for possibly illegal contributions (103.3(b)(4)). A written reason of why the contribution may be illegal must also be included when the receipt of the contribution is reported.

The Committee has 30 days from receipt to determine whether or not the contribution is legal eg. a written statement from the contributor saying why the contribution is legal.

3. Other Reportable Receipts

This refers to receipts which are not subject to contribution limits but which nonetheless must be reported. For example bank loans s100.7(b)(11), overdrafts, interest and dividend income (s100.7(a)(1)(i)(e)). Donated services are generally not viewed as contributions unless the individual provides the service during normal working hours - in this case the employer is viewed as the person making the contribution.

5. Independent Expenditure

Independent expenditure refers to expenditure which expressly advocates the election or defeat of a "clearly identifiable candidate". There must be no consultation or co-operation with the candidate and expenditure of this type is not reported by the candidate benefiting and not subject to limits. It must however be reported to the FEC (s109.1(a)).

6. Disbursements

All disbursements must be reported to the FEC although not all disbursements are deemed expenditure in terms of FECA compliance.

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For example, payments made for operating expenses during a campaign - salaries, rent, travel, advertising etc are all expenditures. Loan repayments and donations to State or Local candidates are disbursements as they are not made for the purpose of influencing a Federal Election (100.8(a)(1)(ii)).

7 Reporting

Records must be kept which show total contributions received (s102.9(a)).

The following table simplifies these reporting requirements.

AMOUNT	NAME	AMOUNT	DATE OF RECEIPT	ADDRESS	OCCUPATION	EMPLOYER
\$50 OR LESS	✓	✓	✓	✓		
\$50 +	✓	✓	✓	✓		
\$200 +	✓	✓	✓	✓	✓	✓

For record keeping purposes contributions are aggregated on a calendar year (although they are also aggregated on an election basis for the purpose of monitoring contribution limits).

Total disbursements must be recorded (s102.10 and s103.3 (a)).

In performing all these reporting duties the treasurer must be able to show that he/she has made "best efforts" to obtain the required information and ascertain the legality of the contribution.

For example, a copy of a written letter by the treasurer to the contributor explaining the need to ensure the donation is legal and that the information required must be reported would be sufficient (s104.7 and s103.3.(b)(1)).

A candidate must file quarterly reports during the election year (April 15, July 15, October 15 and the end of year report on January 31 of the following year).

A pre-primary report and a pre-general election report must also be filed 104.5(a)(1)(i). Any last minute contributions must also be reported if they are received after the 20th day but more than 2 days before the election. Any contribution received in the 18th hour period must be reported to either the Clerk of the House or the Secretary of the Senate (whichever is applicable).

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All of these reports are available for public inspection and copying.

8. Public Funding

(i) Reasons for Introduction

The reasons for the introduction of public funding were neatly summarised in a paper presented to delegates at a conference in Colorado by Penning and Smidt and quoted by Alexander and Frutig. That is,

"... public financing is designed to reduce the fund raising advantage of the incumbent, to lessen the advantage of self contributions by wealthy candidates, and to provide alternative sources of funds in order to compensate for the imposition of contribution limits. Essentially, the goals of public funding are to provide a near-equal financial participation in the electoral process, and to reduce corruption or the appearance of corruption. Public financing also helps minimise the political influence of special interest groups and enables greater numbers of citizens to run for public office."

(Alexander, 1984, p 5).

(ii) Eligibility

To qualify for eligibility for public funding Presidential candidates and party committees must meet a number of requirements ie. they must agree to limit spending to a specified amount.

Once the FEC is satisfied it then certifies the amount of money to which each is entitled and this money is then paid by the US Treasury from funds in the US Presidential Election Campaign Fund.

This fund is established by way of a tax checkoff system whereby taxpayers voluntarily check a box on their income tax return. This checkoff does not increase the amount of tax owed or reduce any fund due for the tax year in which the checkoff is made.

The highest percentage of individuals utilising this checkoff system was 29% in 1979.

(iii) Primary Matching Funds

Partial public funding is also available to Presidential primary candidates in the form of matching payments (up to \$250 of an individuals total contributions).

Only candidates for the Office of Presidents are eligible to receive money from this

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fund and in addition, they must also establish a broad basis of support ie. at least \$5,000 in 20 states must be raised. The maximum donation allowed here is \$250 per individual.

In addition each candidate must also agree to a limitation of primary elections expenditure to \$10 million (plus cost of living adjustments referred to as COLA). Personal funds may only be utilised to the extent of \$50,000 and state expenditure must be limited to \$200,000 plus COLA or a specified amount based on the number of eligible votes.

(iv) General Election Funding

The Presidential nominee of each party may become eligible to receive a grant of \$20m plus COLA if spending is limited to this amount of money and private contributions are not accepted for the campaign. Loans, goods and services and PA contributions are not included in this definition. The only exception being contributions to pay for the legal and accounting requirements for compliance with the FECA.

This can be expressed diagrammatically.

LIMITS	PRIMARY	GENERAL	
		MAJOR PARTY NOMINEES	MINOR PARTY NOMINEES
National Spending	\$10m +	\$20m +	\$20m +
State Spending Limit	\$200,000 + COLA & or 16c x State voting age population (whichever is larger)	None	None

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Exempt Fundraising Limit	20% of National Limit	N/A	N/A
Maximum Public Funds Candidate May Receive	50% of National Limit	Same as National Limit	A % of National Limit based on Candidates popular vote

The FEC

The FEC believes its role is to ensure voluntary compliance with the law - by way of issuing opinions, providing advice and clarifying issues which need resolution. They have toll-free phone lines, publish books, newsletters and brochures and interpret the legislation by way of advisory opinions.

Nonetheless the FEC has still come in for stinging criticism. In 1979 Harvard University said that the FEC structure has created

" problems that need to be addressed : an absence of adequate accountability on the part of appointed officials indirect delegation of responsibility to staff without adequate policy direction and the unlikelihood that the staff, placed with such absence of direction, which either focus on non-controversial minor paperwork matters or worse, assume policy making functions properly reserved to publicly accountable officials"

(Alexander, 1984, P 46).

The FEC has rebutted this allegation and believe that their role is essentially one of ensuring compliance and that they were previously hamstrung. A number of amendments to the FECA have ensured that the appointment process, one of the most criticised aspects, has been modified to remove Congress' influence. The FEC also maintains that they are in the business of providing information rather than actively investigating breaches and this role historically falls to the media and the "tennis shoe brigade" - retired people who have more time to devote to labor intensive and detailed research work.

9. Suggested Reforms

Stern makes a number of suggestions regarding the reform of Federal Election Law (which can just as easily be applied across State boundaries).

That is:

1. Full public funding of House and Senate General Elections and possible matching grants in primary elections.
2. The prohibition of PAC Contributions.
3. Donations of any type are only to be permitted from residents - no interstate transfers to be permitted.
4. Television time, historically a huge eater of campaign finance, should be distributed free to Candidates on a pro rata basis.
5. A more knowledgeable voting public should be encouraged by way of a reduced television cost for studio involvement type advertisements.
6. Third party expenditure must identify the original source of funds.
7. Third party expenditure to be matched by a dollar for dollar contribution back to the candidate that the money is being spent against.
8. Any remaining funds in the campaign offers must be transferred back to the Department of Treasury.

"Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication, however, that the contribution limitations imposed by the Act would have any dramatic adverse effect on the funding of campaigns and political associations. The overall effect of the Act's contribution cullings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression."

(Buckley v Valeo, 424 US.1 (1976)).

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10.1.2 CALIFORNIA

LEGISLATION:	Political Reform Act of 1974
REPORTING REQUIRED BY:	Candidate and Committee
DETAILS REQUIRED:	For contributions - name, address, amount (threshold of \$100), date, employer and occupation. For expenditure - name, address, amount (threshold of \$100), date and purpose.
FILING REQUIREMENTS:	Filing must occur 40 and 12 days before and 65 days after both primary and general elections. Candidates and Committees must also file semi-annual reports. If a non political committee donates over \$500 they must also file an annual report. Late donations (ie. after the 12 day report) in excess of \$1000 must also be reported within 24 hours.
TIMES RECORDS ARE KEPT:	Independability - campaigns and committees. Other miscellaneous - 7 years.
AVAILABILITY OF RECORDS:	Public inspection.
TYPE OF FUNDING:	General funds of California subject to gubernatorial approval.
LIMITATIONS ON EXPENDITURE:	Clear identification by sender in mass mailings.

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LIMITATIONS ON CONTRIBUTIONS: None.

Prohibitions gainst anonymous or cash contributions in excess of \$100 or in someone else's name.

PENALTIES:

Knowing violation misdemeanour; 4 year limitation on actions; fines are either \$10,000 or 3 times the illegal amount, whichever is greater.

GREG BAUCHER: Fair Political Practices Commission
 SACRAMENTON, CALIFORNIA

13 February, 1991

"Probably the most frequent violation would be in the audits where a campaign report of auditors is not done by us but is done by another state agency. In California that is done by the Franchise Tax Board. They have an auditing function under the political format with the body of law. They do it on a random basis. They often find discrepency but they are not considered significant so they will issue an auditing report pointing out this error and refer that to us to see for our determination whether any further action should be taken. Most of the time we agree that it is not a significant problem. We don't even issue a warning letter, which is really just a letter saying to them you have violated the political format, it is not something we can simply overlook, we are just letting you know that you have violated it, and that we are not going to proceed with prosecutions this time but be warned that we are going to keep this letter on file in case there is a subsequent violation. There are many cases, where there is a violation, though very minor, and we don't even issue that letter.

The law sets forth what our repsonsibilities are. They are to administer and implement a day-to-day format and that is primarily an educational role and advice-giving role. We have 15 attorneys in the legal division and a whole staff of consultants in technical assistance commission. The primary function of that whole staff is to provide advice and assistance, either by answering telephone calls, written advice requests, seminars, workshops. Even the publication of regulation is an effort to provide assistance and guidance in the meaning and application of our political format. Because we are repsonsible for administering and enforcing the poltical format, we also have an enforcement commission.

In at least each of the last four years we have set a new record in each successive year for the number of cases that we have actually prosecuted and the amount that the clients actually collected to the administrator of consititunalonal process. In otherwords, we have been much more efficient in investigating and prosecuting cases."

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10.1.3 MARYLANDS

LEGISLATION:	Summary of Maryland Law
REPORTING REQUIRED BY:	Candidate and Committee
DETAILS REQUIRED:	<p>For contributions - name, address, amount (all - no threshold), date and employer (broken down by category).</p> <p>For expenditure - name, address, amount (all - no threshold) date and purpose (broken down by category).</p>
FILING REQUIREMENTS:	<p>No later than the fourth Tuesday before a primary election; no later than the second Friday before any election; no later than the third Tuesday after any election or before taking office - whichever occurs first.</p> <p>If a cash balance, unpaid bills or debts remain regular filing must occur until no cash balance unpaid bills or deposits remain. Committees must also file in the same manner with the additional responsibility of annual reports.</p>
TIME RECORDS ARE KEPT FOR:	Five years or one year longer than the term of office.
AVAILABILITY OF RECORDS:	Open to public inspection.
TYPE OF FUNDING:	<p>\$100 Tax deduction.</p> <p>Candidates in primary elections are reimbursed \$1 for every \$2 raised privately if opposed. If unopposed they receive \$1 for every \$3 raised privately.</p>

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The remainder of the money goes towards subsidizing general elections.

LIMITATIONS ON EXPENDITURE:

No limits unless a candidate receives public funding.

If they receive funding they are only entitled to spend 20c x the population of the State.

LIMITATIONS ON CONTRIBUTIONS:

DONOR	AMOUNT	DONEE
Individuals Corporations Unions	\$1000	Candidate
<hr/>		
Individuals Corporations Unions	\$2500	Political Committees

Anonymous contributions, cash contributions in excess of \$100 or in the name of someone else are prohibited.

PENALTIES:

Violations - misdemeanour ineligible to hold office for four years, one year imprisonment, \$1000 fine; late filing - \$10 per day to a maximum of \$250 and candidate cannot take office until all reports are filed; statute of limitations - 3 years.

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THE FAIR CAMPAIGN FINANCING ACT, BALTIMORE

- enacted by the Parliament of Maryland.

§31.1 states

"The General Assembly of Maryland, recognising that our system of representative government depends in part on guaranteeing that election campaigns are funded by the people and for the people and on eliminating the corrupting and undemocratic effects of large private contributions, finds and declares that an equitable means of public campaign financing is necessary in these times for the continued effective functioning of representative democracy"

The Legislation also contains a number of definitions worth quoting.
That is:-

- "(a) Candidates expenditure limits - A candidate who applies for and accepts a public contribution from the Fair Campaign Financing Fund may not expend in the applicable election, an amount in excess of the product of 20 cents multiplied by the population of the State.
- (b) Determination of population - For purposes of this section, the population of the State shall be determined on January 1 of the year in which the election is to be held in accordance with the most recent decennial United States census, or a more recent population estimate prepared for the State by the State Department of Health and Mental Hygiene if this is available.
- (c) Liability for violations - The candidate, and any chairman or treasurer associated with the expenditure, are jointly and severally liable civilly and criminally for any expenditure made in violation of this section.
- (d) Applicability - Provisions in this section shall not be applicable to any election held prior to January 1, 1991."

(§31-3)

To qualify for a payment referred to as a public contribution from the Fair Campaign Financing Fund a candidate must raise seed money before September 1 of the year preceding the election year. Seed money as defined

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by the legislation is a:

"sum of lawfully raised eligible private contributions that is 15% of the maximum campaign expenditure limit provided under §31-3 for an election".

(§31-2(h))

A further restriction on expenditure states that a public contribution must only be spent:

1. With authority
2. To further the nomination or election process
3. For expenses incurred no later than 30 days after the election

(§31-6)

BARBARA E. JACKSON:

Administrator, City Board of Elections
BALTIMORE

27 February, 1991

"The candidates obtain the majority of their funds from fundraisers, although they also can use some of their money. The different political parties we have in USA contribute to their own campaigns. They are responsible for going out and getting literature if they want to send out mail, post signs, gain television or radio coverage, but we actually have to finance the running of the election. We are involved with printing absentee ballots, making ballot strips for our voting machines, posting them to the people that man the precincts on election day. We also have to supply any type of literature concerning the candidates as far as what office they are running for, but not anything which promotes a candidate. We have to organise a polling place listing and anyone that requests one is to receive one, also with sample ballots. This is funded by the city here. Basically that is what it is. It is in the sub-divisions generally budget every year. In fact I have just finished my budget. In this budgetary year we will have three elections so I have to make sure I have enough money in my budget to cover those three elections.

The candidates have to report to us any contributions they may get, any fundraising they may do. They have to report to us every three months during the time after they file, and must send us a financial disclosure.

The disclosures are open to the public. Anyone can come into the office and see them. We do not publicise them or put them in the paper.

We need from the candidates the person's name, what they gave, if they have more than one committee, and which committee it was given to. They don't have to tell us how that particular money was spent, but they do have to tell us how their monies are spent as a whole. For instance, if they spent \$200,000 on advertising they have to state that, but they do not have to say I gave them \$500 towards advertising they, but, if I give a \$500 contribution, they must tell us that in the report.

If they did spend \$200,000 on advertising they do not have to submit a receipt from the agent or anything, but they do have to keep records of it because there have been times when they have been questioned. Their report may show them raising "X" amount of dollars but only spending less than that. So if they are called to bring forth their financial disclosure they must have receipts but they don't have to turn them into us.

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Anyone can contribute. We do have a limit of \$2,000 per candidate per election.

When we do our income taxes there is a spot where we can check off a dollar of our tax money to go into a presidential fund.

On the election we don't spend anything on candidates per say as an individual but an election costs us approximately \$1 million.

Each one of the main candidates spent well over \$1.5 million last year.

Over the state we have about 2.5 million people.

We have approximately 1460 voting machines called AVM's (Automatic Voting Machines). We use the same machines in Baltimore city. Last year we changed our absentee ballot system. Usually we just do a plain paper ballot and after the election we would have to sit and count each ballot individually. Last year we purchased a scanner machine and it is still a paper ballot but these machines read 500 ballots in 30 minutes so the time that we save and also the labour costs, as we usually have to hire an extra 20-25 people to count the absentee ballots, was great.

What we choose to do with the specimen ballot is, instead of sending one out to everyone, we just put it in the paper. Everything that is on the ballot is in the paper, and we have a full page advertisement that shows all the questions and candidates.

If someone did not disclose his financial report or send in his statements as required, if he were to win, he would not be sworn into office until he does so or until whatever steps the Attorney General feels are necessary to take to get this person to do what he is required to do by law.

The Governor is elected. Most of our officers are elected.

We have an Ethics Commission that is appointed by the Governor for two years.

With the State Legislature it is 3 House members for every district. We have 47 districts in the state.

We have 143 members in the House and 47 in the Senate.

We introduce bills through the Senate, including money bills.

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In Baltimore city we have nine Senators. Out of that nine, eight have city offices and have it staffed by a secretary and receptionist and maybe correspondent.

Each Senator and House of Delegate member, on top of their salary, have a budget.

In the primary you vote for the party you are registered with.

The AVM's [Automotive Voting Machines] are manual.

The Ethics Commission basically has control of how much one gives to a candidate. They also want to know how much profit you own, how much money you have prior to going into an office to make sure you don't try to take money from somewhere that you can't. We had a couple of people who used political funds for personal things and that is not allowed.

If it is a highly contested election, then usually the media gets into it. If two candidates are running neck and neck and feel that something might go on the media will get into it, but if it is very quite and mild they don't care.

They have a high Republican registration in New York.

We only have 323,000 registered voters in Baltimore City. I think the decline of voters is from not being educated and not knowing what the political process and the electoral process is. I am in the process now of conducting a voter education campaign because I have found the people that know the least about the electoral process are the ones that don't register or that register and never vote. We do have at this time a law that if you don't vote within a 5 year period we have to remove you from the roll. We find that the same people are purged every 5 years. They think that having the voters card and not voting doesn't mean the same. That is mainly in Baltimore City. I have gone to high schools where the teachers don't even know who the elected officials are. That is very sad. I find that unfortunately I am getting some opposition to my little campaign that I am doing in trying to get politics back into school.

We have a Republican and Democratic state central committee for the city council here. If, for instance, my husband died, I, being his wife, would automatically take his seat for the rest of the term. That is how it is done in the city council. Resignation is different. The members from your district along with the President of the city council and the Mayor would vote on it.

A slate occurs when we are all running. We get on the same ticket, so then we

all support each other.

A loser has 30 days to remove his literature after a primary. The winner can leave his literature through 30 days after the general election. We have had some people that will leave the literature past that time. Then the election board will not do anything about that.

There have been some things in the media about contributions but we have only found one delegate that supposedly used political funds for personal usage. He was using his funds that he raised and then he was charging certain things back to the state to get funds for the same thing.

If you want to have a party recognised here, you can get petitions and you have to get 10,000 names of registered voters. Once you go on the ballot you have to get 10% of the vote and, if you don't, you can't become an official party.

The requirements for becoming Mayor of Baltimore are that you must be a registered voter, over 25 years of age, citizen of the U.S.A and a resident and qualified voter of Baltimore city for at least 1 year preceding the election. There is also a \$150 filing fee.

If you were convicted of a criminal sentence here and you get a pardon from the Governor, you can run. If you don't get that pardon, your first felony offence is disregarded and you can register and run. But, if it is more than one felony offence after the age of 21, it is not considered at all.

A lot of people seem to think the Republican party is the rich party and if you have a Republican state they know how to handle money better and the state will stay more wealthy. I don't really agree with that.

About 95% of the elected office is Democrat."

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10.1.4 MASSACHUSETTS

LEGISLATION:	Massachusetts General Laws
REPORTING REQUIRED BY:	Candidate and Committee
DETAILS REQUIRED:	For contributions - name, address, amount (threshold amount \$50) and date. For expenditure - name, address, date, amount (threshold amount \$25) and employer/purpose.
FILING REQUIREMENTS:	For a primary election, reports must be filed 8 days before the election. For a general election reports must be filed 8 days prior and 30 days after. The final report must be received by 10th January after each general election. If contributions are received after the final report is filed, additional reports must be charged. Political committees must also file a statement of organization as well as the above reports. This enables cross-checking between candidates and committees for information.
TIME RECORDS ARE KEPT:	Candidate - 6 years Committee - 6 years
AVAILABILITY OF RECORDS:	Public inspection.
TYPE OF FUNDING:	Funds are given to candidates for both primary and general election from a voluntary addition of \$1 to inclusions income tax returns.
LIMITATIONS ON EXPENDITURE:	No limits except expenditure over \$50 must be paid for by cheque.

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LIMITATIONS ON CONTRIBUTIONS: Individuals can donate \$1000 per year to a candidate, \$1000 per year to a party and \$1000 per year to political committees that are not attached to either a candidate or party.

Political committees can donate \$100 per year to a candidate and \$1000 per year to political committees.

There is a prohibitor against corporate contributions, cash donations over \$50 contributions if someone else's name and anonymous donations.

PENALTIES: Exceeding contribution limits - for an individual \$500 fine or 6 months imprisonment, for a company \$50,000 fine (maximum) and for a company's agent \$10,000 fine (maximum) and/or 1 year imprisonment.

Other violations - \$1000 fine, 1 year imprisonment

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BOSTON, MASSACHUSETTS

The Boston system is markedly different from the Australian system in that the law requires candidates to gather a certain number of signatures in order to be allowed to run for office.

FOR FEDERAL OFFICE

OFFICE	RESIDENCE REQUIREMENTS PRIOR TO DATE OF ELECTION	SIGNATURES REQUIRED
U.S. Senator (30 year old)	United States Citizen for 9 years, inhabitant of Massachusetts when elected	10,000
U.S. Representative (25 years old)	United States citizen for 7 years, inhabitant of Massachusetts when elected	2,000

FOR STATE-WIDE OFFICE

OFFICE	RESIDENCE REQUIREMENTS PRIOR TO DATE OF ELECTION	SIGNATURES REQUIRED
Governor & Lieutenant Governor	7 years in Massachusetts	10,000
Attorney General (must be member of Massachusetts bar)	5 years in Massachusetts	10,000
State Secretary	5 years in Massachusetts	5,000
Treasurer & Receiver General	5 years in Massachusetts	5,000
Auditor	5 years in Massachusetts	5,000

FOR STATE DISTRICT OFFICE

OFFICE	RESIDENCE REQUIREMENTS PRIOR TO DATE OF ELECTION	SIGNATURES REQUIRED
Governor's Councillor	5 years in Massachusetts	1,000
State Senator	5 years in Massachusetts, inhabitant of district when elected	300
State Representative	one year in district	150

FOR COUNTY OFFICE

OFFICE	RESIDENCE REQUIREMENTS PRIOR TO DATE OF ELECTION	SIGNATURES REQUIRED
District Attorney (must be member of Massachusetts bar)	Resident of District	1,000
County Commissioner (except Nantucket & Suffolk)	(no requirement)	1,000
County Treasurer	Resident of District	1,000
Register of Deeds (Vacancies only)	Resident of District	1,000
Clerk of Courts (Vacancies only)	(no requirement)	1,000
Register of Probate	(no requirement)	1,000
Sheriff	(no requirement)	1,000

A popular way of solicitation is through shopping centres and the State Supreme Judicial Court has upheld this right. Any interference by shopkeepers involves the State Civil Rights Law provided of course that the petitioners act reasonably and politely and there is no breach of the peace.

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There are no restrictions about soliciting in City and Town halls yet most recommend against this as the line between fair practice and violation of official authority is a fine one.

Banned Conduct

No one is allowed to influence a persons voting behaviour by paying money, offering a gift, threatening to fire or hire and so on. Public officials are also banned from using their official positions to influence the outcome of an election.

Candidates are also not allowed to interfere in the freedom of the press by paying an owner or agent of a newspaper or journal to oppose or support any candidate.

Public funds are also not allowed to be used for the purpose of influencing election results.

Statement of Organisation

Candidates for local office and committees organised to support or oppose a ballot question must file reports of their financial activity with the city clerk, town clerk or election commission.

A number of candidates must also file reports of financial activity, depending upon the office for which they are standing.

No committees are allowed to raise or spend money unless they file statements of organisation.

Contributions

Cash contributions are limited to less than \$50 per principal year, otherwise the amount of money contributed must be by means of cheque. The maximum contribution per year is \$1,000.

People under the age of 18 years are limited to contributions of less than \$25 per year.

All loans are considered to be contributions except for normal bank loans.

Contributions from corporations are prohibited unless the contribution is

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directed towards a ballot question campaign.

PAC's are limited to contributions of \$1000 per year.

Party Committees are limited to contributions of \$3,000 per year.

Public Employees

Because of the position of trust public officials enjoy, they are prohibited from directly, or indirectly, soliciting or receiving contributions for any political purpose. This rule goes as far as prohibiting public employees from using their home for fund raising purposes, being a treasurer, having their name on the letterhead of a fundraiser or sell or distribute tickets to a fundraiser.

The only exception is if the public employee is a candidate.

Public employees are also prohibited from using office facilities to work for or defeat a political candidate or ballot question.

Expenditure

There are no expenditure limits although no money raised or acquired by a candidate may be used for personal use.

There is no limit on a candidate's use of his/her personal funds as long as all expenditure and contributions are fully disclosed.

Any expenditure in excess of \$50 must be made by cheque.

Also each cheque payable to the candidate from the committee (for treasurer) must be limited to less than five hundred dollars and must contain a printed statement of purpose as follows:

PURPOSE OF PAYMENT

TV, RADIO	PRINTING	SIGNS, DISPLAYS
NEWSPAPER	OFFICE	TRANSFER OF FUNDS
MEETINGS	TRAVEL	OTHER
SPECIFIC PURPOSE		

Public Funding

Massachusetts offers the tax payer the opportunity to add one dollar to the tax payers state tax liability and the funds are distributed to candidates for

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office in both primary and general elections. This area is overseen by the Director of Campaign and Political Finance.

The amount of money available for distribution is determined by the fund balance - 60% is allocated to primary elections account and the balance to the general election account. Each amount is then divided into as many accounts as there are qualified candidates.

The amount to be credited to each candidate is then worked out by dividing the election account by a number equal to five times the number of candidates for Governor, and one half times the number of candidates for Attorney General and one time by the number of candidates for Stateside Office.

Eligibility for funding also depends upon the candidate filing a bond and a request for public funding as well as certification that they have received qualifying contributions from the public according to the following chart.

OFFICE	PRIMARY ELECTION			GENERAL ELECTION		
	BOND	QUALIFY CONTRIB	MAX PAYABLE	BOND	QUALIFY CONTRIB	MAX PAYABLE
	\$			\$		
GOVERNOR	250,000	75,000	80,000	250,000	125,000	250,000
LIEUTENANT	50,000	15,000	50,000	50,000	125,000	250,000
ATTORNEY GENERAL	125,000	37,500	125,000	125,000	62,500	125,000
SECRETARY	50,000	15,000	50,000	50,000	25,000	50,000
TREASURER	50,000	15,000	50,000	50,000	25,000	50,000
RECEIVER GENERAL	50,000	15,000	50,000	50,000	25,000	50,000
AUDITOR	50,000	15,000	50,000	50,000	25,000	50,000

Payments

1. Primary

Candidates who are certified are entitled to one dollar for every dollar

The Joint Select Committee upon the Process and Funding of the Electoral System

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of qualifying contributions up to a maximum of the balance in the candidates primary account. No candidate for Governor or Lieutenant Governor may receive more than \$250,000 and no other candidate may receive more than \$50,000.

2. General

Certified candidates are entitled to one dollar for every dollar of qualifying contributions up to a maximum of the balance in the candidates general account.

No candidate for Governor or Lieutenant Governor may receive more than \$250,000, no candidate for attorney general may receive more than \$125,000 and no other candidate may receive more than \$50,000.

This money may only be used for campaign expenditure or to repay loans for the election period that the expenditure relates. Excess payments must be returned to the State Treasurer. A formula exists for determining the actual amount returnable.

Penalties

A wide variety of penalties exist for violations of the law and fines up to \$50,000 are applicable to corporations violating contribution laws.

Any corrupt practice or false returns are punishable by declaring the candidates election void and excluding the offender from office. A person convicted of a corrupt practice is also stricken from the electoral roll for three years.

Director of Campaign and Political Finance

The appointment of the director must be a unanimous appointment and the election committee is composed of State Chairman of the two major parties, the Secretary of State and a Dean of a Law School.

The directors term is 6 years and they must, as part of their duties, ensure that information, interpretation and advice is available to all interested parties.

10 OVERSEAS SUMMARIES

JOHN CLOONAN: **Director of Elections Division,**
 Office of Secretary of State
 BOSTON

22 February, 1991

"We supply the ballots to every city and town in the state before the state election.

Campaign requirements are handled by the Office of Campaign and Political Finance. They keep records of all money taken in and expended.

There is a State Ethics Commission and a candidate must file a financial statement with them before they can get their name on the state ballot. What they do is they file a form with our state ethics, and they get a receipt. Without that receipt we will not put a candidates name on the ballot.

We have a guide put out by this office of campaign practices. It is intended mostly for a candidate who needs it. It is a brief overview of what we do.

Ethics covers the whole state. Our function is that we do not do anything regarding municipal elections. We only supply tally sheets.

Before last year you could only sign one nomination paper, now you can sign as many nomination papers as there are candidates as long as they are in your electorate.

The candidates collect their signatures or some person could go around and say I am getting signatures for John Smith and get your friends and neighbours to sign.

We do not have a filing fee.

Candidates may spend their own funds without limitation for the purpose of the campaign.

Boundaries are set by the state legislature.

Generally this state is predominantly a Democratic state. The Republicans are starting to come back a little bit now, but the Government party is the Democrat Party.

The Joint Select Committee upon the Process and Funding of the Electoral System

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The Courts have the overall view to review the districts. Under our Laws, if you don't like the districts you can file a Court suit but this must be done within ten days. On the basis that the districts are not equal.

There is a deviation of 5%.

Right now there is a movement to not combine my division but to combine the division of Ethics and Campaign Finance.

Both of those have only existed since about mid 70's.

The legislature set up both of these committees. At one time the campaign reporting was under the Secretary of State.

We report to the Secretary of State. Campaign Finance has a director who is appointed by four people by unanimous vote. The four people are the Secretary of State, the Dean of a law school, and then the Chairman of the respected political parties. That person then has the authority to appoint other people. The budget is set by the legislature. The person appointed is in for a six year term.

The objective of this office is to make sure everybody has a right to vote. We get involved in a lot things because of our knowledge and experience in dealing with all the cities and towns in Massachusetts. People rely on us for certain information and we try as best we can to help as many people as we can.

Each one has a certain field. Ethics is responsible for taking in the financial report, also any conflict of interest action. You appoint your son or daughter, or a family member or whatever, which could come under the Corporate of Interest Statute. That would have nothing to do with election statutes. Campaign reporting again is a separate issue. It is nothing to do with that.

ORAL CAMPAIGNING

On election day, they can run television ads, they can drive around town with loud speakers, anything like that is permissible. Bribery, paying people to vote is not permissible. We sometimes have a polling booth in a veterans club. The club does not have alcohol there, no alcohol can be sold in any portion of that building while the election is going on or while people are counting ballots after the poll is closed. But as far as notes, talking or any campaigning is going on, you are pretty much free to do whatever you want as long as you don't hand out literature within 150 feet of the poll. Outside the

10 OVERSEAS SUMMARIES

150 feet, you can do what you want. Every polling place has a police officer whose duty is to maintain order. A voter who has a badge on advertising a party is requested to take it off once he walks into a polling place. You must register 28 days prior to an election. For a municipal election it is 20 days.

In the election everybody is on the same ballot. The secretary who is the Chief Election Officer gives public service announcements. He goes on radio and television alerting people when you can register and telling people to get out and vote.

The candidates can have all kinds of fundraising activities.

I have a staff of 12. Our annual budget fluctuates between the various years, depending on whether we have a presidential election coming up so it could be as high as 3-4 million.

We have a private printer who does our ballots.

We have 6 constitutional offices.

They run with party labels, but they are not tied into the Government.

The term of the State is 2 years. Constitutional Officers are 4 years. County officers vary from 4-6 years, we elect Sheriffs, District Attorneys. The Sheriff's term is 6 years.

We have a procedure of putting a local question onto a particular state district.

In an election everybody gets the same ballot.

We have counting machines to count the votes. If you do not like the numbers and are losing candidates, you have the right to request a recount. This must be 10 days after the election.

To vote you must go to the polling booth you are registered at or you can vote absentee.

Usually the Mayor appoints the Registrar.

Anytime you appoint a Democrat you have to appoint a Republican. You can't overload with one party.

If two candidates get an equal vote, it would then go to the Court of Legislature. Under our constitution the Legislature would meet during session and pick one of the two candidates.

If you are registered as a Republican voter and after some years you no longer wish to be registered as that, all you have to do is write a letter. In fact we have a little affidavit that the voter can sign, it is there at a primary. They must have this form at a primary so the voter can change back to Independent or other party. Once the Registrar has that form from you, the effect is immediate.

Most places have no more than 4 counting machines.

All equipment has to be approved by the State by our office before it can be used in the election.

State elections are held every even numbered year. Cities have there elections in odd numbered years. There is always some sort of election going on."

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10.1.5 NEW JERSEY

LEGISLATION:	The New Jersey Campaign contributions and Expenditures Reporting Act.
REPORTING REQUIRED BY:	Candidate, Committee and Party.
DETAILS REQUIRED:	<p>For contributions - name, address, amount (no threshold) and date. If the contribution is under \$100 name and address details need not be given.</p> <p>For expenditure - name, address, amount (no threshold) and date.</p>
FILING REQUIREMENTS:	<p>For a primary election filing must occur 29 and 22 days prior to and 20 days after the election.</p> <p>For a general election filing must occur 29 and 11 days prior to and 20 days after the election.</p> <p>Political committees must file quarterly.</p>
TIME RECORDS ARE KEPT:	Indefinitely.
MANNER OF DISCLOSURE:	Annual report to the Legislature, Public Inspection and publication of summarized reports.
TYPE OF FUNDING:	<p>Tax check-off system and public financing.</p> <p>Funding is available to gubernational candidates from a tax check-off system and general funds.</p> <p>Funds are distributed to candidates by way of \$2 for every \$1 after the initial need money of \$50 000 is raised.</p> <p>Maximum subsidy available is 20c per voter</p>

in a primary election and 40c per voter in a general election.

LIMITATIONS ON EXPENDITURE:

This applies to gubernational candidates receiving funding only.

Candidates are allowed to spend 35c per voter in primary elections, 70c per voter in general elections and a maximum of \$25 000 in private expenditure.

The Public Broadcasting Authority must provide one hour joint appearance and one hour individual appearance worth of advertising time.

LIMITATIONS ON CONTRIBUTIONS:

DONOR	AMOUNT	DONEE
Individuals Political Committees	\$800	Gubernational Candidates
County Committees Municipal Committees	\$10 000 (\$100 000 max agg.)	Gubernational Candidates
Anonymous		Prohibited

Donations in another name are also prohibited.

PENALTIES:

Violation of filing or reporting - misdemeanour; violation of limitation provisions - \$1 000 fine for first offence, \$2 000 fine for subsequent offences.

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NEW JERSEY

According to Fred Hermann of the New Jersey Election Law Enforcement Commission (ELEC) the mission of his agency is to ensure that the public interest is being served through campaign finance disclosure.

This Commission basically has the responsibility for administering and enforcing the Campaign Contributions and Expenditure Reporting Act (CCERA). The CCERA requires candidates and campaign committees to file reports of contributors, contributions and expenditure.

ELEC also administers the 1974 and 1980 laws which provide for partial funding of elections for Governor (both primary and general) as well as imposing limits on contributions for individuals, loans and expenditure.

The CCERA is applicable to any public office election including

- . June Primary
- . November General
- . May Municipal
- . June Runoff
- . School Board
- . Fire Commission
- . Special Elections
- . Post Election Fund Raising

Candidates who spend in excess of \$2,000 on their candidacy or PAC's which raise or spend in excess of \$1,000 on candidates must report all contributions and expenditures.

PAC's must also report if they spend in excess of \$2,500 to try to aid or defeat a public question (referenda question) in an election.

A multi-candidate committee (which assists a number of candidates in filing reports) must report any expenditure beyond \$4,000 per election.

These three groups must disclose by way of 3 reports - 29 days prior to the election, 11 days prior to the election and 20 days after the election.

Candidates who spend \$2,000 or less or multi-candidate committees which spend

\$4,000 or less must file a less detailed report 29 days before the election. They must also identify all contributions received by name and address of contributor if the donation is in excess of \$100.

They must also notify the commission in writing if they receive a donation in excess of \$250 between 13 days before the election and the day of the election.

Expenditure Limits

New Jersey does not have expenditure limits except for gubernatorial campaigns.

Contribution Limits

Anonymous contributions are prohibited. Any anonymous donations must be relined to the donor if it can be ascertained who the donor is. Otherwise the donation must be returned to the State coffers.

There are no limits on the amount of money which can be contributed. Although there are limits on the amount of money which can be received by way of a cash solicitation ie \$20. Any donation in currency of up to \$100 must be accompanied by a form signed by the donor detailing the name, address, date and amount of money. No contributions in currency may be accepted if they exceed \$100.

There are no state prohibitions on labor organisations or corporations donating money although a number of acts do indirectly, point out prohibitions. eg. N.J.S.A. 19:34-32 and 19:34-35 prohibit donations from insurance companies, banks, public bodies and cable television companies. The Casino Control Act N.J.S.A. 15:12-138 prohibits contributions from Casino interests.

Federal law also prohibits foreign bodies from contributing but generally ELEC suggests any questions in prohibited donations should be referred to either FEC or themselves in order to avoid potentially embarrassing situations from developing.

Fundraising Events

If a dinner ticket costs \$150 and the actual cost is only \$75 the full amount of money must nonetheless be reported.

Loans

Loans are also considered to be contributions and all relevant information must be disclosed including the terms of the loan.

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Public Solicitation

A person collecting money on behalf of a candidate or PAC must have full written authorisation before soliciting from the public. The person must also provide the treasurer with all pertinent details eg. amount of money collected, method or solicitation, name and address of donors and amounts of money expended for the purpose of the solicitation.

Personal Funding

Prior to being spent by a candidate his/her personal funds used during the campaign must be deposited in a bank account as they are viewed as campaign contributions. There is no limit on the amount of personal funds which may be spent.

Enforcement

Failure to file reports or filing false information is an offence under the Act and is subject to penalties as may be imposed by ELEC. ELEC is empowered to conduct investigations, hold hearings, subpoena records and impose monetary fines.

ELEC also issues advisory opinions as to whether a set of facts or a circumstance would constitute a violation or affect reporting requirements of a present or potential filing entity.

ELEC also conducts media briefings.

Contributions Summary

AMOUNT	ACTION
Less than \$ 20	Maximum cash solicitation receivable
Less than \$100	Must be accompanied by forms - name, address, date of money received.
More than \$100 (Cash)	Prohibited
More than \$100 (Cheque)	No limits. Disclose name, address, date of receipt
Anonymous	Prohibited

FREDERICK HERRMANN PHD:NEW JERSEY

"ELEC has recommended the Act because it slows the flow of campaign money and saves the public dollar. With a two for one expenditure, there is a more rapid depletion of public funds by giving out money more quickly. The main safeguard against giving away the entire fund is with a public funds cap which is the total amount of money a candidate can receive. That is in a primary election, \$1.35 million and in a general election \$3.3 million per candidate. That is the total amount a candidate can raise.

When a candidate exceeds \$150,000, the two for one expenditure beyond this amount will be partially retroactive system partially that is different proposals.. results in more money being given away

The issue debated becomes one of how much money you want to give away and has ramifications with regard to the needier candidates who may not have raised as much money or not as quickly. This is an issue that should be carefully looked at, as it has all sorts of ramifications when designing a program.

The expenditure limit is \$2.2 million in primary and \$5 million in general elections and that is the total amount of money from both public and private that you may spend.

New Jersey is in an interesting situation being between the first and fourth most expensive media markets in the United States (New York and Philadelphia) which means elections are far more expensive than, say, Iowa.

An interesting addition in 1989 to the program was debates. Any candidate who received public money had to debate on statewide television. One of the purposes was to help candidates with limited means enabling them to get on television free and is worth a lot of public money.

The total amount spent during the last campaign was \$25 million by all candidates gubernatorial combined in the primary and general election. In the general election there was a \$10 million expenditure limit.

There is a relationship between the political party and gubernatorial candidate which allows a coordinated expenditure enabling the candidate to spend

beyond the \$5 million limit. This is a large issue and will be addressed later.

The Election Law Enforcement Commission (ELEC) has created a campaign cost inflation index. The purpose was to show the change in costs to run as governor. The index also proved that campaign inflation and expenses are escalating at a much more rapid rate than the consumer price index. This campaign cost inflation index has now been adopted in New Jersey legislation. ELEC sees this as a very important step as it allows inflationary adjusters to be built into the actual legislation rather than relying upon the continual and often difficult process of amending the legislation on a constant basis.

The reason for its introduction was because the amounts of money were never changed and during 1989 it was only in the 11th hour that the changes came into effect, otherwise there would have been one of the screwiest election campaigns to-date. The contribution limit would have been artificially very low and the campaigns starved of money. At the same time, the qualification threshold would have been artificially low with people running who should not have been. The expenditure limit would have been artificially low and nobody would have been able to spend enough money to get a message out. Fortunately this was changed in the 11th hour because of this emergency climate and allowed this index to be introduced into the legislation.

ELEC is purely a campaign financing agency. ELEC does not do election administration, ie. absentee ballots, voter registration, etc.

ELEC was created in 1973, a significant date in US history as this was the time of the Watergate crisis which was a catalyst for commissions such as this and other similar changes in North America started. And in a sense, Nixon is the patron saint of an organisation such as this! Nixon has in fact moved to New Jersey.

ELEC is an entirely independent agency which is a very important structural point. ELEC is not with the office of the Secretary of State as this position is appointed by the Governor (ELEC regulates the Governor) and would have been inappropriate for someone who owes their position to the Governor to be supervising the Governor's reelection. The appearance alone would be devastating. Although in approximately 50% of the states in the US, the Secretary of State or the Attorney-General does have this kind of function. This is totally inappropriate as the ethics agency needs as much autonomy as possible.

ELEC has four members, two Republicans and two Democrats, appointed by the Governor with the advice and consent of the Senate. It has been

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suggested that this kind of appointment process really should be looked at.

There could be the desire to choose two stellar representatives from the Governor's party and two 'dodos' from the opposition party. There needs to be some way of controlling who the Governor can choose to give a little bit more autonomy to the Commission. In New Jersey the Governor can choose the Chairman of the Commission and then dismiss this person at any time.

The Chairman is not able to participate in campaigns in any way at all. They are members of a party, they have to be in a sense because the Commission is bipartisan. The tradition in New Jersey is non-partisanship. In the Federal Election Commission (FEC), the tradition has been bi-partisan, they have six commissioners and they often split along party lines and nothing gets done. They have received a lot of criticism for that. The FEC has a structural problem where the chairmanship rotates each year, and doesn't lead to a strong chairmanship. It is felt that Congress designed the FEC with the intention of keeping it weak. There are a lot of structural differences between the operation of ELEC and the FEC. There is also a different political climate comparing New Jersey and the federal scene. The expectation here is that even though the commissioners are partisan, they will act in a non-partisan manner. And historically they have. The Commission has been in place for 17 years and, looking at old minutes, history shows they have not once voted along party lines which is absolutely incredible.

But this probably goes back to the first chairman who was a very professional non partisan individual.

The other difference between New Jersey and federal situations is that New Jersey has part-time commissioners, unlike in Washington where it is a full-time job. If you bad mouth the President then you are likely never to work again in Washington. While if you are out of work here, you can still go back to your law firm. So the structure has a lot to do with how the institution functions.

ELEC meets once a month. The staff are divided into six sections (this is laid out in annual report).

ELEC has the ability to issue complaints when the law is violated. The FEC can't. The FEC has to sit down with the candidate and agree on a penalty. ELEC does not need to do this, it can simply charge somebody with an offence

which then goes through a judicial process ELEC initiates without having to go through court. So ELEC can fine people without going to court.

New Jersey has special administrative law judges who specialise in regulations. They are not regular judges, rather specialists, and the process is a lot quicker. Someone charged with a violation has the right to get a hearing with an administrative law judge. Most of the time the violator will waive it and come right back to the Commission with a short report on the incident. If the person does want a hearing they are entitled to one. The administrative judge can make a decision. This Commission can overturn a final decision, so ELEC does have a lot of power, they are both the judge and the jury in the process.

There are six attorneys on staff, a few function as attorneys, and the rest are administrators. The ELEC will send along attorneys to advocate a case. Also ELEC has outside counsel for larger cases.

ELEC can fine up to \$1,000 for first offence, up to \$2,000 for second and subsequent offences. The FEC can't fine, they have to take the matter through the regular court system which can take years and is not the most efficient method.

ELEC spend a lot of time with compliance and educational efforts. There are compliance manuals which are given out to candidates with details of how things function. Warning letters are also issued. Public information sessions are held for the candidate, in-house. Over 11,000 public assistance requests are handled per year.

ELEC issue advisory opinions provided by law, ie. if a candidate is contemplating some action, they write to the Commission and say, "If I do this, are you guys going to come after me?" And the ELEC will respond.

One criticism of the FEC is that they will spend more time with people that lose rather than the incumbents in Congress. Due to structure, FEC has to be more careful than ELEC. The bottom line is the way you structure will affect functioning of agency.

They do have jurisdiction currently over elections of all government levels. New Jersey recently passed Epicson Local Government Act requiring conflict of interest filing at local level where the concern is that local officials have incredible power within their municipalities and counties. There has to be disclosure where money is coming from at that level. People have to be aware of potential conflicts of interest.

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This agency is repeatedly written up as one of the best research agencies of this kind in the nation.

Reform Issues

There are two problem in this field. Not just in New Jersey but all over the US and Canada.

1. There are serious weaknesses in statutes. Loopholes need to be closed.
2. Inadequate funding of ethics agencies.

Ethics agencies are necessary to enforce laws but most jurisdictions grossly underfund their agencies. And in the case of the ELEC, while the budget has declined, the workload has gone through the roof.

Statutory concerns. Contribution limits.

New Jersey does have contribution limits for gubernatorial election - you can't give more that \$1500. The reasoning is to avoid too much money coming from any one source.

Some people in field say there is too much money being spent on a campaign. Herb Alexander says not enough money is spent.

There is more money spent on Coca Cola advertising in the US than on political campaigns. The issue of spending too much is a major issue in US newspapers. This is not primary issue.

The primary issue is where the money comes from. Too much money from one source is the root of problem, ie. someone donates a lot of money, down the track they get legislation they like or say a job in cabinet. This kills trust in democratic government, whether anything went on or not. It is the appearance that does the damage. But this only occurs at gubernatorial level and not at, say the mayoral level, where there are no limits on the size of a donation. The Commission is arguing for across the board limits.

Early thinking was that disclosure was enough. People don't seem to care, therefore disclosure is not enough. Contribution limits stop large donations.

We must be careful of over regulation. Contribution limits have to be low enough to keep out undue influence. Certainly a \$350,000 contribution is obscene even if it's disclosed. However, if the limit is set too low you choke off the money needed to run for office. Balance is therefore necessary.

Over regulation means Political Action Committee's (PACs) would be limited to what they can give. There would also be restrictions to what can be given to a PAC by an individual. Third party independent groups cannot be limited on what they spend.

A most important area of regulation in the US is disclosure. Go beyond disclosure and you raise interesting questions.

Currently in New Jersey you get the name of the person contributing and their home address. What is not disclosed is their employer. Everything may look alright but 90% of people on the list might work for the same company. So the employer should also be listed. Federal level disclosure does require employer to be included but not at the State level.

No PAC registration exists. Entities in New Jersey exist such as Committee for a Better Garden State, Big PAC, Fun PAC, Happy PAC. ELEC receives reports from those groups and they tell who their contributors are and how money spend but they don't tell who they are. Committee for a Better Garden State could be the Communist Party or the Group of Toxic Waste Polluters. They don't have to tell who they are or their aims.

An amendment that is needed is: Get a list of key decision makers and who they work for. That way they could cross check where contributions came from.

There was a recent scandal with Legislative staff which involved a lot of the partisan staff were spending a lot of time working on campaigns instead of doing public work, not only doing campaign work on state time but also using state equipment. The Grand Jury ruled on this, and the good news was nobody broke the law. The bad news was that there was not a law to break. No guidelines were there.

Appearance is really an issue. Appearance becomes reality. Disclosure is essential. In New Jersey, most average Legislator's would support contribution limits. The fight is over at what level should they be and then

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questions that at certain levels it will help one party more than the other and that is one of the things that has slowed reform. Most Legislators and the Governor would agree reform is necessary."

QUESTION:

Another aspect is: has the public view of the states politicians improved with this system?"

HERRMANN:

"No because of loopholes.

Loopholes

Lobbying law in New Jersey is: If I pass a benefit to a public official and I'm a lobbyist, ie. a trip to LA where \$10,000 is spent, I have to report it. However, the law says that as long as you and I don't talk about a particular piece of legislation I don't have to report a thing.

Financial disclosure says if I give you a gift as a public official of over \$250 I have to disclose my name and address, but I don't disclose what the gift was, so material gifts may be given.

When you under-fund a place like ELEC where there is one field investigator for the whole State and then the State car taken away, you must ask if they are serious. In the material given, ELEC came up with a plan for being self sustaining, with twice as much money than we have today without any cost to the tax payer. That idea has gone nowhere.

The budget for ELEC is received from the people ELEC regulate. It is the Governor who sets the process.

Last year the ELEC found over 500 people guilty of violations. ELEC do about 100 investigations per year.

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A serious violation would be not filing anything so that nobody knows what you raised or spent.

The enforcement part of ELEC's title refers to enforcing the requirement to filing information rather than enforcing any aspect of criminality that might arise from what you see in the information filed. The job of ELEC is not to judge whether money should have been accepted, but to disclose the information to the public and let them judge if its inappropriate or not."

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JOAN HABERLEE:

Secretary of State
TRENTON, NEW JERSEY

The System

"The Secretary is head of the election but it is the Election Law Enforcement Commission that does all of the financial disclosure information gathering. At the end of an election night, they will publish a booklet that will have all of the contributors listed and broken down by corporate contributions, individual contributions, lobbyists, and then a whole section of PAC contributions which are also regulated under that law. While they have given the secretary authority, they have taken a lot of the financial reporting and placed it in another department. The reason is that the secretary is in essence a political person appointed with the governor as a constitutional office so they are trying to remove the election enforcement from the secretary's designation.

There are two constitutional officers in New Jersey - the Secretary of State and the Attorney General. These two officers are in for 4 years, and are sworn in the same day as Governor. The only way they can be removed are by certain actions, such as committing a crime.

In New Jersey, the Governor appoints all of the Judges. Judges are not elected. They get a 7 year appointment then if they get another appointment, it will be for another 7 years. When they get the third appointment, they then get lifetime tenures. They go through the BAR Association. The Governor is close in terms of power structure to the President.

Disclosure Rules

On disclosure - everything is asked. All details are published in the newspapers. Income tax figures and salary details are published when people are being considered for a position with the State.

Also a three way and a four way investigation is carried out. A three way investigation is done by the State Police. A four way investigation is done by the FBI. But we check everything. When the filing is done, basically we are looking at the financial side to see what outside business interests.

Candidates have to disclose every source that they get money from.

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You have to disclose the occupation, name, address, amount and employer.

The 'blind trust' system is used constantly. All the appointees in the administration must file a financial disclosure and then you have to update that every 6 months and file again so they pick up a lot of things.

The reason for 'blind trusts' is to avoid any appearance of a conflict of interest.

There is a commission called the Executive Commission on Ethical Standards. A fair make-up of that would have been to have had some general public members of the Commission and a mixture of state people. The Commission is totally made up of state people so you oversee the activities of all State employees.

The \$1500 limit contribution is also limited to unions as well as corporations. Spouse's and children's interests are also filed. On these forms there is always "catch all" phrases which ask if you hold an interest directly, beneficially or otherwise in any other property. eg. if a child had a business and you sat on the board of Directors of that business, you would have to disclose that; or if the child held stock and you are trustee of you have to disclose that.

There is a third party limit across the board.

You can give to a PAC. This is a direct contribution to the candidate so the way everybody gets around that is they can make 10 contributions to Political Action Committees and there is no limit on that.

You can give money to Campaign 89 which was a PAC created to re-elect incumbent and Democratic members to the Legislature. That is a way to get around it. Federally, the way to get around it is also a PAC. This President in his seat of the Union address announced that he wants to get rid of PACs. Most people say the only way to get rid of PACs is to go into public financing.

If you owned a corporation, you don't necessarily have to give through the corporation, you could give as an individual. This still has to be recorded but you are recorded as an individual not as a corporation. There is still a limit of \$1500. But if you belonged to the Democratic party and you wanted to give a \$100,000 contribution, you could then turn around and make out another cheque for \$99,000 and give it to the Democratic Committee. There is no limit on how much money is given to the party, it's only upon the individual candidate that there is a limit.

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There are rules as to how the party money can be spent. Party money can not be spent to purchase television time for the Jim Porio but it can be used to purchased television time to support the Democratic candidates. You can't name individual candidates. Democratic State Committee money and Publican State Committee money can support different initiatives to elect a block slate or support democratic initiatives. There are rules on what the different PAC money can be spent on. These rules don't work entirely. You could purchase something to support the entire ticket which would have Porio's name on it, but there are some limitations to protect moving money somewhere else and buying a television commercial for an individual candidate. But they don't work entirely, these are "backdoor" approaches.

All election merchandise must be endorsed.

The lesson is to simplify the system. The current system is getting complicated. People don't want to run, the system discourages people. Your life is like an open book, everyone knows everything about you. People are also discouraged because of the ability to raise the money.

An Election

A notarial campaign cost is \$11 million. They just spent \$11 million on the election. The one reason that everything is so high in the east is that they sit between New York and Philadelphia, which are the two most expensive media areas to be in. So they pay triple the amount anyone else would pay.

In the case of some debates, there is free media time given. Both candidates have to agree to the debate. But there is a problem when it comes to fringe candidates, they object that only the main candidates will be heard.

New Jersey has 80 senators.
Population : 7.7 million
Voters : 3.8 million
Districts : 40

There is a big problem in the US with getting people to register to vote because there is not a permanent continuing roll.

10.1.6 NEW YORK

LEGISLATION:	New York State Election Law
REPORTING REQUIRED:	Candidate and Committee
DETAILS REQUIRED:	For contribution - name, address, amount (threshold amount \$99) and date. For expenditure - name, address, amount (threshold amount \$50), date, and employer/purpose.
FILING REQUIREMENTS:	Filing must occur 30 and 11 days before an election and 27 days after an election. Also, 15th of January and July until candidate or committee terminates. Contributions greater than \$1,000 to be reported within 24 hours. Statement of organization required before money received or expended. Financial reports required if expenditures exceed: \$50 per year - ongoing committee; \$100 per election - single issue committee.
TIME RECORDS ARE KEPT:	Five years.
AVAILABILITY OF RECORDS:	Public inspection
TYPE OF FUNDING:	
LIMITATIONS ON EXPENDITURE:	Provisions: expenditures above \$100 by cheque. Advertising: Records of political literature, advertisements and broadcasts to be filed with financial statements.
LIMITATIONS ON CONTRIBUTIONS:	<u>Individual contribution limits:</u> Primary election: Number of enrolled voters in candidate's party x \$.005. General election: Number of registered

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voters in the State x \$.005.

Family Contributions:

Family collectively may not exceed the following limits. Family is considered to be the candidate's child, parent, grandparent, brother and sister and their spouse.

Statewide Office: Same as individual except x \$.025.

State Senator: For primary election number of enrolled voters x \$.05 or \$4,000, whichever is greater. For general election number of registered voters x \$.05 or \$4,000, whichever is greater.

Member of Assembly: For primary elections number of enrolled and/or registered voters x \$.05 or \$2,500, whichever is greater. For general elections number of registered voters x \$.05 or \$2,500, whichever is greater.

All other Offices: For general election number of registered voters x \$.05. For primary election number of enrolled voters in candidates party x \$.05.

(a) State Senator - x \$.25 or \$20,000, whichever is greater. (b) Member of Assembly - x \$.25 or \$12,500, whichever is greater. (c) All other offices x \$.25. (d) Maximum - regardless of limits, no family contribution may exceed \$100,000 except in case of statewide office for which there is no limit.

Maximum-Minimum: Regardless of limits stated, each individual may contribute at least \$1,000 and maximum \$50,000 to any campaign. Overall limit \$150,00 for all political activity in a calendar year.

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Corporations:

Same as individual limits except no corporation may expend more than \$5,000 for all New York State political activity in a calendar year. Expense incurred in administering a PAC is considered a contribution to the PAC by the Corporation.

Contributions Exempt from Limits:

Contributions by candidate or candidate's spouse to candidate's campaign.

Contributions by party or constituted committee.

Contributions made to political committees independent of a candidate, or agent or political committee.

Exchange of funds between a candidate and authorized committee or an exchange of funds between committees solely supporting the same candidate.

PENALTIES:

Failure to file - \$100 fine; making or receiving illegal contributions - misdemeanor; wilful performance of acts for purpose of evading contribution limitations - felony.

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DEAN JOHN FEERIK:

Chairman of the now defunct
NEW YORK STATE COMMISSION ON
GOVERNMENT INTEGRITY

25 Febuary, 1991

"Back in 1986 and continuing into 1987, there was a negative period and a lack of confidence in Government in New York which brought an enormous amount of pressure to bear on the Governor and the Mayor.

This is a Commission that was created in response to many scandals in the New York state. Most of the scandals that gave rise to the Commission were in New York City involving people in political parties, political party leaders and government officials. There was such an outrage about the allegations of corruption, some of those allegations eventuated in prosecutions and convictions.

This Commission felt that there was a lot wrong with the commitment in New York State to election reform, that there is a weak commitment to election reform and that, if certain steps were taken in a number of different areas, opportunities for corruption would be eliminated and improvements could be made to the systems.

The reforms are pending before the legislature.

Leaders of both parties and the legislature have indicated that they are receptive to change but it is not clear whether there is enough pressure on those who have the power to make change. The changes necessary, in some respects, would take away advantages that those in office presently have and may change the status quo to some extent by increasing competition, which puts at risk the incumbent in terms of remaining in public office.

Essence of Reform

Disclosure is important. In terms of campaign financing, the people of a community have a lot of information about who gives to campaigns. There should be as much sunlight brought to bear on that as is possible. In New York there has been a lot of obscurity about people giving to candidates for office. There has been some improvement in the City, but more broadly there is very little information that is provided to the voter about who contributes to campaigns. There is no indication about the business affiliation of a

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contributor. In relation to the corporate gift, there is no information as to whether a particular corporation is related to another corporation.

This is the system at the State level. Some of these problems have been addressed at the City level in the past two years.

When the Commission was appointed in 1987 one of the mandates was to look at the subject of campaign finance reform. The Commission was shocked at how little information was available to the voter about who contributes to the campaigns.

The Commission found that the filings at the State Elections Board were, in some instances, not legible. They were in handwritten form and in some cases photocopies of original documents that were clear. Due to the state of those filings, it was difficult for anybody really to know who contributed to campaigns. Even assuming that the forms were typed and were legible, you would not be able to tell about the relationships. There was no information about business affiliation.

Before you can get to more radical reforms in the campaign finance area, such as a system of public financing, you really have to be sure that the system is very strong at the disclosure level, not only with the form of the document and the information contained on the document but also that there is an agency that has a real commitment to taking this information and making it available to the public. This agency must also have the ability to investigate issues that might appear from initial filings to warrant investigation.

The Commission came to the view that some of the reforms that have taken place in New York City should have been reforms at the State level. The agency at the City level puts out to the media and the public information about who is contributing to campaigns. Information that is released will be taken by the media and disseminated to the public but at the State level it is very difficult for the media to do its job because that kind of information is not being provided to the media as a statutory obligation of the agency that administers the law.

Clearly, the media will always play an important role and you can't expect the ordinary citizen to sort out who is contributing to campaigns, but if you have a requirement that the agency must make this information available, that means it is going to have to do that because it has a statutory mandate. Citizen groups and the media and interested citizens will then have ready access to the information and it seems to operate as an incentive that, as a

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candidate, you know that what you file is going to be distributed in that form.

Threshold Levels

The Commission would have accepted a reasonable figure in terms of grouping gifts that are below a certain amount. The concern of the Commission was with the limits on the size of gifts. In New York State you can contribute \$40,000 in a State wide race for Attorney General or for the Governor. Massive gifts of between \$10,000 & \$20,000 and up to \$30,000 would go into those races if there is a primary as well as if there is a general election.

The Commission felt that that size of gift was corrupting. Although it would be political suicide after receiving a gift of this proportion to do a favour for the party who made this donation, there are a few ways of looking at why it may be corrupting.

It may turn out that most people for the controllers office have contributed. Right now, the Commission knows who contribute. They can find out who contributes and who controls the campaign. People have said that they contribute because they feel pressure that, if they are going to be a player when the final decisions are made, they had better have a large gift.

Even in a perfect disclosure system, if a government official has discretion in terms of giving out government contracts and business, there is enormous pressure put on that person. There is the pressure to maintain a level on integrity and intellectual honesty when the official is passing on the application of somebody who has given say \$40,000 to the campaign, particularly if some of the other players haven't done so.

It would be helpful to change the decision making system so that no one government official was responsible for making such decisions but it would not be possible to create a system that was not susceptible to powerful people being able to influencing the system if they wanted to.

Let's assume that you constructed a system where the person was removed from making decisions on anything that affected the contributor. That is essentially what was recommended, that people would be banned from doing business with Government having made gifts to Government.

Looking at New York City for example, the same system was also recommended for the State. It is not perfect but it opens up some possibility for advances, namely making available some public support, public money and

then putting limits on the size of gifts so that that particular area. What's more important than someone who can help you get elected or keep you in office? A big part of achieving that today is through campaign gifts. Therefore, if you can regulate the campaign area, even though there may be other areas of penetration, a lot of abuse and potential abuse will be eliminated.

In relation to the issue of members of a union being the same members as shareholders of a corporation, the Commission would recommend that corporations and unions, as entities, not be allowed to contribute in the State. That is true at the Federal level.

The problem is that contributing to campaigns by individuals is a form of political speech, it is an expression and it is a value that is encouraged by the First Amendment of the US Constitution. People who are employees of corporations or who are members of unions are allowed to make a voluntary contribution to a PAC. You can do it directly, as opposed to PACs and there would be severe limits placed on how much a PAC could contribute. There would also be limits on how much you could contribute to a PAC. The fact is that you allow for Corporate or Union PACs to exist and they have the ability to raise money.

Some PAC leaders are powerful enough to approach the House Leader and ask for pressure to be applied to the Congressman or State Legislator because of contributions which would be received. This is an area of abuse. This is a problem at the national level in terms of the influence of PACs. They are able to control that PAC however there is a need for reform to deal with that subject.

It has been recommended, in relation to PACs, that severe restrictions be placed on the amount of money that they could contribute to campaigns in an effort to dilute their influence. Regardless, they would still have a lot of power. For example, if it was restricted that only \$X, they still could push that \$X into so many individual campaigns of members of a particular political party.

Now, hypothetically you have an office holder that now can only collect a much lower amount of money because of the new laws. There is no other support for that person, no public financing, voter guides, and that person may have to spend more time on fundraising to get the necessary amount of money because they can no longer get those \$30,000 gifts. There is no real sympathy for the office holder because you have limited the challenger to a very small pool of money. The challenger doesn't have the public visibility that goes with

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occupying an office. So if we force the office holder to put a little more time in and we hurt the challenger, it seems that a good job has not been done in constructing the system.

If you are going to put the limits on, and there are going to be severe limits, then you have to give thought to other kinds of support for people participating who are serious candidates in the election campaign. That is what the Commission has tried to do in crafting their recommendations.

Some systems would determine a serious candidate based on the person's ability to raise an initial threshold of private support. There are probably different figures for different States. If you don't raise for the office for which you are competing a certain level of contributions from private sources, then it is a mechanical process, you are not viewed as a serious candidate.

A public funding system was dealt with in the sense that competition was very important. If you are bringing down the limits on gifts in, for example, a State-wide election, you limit how much a private person can give, that would apply to both challengers as well as incumbent office holders. You have to provide another source of support. If you want to drive out private money, you have to push in some public money. In the whole analysis, it was very important that the election competition be seen as the area of principal activity so it was never looked at from the standpoint of anything but acknowledging what was going on, providing whatever was a fair degree of support to people competing in the election.

The private support triggers a certain level of public support. There was a decision made on the expenditure limit in general, drawing a relationship between that limit and public funding. There is clearly some relationship there."

TIMOTHY BROSANAN:

**Former Counsel to Chairman of the now defunct
NEW YORK STATE COMMISSION
ON GOVERNMENT INTEGRITY**

"The point should be made that it is not necessarily just the amount of income, it is the amount of income and it is also the number of contributors. Under the Commission's proposal, you would have to show a grass roots support. Contributors giving a small threshold amount and public funding would not necessarily be kicked off by your raising \$100,000 as opposed to having 1,000 contributors of varied small amounts. So while we do come from an income rather than an expenditure side, we also come at it from a grass

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roots support side, that is how under our public financing scheme someone would be judged a serious candidate."

DEAN JOHN FEERIK

"Conceptionally, during the heat of a campaign, documents and information are pulled together sometimes hurriedly and mistakes would occur in that process, which is taken into consideration. There should be the ability to correct information that was erroneously reported and that may be innocently reported.

But, in relation to the person that knowingly and wilfully held back information believing it would be harmful to his or her campaign and didn't want to disclose, certainly that would be a violation of law and there would be a criminal penalty.

In relation to the question of the disclosure system and true name or true source requirement, as well as the degree and the way the legislation was drafted, penalties involved and standard of proof required to prosecute failure to truly disclose the source of a donation, it was noted that it was not a mandate of the Commission to look at criminal liability. There is a statute in the State Election Law that makes it a criminal violation if your intent is to avoid the election.

There was a Congressional Election in Westchester two years ago that was lost by Theo Gwading who was a member of the House of Representatives because of something like that. It was disclosed just before the end of the campaign that the sub-corporation had departed money to individuals to support his campaign to avoid the corporate limit. That was disclosed before election day. Gwading should have been a successful candidate and it did turn the election the other way. Again it was disclosed.

There is a danger that discouraging our youth from ever wanting to play a part in participatory democracy because of the ugliness that is associated with Government as a result of not dealing with some of the problems.

In a sense, you are discouraging people because of having to deal with all of the red tape, although, if you really want to participate, you will acknowledge the laws of disclosure and work within that system. There is a greater danger that a lot of good people will be driven away from participating because of the cynicism they have about Government because of the allegations about campaign financing corruption.

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An example from the Commission, "I have a business as a Government Official and I'm peddling this business all over the State of New York. I want to get business and I'm up against a lot of other competitors. Lets suppose I'm a Government Official and I'm allowed to have my own private business and I'm trying to get the business from these people. I'm a State Senator and I'm using my letterhead and your looking for business from other parts of Government. You can properly sell your hardware to other parts of Government, as you compete against the Dean of Law School who has his own business and this person has his business, you are making it a point to go to the Local Government Officials that you are dealing with and saying I'm a State Senator and I'm using my letterhead. Now the person says, I want the business and I want to make it known, so that everybody knows who I am in order to get that business. It is probably not in a strict illegality test, I'm not sure that you can ever convict somebody of crime."

This behaviour falls short of the standard which you associate with occupying a public office and a public trust. There should be a greater sensitivity to using your position for your private benefit, even if you are using it in a way that doesn't violate a State Law. In this particular instance, it was quite shocking but there was no illegality involved. It certainly seemed to be conduct that would be harmful to Government and was seen as trying to use one's influence.

Some of the laws to deal with the above mentioned circumstance: There are competitive bidding requirements that cut down on the opportunity for favouritism. The New York State Ethics in Government Act 1987 was the one major advance. Where it is not competitive bidding, certain people can not participate in getting it if they own a certain percentage of a corporation. You have a set of rules that limit access from people in government and there are certain positions in government to work on the other side of Government dealing with contracts.

There are very few rules that bar members of government at the state level from dealing with local government. The rules put aside New York City, although New York City, in its charter, has all kinds of rules. At the state level, members of the legislature have been taken out of dealing with the executive side of government. If they are lawyers, they can't represent clients before the state side of government, their law firms can but they can't share the fees of their law firms. That is the 1987 legislation. Their law firms can continue to represent clients dealing with the State agencies that are regulated by the legislature so there are all kinds of rules that try to limit the personal benefit a member of State Government can get from a

transaction from the Executive side of Government.

QUESTION:

"Many people make contributions to political office holders, not for the purpose of corrupting them but purely for the purpose of them knowing who they are and thereby having access which they can't otherwise get. It's not the access which creates the corruption - it is what you do with the access."

DEAN JOHN FEERIK:

The Commission would not proscribe access. Access is an area where behaviour is being regulated to such an extent that would be harmful. Wrongful use of your office, in a sense not of impeachment conduct or illegality but if the message is that you have to be "in my campaign because I only can meet with a few people a day, because of my schedule, and the only people I'm going to meet with are the people I really feel I have to meet with because they are at least entitled to a meeting based on the large gift that they have made to me", that falls short to any ethical analysis.

With regard to persons making equally substantial contributions to parties at both state and federal levels so that they may gain access to the government at federal level and access to government at state level, it was commented that a lot of people giving in legislative races in New York State to both political parties in both houses, are then seen as a participant in support of both parties.

Salary of State Senate Member

The salary of a member of State Senate is generally between \$54,000 and \$55,000, plus many of them get estimates for committee service or charity committee. Estimates can range anywhere from between \$10,000 to \$30,000. The legislature is also a "part-time" legislature that technically only meets from the middle of January to the end of June.

Independent Expenditure

The law on independent expenditures is "fuzzy" and one of the recommendations made by the Commission was that it has to be clear and concise. A clearer line would be drawn between what is independent and what is politically related.

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In the New York City scheme of public finance, they try to deal with wealthy individuals who decide they will spend as much money as they want and decide not to be bound by contribution limits. The New York City program uses "carrot on a stick" approach in this instance. If a candidate won't be bound by the public financing laws, then the other candidate will get matching funds at double the rate that they otherwise would. The reasons for this are:

1. to deter this person from choosing take this course
2. if he does it, to reward or give some incentive to the other party."

NEW YORK CITY CAMPAIGN FINANCE BOARD**Carole Campolo:****Deputy Executive Director****Dan Seddlus:****Director Campaign Finance Administration**

15 February 1991

"The New York City Campaign Finance Board (NYCCFB) is a result originally of a local law that was put into affect to do campaign financing in New York City.

New York State has no system of campaign financing at all. New York City however does. It was a local law and was also reaffirmed by about 80% of the electorate in 1988. In New York State there has been talk for years about campaign financing and because of the way the New York State legislature is set up, it has not happened. Governor Cuomo has talked about it very seriously in the last State speech and he will push very heavily for campaign finance reform.

New York City was in the forefront and in February 1988 passed the floor. The Campaign Finance Act is a system that is voluntary for candidates running for Municipal Government in New York City. The term Municipal Government covers the Mayor, the Controller, the City Council President, Five Borough President and all City Council Members.

The system is basically a voluntary one and is the only way that the United States Constitution would allow any kind of prohibition on expenditures for campaigns and on contribution limitations for campaigns. This voluntary system was put into affect in the election in 1989. There was a full city wide election for mayor and all of the offices which was very successful.

In 1989, six out of seven or seven out of eight mayoral candidates joined the program, which is considered to be a very successful rate. There was a majority of New York City Borough Presidents, that is, one Borough President for each of the five counties in New York, even candidates joined the program and approximately half of the City Council incumbents joined the program. There were arguments for joining or not joining; at the City Council level a law was passed initially. The reason why some of them did not join the program was they felt it was too complicated.

Because it was the first time that this was attempted in New York City, let

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alone New York State, the regulations were written in such a way to make sure that everybody understood what was to be expected of them under this law. It is possible that those regulations were a bit shaky and the forms were complicated but the City Council members that did not join complained that the amount of money they were going to get for joining the program was not worth of the trouble they to go through.

The argument for joining the program is that the person is a "good Government person" who is a reformer and doesn't mind joining the program. What they had to do in joining the program was not only limit the amount of contributions from any single contributor and limit the amount of expenditures they made but they had to disclose publicly for the first time who their contributors were and how much money the contributors gave.

New York State Board of Elections ask for similar types of information to be disclosed to the public but never before had the type of information or the extent of the information that had to be publicly disclosed.

It is required by law that after each major election an analysis of how the election went is produced by the NYCCFB.

Participating in the program and receiving public funds entails adhering to the rules on disclosure and limits. If you don't elect to take public funding, the only limits imposed are the New York State law limits. For Mayor, according to State law, there is a limit of \$50,000 per contributor per election if there is a Primary Election and a General Election so theoretically a Mayoral candidate could receive \$100,000 from any one contributor under New York State law. In 1989 under the NYCCFB law, the most they could receive was \$3,000 for the Primary and \$3,000 for the General, therefore a \$6,000 maximum contribution from any one individual, corporation or affiliate. There is no limit on the total amount collected.

The cost for the Mayor campaign, for the two major players, was \$7 million for both. There was a limit on expenditure, but there is not a limit on how much you can receive for contributions. You can receive \$8 million in sections of \$3,000 on contributions. The maximum amount that the NYCCFB will pay in public matching funds is one half the limit. For the Mayoral, \$1.5 million was paid and for the Primary and General, \$1.5 million was paid. There is a limit on how much public matching funds will be given but in terms of a candidate collecting outside contributions, there is no problem as long the individual limits are adhered to.

As there is an expenditure limit, candidates do not need to seek as many contributions unless a candidate is going to build up a war chest and there are rules to deal with people that are in a program of war chests. These people may run for a different office, for instance, there is a Controller Candidate who is considering running for United States Senate or Congress and they can use the money in those elections that are not under New York law.

If Congress holders feel quite comfortable coming into a campaign when they don't have any serious opposition, several million dollars generally covers them.

There is a law saying that you can not use campaign contributions to run for other Offices that you did not originally seek the contributions for. You can make contributions to other candidates campaigns.

The NYCCFB is now in the process of finalising audits of the Mayoral candidates who participated in the program. Once it is determined how much there is in surplus funds, those surplus funds will be returned to the Campaign Finance Board.

In order to qualify for a "public matching fund" you have meet several tests. First essential test; you have to be on the ballot in New York State to run for any given office.

Second; you have to meet a threshold amount of collected contributions which essentially shows that you are a serious candidate, the threshold is met in two ways;

- i. By the number of contributions you receive from New York City
- ii. You have to reach a dollar amount by receiving contributions for City Council, for instance 50 contributors, and meet that threshold.

Once you have met those two requirements you are then eligible for public matching funds. For Mayoral, it was up to \$3,000 by any one individual. Once you meet the two thresholds you are eligible for matching funds, whether you have a lot of money or not.

The NYCCFB receives disclosure reports. Larry Laufur is Counsel for NYCCFB and he helps essentially helped to act the original law with the New York City Corporation Council's Office and Mayor Edcotch in 1988.

The program was structured as completely voluntary because of the New York Cities existence as a political subdivision of New York State. New York State

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has an election law that applies to every candidate just by virtue of their being a candidate. In order for New York City to develop superseding or additional regulations the program has to be structured in a way that it doesn't directly conflict with State law. It is a legal pre-emption issue that New York City faced in structuring this program. Therefore the idea of what is based on case law in New York State was to have a program that candidates could choose to be part of if they wanted to. They were not required so there was no direct conflict with State law and the requirements of the New York City program are considered additional for those candidates who choose to be part of it.

There is a second pre-emption argument that exists on Federal Constitution as to whether you can impose expenditure limits on a candidate in the United States without that candidates consent without giving the candidate something in exchange for expenditure limits they are accepting.

There is a US Supreme Court case that says in order to impose those expenditure limits you have to give a quit pro quo to the candidate, provide them with public dollars in order to get them to abide by expenditure limits. That is one voluntary aspect that applies to every public financing program in the US. In addition, New York City has a second voluntary aspect and that is the political subdivision of New York State.

There were a number of corruption scandals in the New York City Government in the 1980's. This was seen as an opportunity to create at least some reform of electoral financing process and take advantage of the climate that was created. The scandals had nothing directly to do with campaign contributions but it was the climate that allowed for laws to be put forward.

The Mayor at the time talked for a couple of years about having some kind of campaign finance reform in New York City. While this Mayor's administration's name is associated primarily with a scandal, (mentioned by Larry Laufur) he pushed very heavily for this law and in fact got the New York City Council to pass it. The other entity that was a primary motivating force behind this campaign finance law was John Feerik's Commission on Integrity in Government. As a result of the scandals and the climate in New York City, the State of New York put together the Feerik Commission on the Council on Integrity in Government with Nicole Gordon (the Executive Director of NYCCFB) the Counsel to John Feerik at that time.

In regard to the lifting of expenditure caps, there are two matter to be addressed.

Firstly, not every Senator is covered by the limits, for instance, expenditures that are incurred in order to comply with the law or expenditures because of challenges to the candidates status on the ballot are exempt because those are variable clauses that are bound up with fighting a Body from a main candidate.

Secondly, because there are both people who choose to be part of the program and those who stay outside, the law is structured so as not to disadvantage a candidate who is in the program and is faced by opponents who chooses to be outside of it and is raising and spending a significant amount of money. When you have a candidate and they raise or spend more than a certain amount, their opponents who are in the program get two things. They are no longer subject to expenditure limits so they can now compete at an equal spending level and they also get additional public dollars. They get the public dollars paid at a faster rate than they ordinarily would. The overall cap of what a candidate can receive per election is maintained.

There is a special election for City Council. A Council Member has just resigned so there are nine candidates who are participating in an election. Five of them have joined the Campaign Finance Program very early on in the campaign. One of the non-participating candidates raised and/or spent more than \$30,000 which meant for the five candidates who joined the program were no longer operating under a \$105,000 spending ceiling. They could spend as much money as they could raise because they were faced by this free spending non-participant. In addition, they get public funds at twice the rate so for every \$20 of contributions they claim from a public fund, they get \$40 - up to a total of \$40,000. The ratio has changed. They are getting \$2.00 for every \$1.00 raised and twice as fast.

In New York it is very difficult to get on the ballot and because of that, it does reduce the chances of someone putting in a "dummy" candidate non-participating candidate.

80% of the electorate passed the New York City charter in 1988 which was because people were tired to the enormous amounts of money being spent on candidates for City Council and other lower levels of Government.

The New York City budget is approximately \$28 billion dollars and coming up in fiscal year 1992 it will be \$29 billion. In order to start the NYCCFB, office operations is less than \$3 million. It is practically \$1.5 million in staff salaries, and \$1.5 million in personnel services and that is a pretty high figure. Starting an office requires more money than that. In terms of office operation there is a staff of 44. The election fund or the matching public fund in 1989, which was a fairly hotly contested race for the Mayor and all of

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the other positions, resulted in \$4.5 million in public matching funds. This was a considerably large amount given that the City Council is the lowest level and very often does not generate very much competition. As a percentage of the New York City budget however this figure is almost negligible. For the amount of tax money being expended, the people are being provided public disclosure.

In the City Council races there is not a lot of competition at that level. If you are an incumbent Counsellor or incumbent Assembly officer, you are probably likely to be re-elected. Their races are not particularly expensive to fund, which was one of the reasons why some of the incumbent Council people did not think that they should take public matching funds and that they should join the program. They did not spend that much money.

There are 35 Council positions now, which will be expanded in November to 51 seats. This figure is made up primarily of Democrats and the major competition comes in the Primary election, not in the General election. If there is competition between the Democrats then the money is spent in the Primary election. Even on the Mayoral level that is where the most money is spent, although the past election was different, where a Republican candidate mounted a very credible campaign.

When anyone makes a contribution of any kind, it is supposed to be shown on the public disclosure reports. However, there is a fuzzy part of that law where a union can provide telephone banks in New York City which is when they get 100 members to make telephone calls on behalf of a particular candidate and the candidate is not affirmatively saying to do this. This can be a problem.

One of the advantages of this program is that it does have an auditing capacity and part of the program is subjected to that. The program also has the ability to handle candidate complaints and the subject of undisclosed contributions is a matter that candidates frequently raise with the program about one another. Although it is a very difficult thing to uncover and prove, at least there is the advantage of having an active auditing unit whereas the other Boards of Elections in New York State are under funded in those areas.

During the first administration of the program, 8 or 12 candidate complaints have been resolved internally before the Election without have to resort to Court. The filings were amended and contributions that had not been recorded or disclosed and this was all done before the election. As of this time the audits with respect to the 1989 election are just being concluded so

if there are going to be prosecutions brought in light of 1989, they will be coming up.

The NYCCFB is a five member Board which has a Mayor and the majority leader of the City Council. The Mayor has two appointments and the majority leader of the City Council has two appointments and with the approval of the majority leader of City Council, the Mayor appoints the Chairman. Those Board members are appointed for deliberately staggered fixed terms so that when an Administration changes, it was hoped that that would prevent any major political jockeying on the Board.

The Chairman of the Board is Father Joseph O'Hare, who is a Catholic Priest and the President of Fordam University. Others on the Board include Joseph Casina who is the President of the Motor Vehicle Indemnification Unit; Sonia Sotomior who is an Attorney in private practice and James Lewis who is a Professor at City University. The fifth member of the Board, Robert McKay, passed away in the summer.

In New York City and New York State, where election agencies are well known to be politicised, the NYCCFB managed to remain totally non-political during a very heated Mayoral election. The Board is supposed to make up a representation of political parties in New York City so it is not all Democrats. Robert McKay was the Democrat on the Board and there are two other Democrats, one Liberal Party member as well as an Independent. Although the City is primarily "Democratic", it is made to be a representative of the political parties of the City. The aim is to keep it as depoliticised as possible and that was achieved over the last Election.

To receive "match threshold contributions" it is a requirement that you must first raise a certain amount of money. For example, for a City Council person in 1989 the amount was \$7,500, and once this amount is reached then the NYCCFB starts matching funds.

Now that threshold for City Council has been lowered to \$5,000. This \$5,000 must be raised in contributions of between \$10 and \$1,500 from 50 residents. Once the threshold is met, it is matched with another \$5,000 by the NYCCFB and then he/she gets \$1 to \$1 public funding to a maximum of \$40,000.

In drawing up the initial law there were a lot of requirements that on paper seemed good, such as that the whole idea behind public financing was to promote the education of the electorate as to who the candidate is, and what the issues involved in the election were. However, in trying to implement that type of requirement and a number of other detailed disclosure

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requirements, it is very difficult to distinguish as to whether a piece of literature that a candidate produces in that campaign is for an educational purpose, for a fund raising purpose, or an ancillary purpose.

Trying to make that determination with respect to every expenditure is a very difficult job for both the candidate and the agency. One of the things achieved from the recommendation and the subsequent amendment was a change that gave candidates more flexibility in how they would use the public dollars that they were receiving. Instead of the notion that it would be targeted to education, now the idea is that any expenditure that promotes your candidacy, which is basically everything that a candidate does. With certain exceptions to safeguard against self dealing, the candidate can not pay him/herself a salary with the public funds and they can not give to their own business.

The New York State Board of Elections form legislates a different law with its own set of disclosure requirements that are much more narrow than the NYCCFB's. The NYCCFB law requires them to collect more information. The candidate on the New York State law is required to file forms with the State Board of Elections to give a minimal disclosure that is required under State Election Law.

If the candidate decides to join the New York City program in addition to making that filing under New York State Election Law, they are also agreeing to abide by the more detailed disclosure requirements of the New York City Law. Therefore they must file a form that suffices for those purposes to provide more detailed information.

The State Board of Elections will accept the NYCCFB's contribution reporting form as sufficient for purposes on the New York State Law because it gives more detailed information. Thus the candidate only has to file the single form with both agencies resulting in greater public disclosure at both agencies.

The other advantage to the NYCCFB form is that it is allowed to be entered into NYCCFB computerised data base which is another mandate of the local program. The State forms were never designed with data entry in mind.

If there is an intermediary involved, they are required by law to advise of the intermediary's name and address and to list all of the contributions that that intermediary has delivered to the candidate whereas under New York State Election Law, an Investment Banker could give \$50,000 to a Democratic

Primary Candidate and also ask 1,000 or 2,000 other people to do the same thing. He/she could deliver \$1 million worth of contributions to a candidate and that intermediary would never be known.

Voter Guide

When the 1988 Charter was passed which followed the New York City Campaign Finance Act by several months, the NYCCFB, although it was just first starting, was the only agency that existed to bring about this type of electoral reform. So rather than create a separate new agency to administer the second reform, the Voter Guide, the responsibility was allocated to the newly formed NYCCFB.

Aside from the legislative history, it is totally congruent to the mission of the agency which is to reduce the role or influence of money in any way in an election and to provide information across the board.

If it is a candidates choice to write something about another candidate, that is their choice, however the Board's Attorney's on each statement take a very good look and try to assess whether or not the particular candidate making the negative statement against another candidate is flirting with the liable issue. There were two instances in the last election and the Chairman of the Board called up the offending candidate which resulted in that candidate changing the statement. The Board did not do the editing. The First Amendment to the United States Constitution is the Freedom of Speech Amendment and the Board takes a very strict interpretation of that. The Board would be in very serious trouble should they start editing statements of candidates.

The experience with the Voter Guide has been very positive. Candidates are not allowed to change their statements between the Primary Election and the General Election, primarily because there is not enough time to do a whole new General Election Voter Guide. The consequence of that is that the candidate has to talk about what their program and what their platform is because they don't know who their opponent is in the General Election. Therefore it forces them in some senses not to get particularly negative with opponent and to talk about that candidate's platform.

The NYCCFB has to produce three million copies of the Voter Guide twice within eight weeks so that every household with a registered voter receives one - once in September and once in November for the Primary General Election.

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The New York State Charter requires that the Voter Guide be produced in English and Spanish. The Department of Justice requires New York City to produce all election related material in English and Spanish for Brooklyn, The Bronx and Manhattan. The New York City Charter said that all Voter Guides have to be produced for the aforementioned three Borough's plus Staton Island and Queens. The Charter gives permission to produce the Voter Guides in any other language that the Board feels is necessary."

10.1.7 OREGON

<u>LEGISLATION:</u>	Oregon Revised Statutes
<u>REPORTING REQUIRED BY:</u>	Candidate and Committee
<u>DETAILS REQUIRED:</u>	<p>For contributions - name, address amount (\$100 threshold for statewide candidates and \$50 threshold for other than statewide candidates and to political committees) and employer/purpose or occupation.</p> <p>For expenditure - name, address, amount and purpose of each expenditure. Expenditure over \$50 must be vouched for by a receipt. Expenditures over \$100 must list the name of the person it was made to.</p>
<u>FILING REQUIREMENTS:</u>	Filing must occur both 29 and 5 days before an election and 30 days after an election. Supplemental reports must be filed annually on September 10th if there is a balance or deficit, until no balance or deficit remains.
<u>TIME RECORDS KEPT:</u>	6 years
<u>AVAILABILITY OF RECORDS:</u>	Published summaries available to public
<u>TYPE OF FUNDING:</u>	Funding is by way of a tax credit system and half of political contributions up to \$50 on a single return or \$100 on a joint return are earmarked for distribution.
<u>LIMITATIONS ON EXPENDITURE:</u>	No limits
<u>LIMITATIONS ON CONTRIBUTIONS:</u>	Contributions may not be given in another's name. Any contributions by interstate committees over \$50 are prohibited unless accompanied by a written statement setting out donor details. Anonymous donations are

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also prohibited.

PENALTIES:

Violations of the legislation - class A misdemeanour; failure to file - certification of election will be withheld and civil penalties may apply.

LARRY BEVENS:
JACK GRAHAM:

Elections Manager
Director
Elections Division
SALEM, PORTLAND

14 February, 1991

"Campaign financial reform has become a major thing. It is becoming increasingly expensive in this state to run for office. Eight years ago it cost maybe \$5,000, now we are up to \$40-50,000 on average across the state. There are races for this House where the combined total of the money spent for an election represents over a quarter of a million dollars. This is for a job that pays about \$1,000 a month. There are an increasing number of people in the public saying this doesn't make sense, so we are seeing this escalation of costs to run for office.

I see an evolution taking place here that is selecting for certain kinds of people that are not necessarily part of the main stream of American existence:-

- (1) The wealthy
- (2) Those who are real good at fundraising
- (3) Those who will do almost anything for money

This puts a tremendous pressure on people. Money is increasingly becoming the name of the game.

First of all we should limit PACs to \$20,000. Another reform should be, for instance, my office should only give \$500 per election to me any time, whereas right now it is unlimited.

There is legislation from the Senate side which would limit the amount of money we could spend on campaigns.

I think the spending is being driven by powerplay, by profit, by leadership and the drive to be with the majority. I think, for instance, that if either party wasn't as close as 31 to 29, if wasn't for the competition, this wouldn't have been so exaggerated. It is real easy to rally the troops when it is that close.

About 99% of the politicians have another occupation.

In Oregon the representatives are elected for two years.

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Your campaign is to remain a sitting member. We are given a budget for the session, the six months session and that is \$23,000. You are given a wide choice on how to spend that. Most people hire about 4 people, and a secretary for six months. You are given money in the interim as well equivalent to about \$1,000. The Legislature here only meet once every two years.

I was never put into a position where I was taking money from somebody that I felt I didn't fundamentally agree with. The Ethics Commission regulates the contributions in a sense of anyone who is receiving a gift.

We have a contribution check-off. We need to generate \$50,000.

For action groups, a way for them to release their tension is to get an issue on a ballot paper and make it an issue at election."

10.2.1 BRITISH COLUMBIA**CANADIAN FEDERAL LEGISLATION**

<u>LEGISLATION:</u>	Canada Elections Act
<u>REPORTING REQUIRED BY:</u>	Candidate and Party
<u>DETAILS REQUIRED:</u>	For contributions - name and amount (threshold is \$100) For expenditure - name, address, date, amount (threshold amount \$25), employer/purpose.
<u>FILING REQUIREMENTS:</u>	Parties file 6 months after an election. Parties also file annual reports. Candidates file 4 months after an election. Contributions to be broken by class of donor. Expenditure under \$25 to be reported by totals.
<u>TIME RECORDS ARE KEPT FOR:</u>	6 months
<u>AVAILABILITY OF RECORDS:</u>	Public inspection and publication in a local newspaper
<u>TYPE OF FUNDING:</u>	1. Tax deduction ie. 75% of the amount contributed if the amount contributed does not exceed \$100; \$75 plus 50% of the amount by which the amount contributed exceeds \$100 if the amount contributed exceeds \$100 but not \$550; or the lesser of \$300 plus 33.3% of the amount by which the amount contributed exceeds \$550 or \$500. 2. Reimbursement ie. candidates that are elected or poll more than 15% of the vote received whichever is the lesser - actual expenses or 15% of maximum election expenses.

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LIMITATIONS ON EXPENDITURE:

Candidates - \$1 for each of the first 15,000 names appearing on the preliminary lists of electors for the electoral district plus 50¢ for each name more than 15,000 but less than 25,000 and 25¢ for each name in excess of 25,000.

Parties - aggregate of 30¢ per name on the preliminary list of elections in which a candidate is standing as an official party nominee.

LIMITATIONS ON CONTRIBUTIONS:

Broadcasters must make available 6.5 hours prime time to political parties. Rates charged must not exceed lowest market rate and advertising is restricted to the period from the 29th day before election day to midnight on the second day before election day.

PENALTIES:

Exceeding expenditure limits - \$25,000 maximum fine; failure to file or lodging a false statement - \$25,000 maximum fine; violating broadcasting provisions - \$25,000 maximum fine; any other violation of the Act - \$1,000 - \$5,000.

CANADIAN FEDERAL LEGISLATION

GENERAL

The Canadian Elections Act, R.S.C 1985, C.E-2 primarily seeks to limit anonymous donations and was created by the Canadian legislation for the purpose of keeping the process as clean as possible.

Contributions are essentially defined according to the commercial value of the donation. Voluntary donations are exempted. Any inter-party contributions are also exempted from this clause.

PARTY CONVENTIONS AND LEADERSHIP RULES

According to S2(2) of the Act any money paid or goods or services donated for party convention or leadership rate is deemed not to be an election expense. Some commentators believe that this system could be abused as a party could delay leadership contests and publicise the promotion of the candidates without having to disclose any expenses until the actual nomination occurs.

Donors can be....

Individuals
Companies
Unincorporated Assoc.
Associations
Governments
Political Parties

Donations can be in the form of:

Loans
Advances
Deposits
Contributions
Gifts
Services
Inter-party Transfers

However all donations must be made through the official agent of the candidate (s36(1)). This concept of agency is at the heart of the federal legislation.

All contributions must also be documented and collected by the same person in order to ensure that the disclosure provisions are adequately monitored and the system is kept as free from taint as possible.

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Anonymous Donations

No anonymous donations may be kept - all must be surrendered to the Receiver General for Canada. The onus of proof rests upon the agent and, if the agent cannot determine the name and class (ie. individual, company (publicly listed or not), government body, trade union) of the donor he must forward a cheque payable to the Receiver General to the Chief Electoral Officer. This full disclosure requirement applies to all donations in excess of \$100.

International Donations

There are no restrictions in the federal legislation as to where the money may come from.

Limits

There are no limits on the amount of money which can be contributed. The maximum which can be claimed however for income tax purposes is \$1150.

The tax credit system can be explained as follows:

AMOUNT OF CONTRIBUTION	TAX CREDIT AVAILABLE
Less than \$100	75%
\$100 - \$500	75% of first \$100 & 50% of the second \$100 up to \$550
\$550	\$300 plus 1/3 of the rest

There are also limits on the amount of money which may be spent in an election campaign.

Expenditure

The Act contains a very comprehensive definition of election expenses. That is, they refer to:

- " (a) amounts paid
- (b) liabilities incurred
- (c) the commercial value of goods and services donated or provided other than volunteer labour, and
- (d) amounts that represent the differences between amounts paid and liabilities incurred for goods and services, other than volunteer labour, and the commercial value thereof where they are provided at less than

their commercial value (all of which are in this definition referred to as "the cost") for the purpose of promoting or opposing, directly and during an election, a particular registered party, or the election of a particular candidate, and without limiting the generality of the foregoing, includes

- (e) the cost of acquiring the right to the use of time or the facilities of any broadcasting undertaking, or of acquiring the right to the publication of an advertisement in any periodical publication,
- (f) the cost of acquiring the services of any person, including remuneration and expenses paid to the person or on behalf of the person, as an official agent or registered agent or otherwise, except where the services are donated or provided at materially less than their commercial value,
- (g) the cost of acquiring meeting space, if provision of light refreshment and of acquiring and distributing mailing objects, material or devices of a promotional nature, and
- (h) the cost of goods or services provided by a government, crown corporation or any other public agency, when those costs are incurred for a purpose set out in this definition." (s2(1)).

Personal expenses refer to reasonable living and travelling expenses of the candidate. Also, no payments may be made except by the agent (s36(1)).

Party Expenditure

The Act also restricts the amount of the money which may be spent in an election ie.

$$\text{\$} = \frac{30c \times \text{the name of each elector} \times \text{the average of the CPI}}{88.9}$$

If a party exceeds the limit of expenditure it is guilty of a summary offence and liable to a fine of up to \$25,000.

Candidate Expenditure

The Act regulates the amount of money which may be spent in an election.

S208 of the Act makes the candidate guilty of an offence for any excess expenditure.

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AMOUNT AVAILABLE	NUMBER OF ELECTORS
50c per name	15000 - 25000
25c per additional name	25000 +

Other Expenditure

Every person (except for candidates agents, or those authorised to act on their behalf) who spends between the issue of a writ and the day after polling day is guilty of an offence. If this expenditure was done with the knowledge of the candidate or agent then the candidate or agent is also guilty of a corrupt practice (s259)(3).

Disclosure by Parties

The Act specifies in S44 that the agent of a party must lodge an annual return for all the income and disbursements excluding election expenditure. This return must include the type of donation, the commercial value (if it is provided in the form of goods or services) and the name of the donor.

For each general election, party agents must lodge an election return within six months of polling day. Failure to do so is an offence and the party is liable to a fine of up to \$25,000 (s47(2)).

Disclosure by Candidates

The Act also specifies the disclosure requirement for candidates that is, the candidates agent must lodge a return with the election district's returning officer within four months of the election. The return must include the same details as those disclosed by the party agent. Failure to lodge this return will render the candidate unable to sit or vote in the House (s236(1)).

S236(3) ensures that any person who knowingly makes a false declaration is guilty of a corrupt practice and guilty of an offence.

S235(2) states that all these returns shall be published in a newspaper which is circulated in the electoral district in which the election was held.

Reimbursement of Parties

If a party spends more than 10% of the election expenses limit (as previously defined) then upon receipt of this return the Chief Election Officer will forward a certificate to the Receiver General entitling the party to reimbursement of 22.5% of the amount of expenditure on the party's return. This money is paid out of the Consolidated Reserve Fund (s322(1) and (2)).

Reimbursement of Candidates

Candidates must receive at least 15% of the valid votes cast at the election. If they have achieved this the Chief Electoral Officer forwards to the Receiver General a certificate setting out the amount of money which equals 15% of the election expenses (as previously defined). The Receiver General then pays the candidate this money out of the Consolidated Revenue Fund. Candidates are eligible for further funding if they have spent more than 30% of their allowable election expenditure and 50% of their expenses have been paid (less the 15% paid by the Receiver General). This additional amount is then paid to the candidate (s243(4)(a)) No candidate may keep any donation in excess of fifty per cent of the maximum.

Enforcement

The Act provides for the appointment of a Commissioner to enforce the Act and administer it. However, the Commissioner is not a separate body instead the position is under the supervision of the Chief Electoral Officer.

S267 states that every person who is guilty of an offence under the Act is guilty of:

OFFENCE	PENALTY
Summary	\$1,000 and/or 1 yr in jail
Indictment	\$5,000 and/or 5 yrs in jail
Corrupt	Incapable of election as a MP or incapable of holding public office for 7 years
Illegal	Incapable of election as a MP or incapable of holding public office for 5 years from date of conviction

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YVON TARTE:**Executive Director, Commissioner of Elections
Canada****FRED SLATTERY:****Director, Election Financing and Registrar****OTTAWA, CANADA**

18 February, 1991

"The Constitution here ensures certain rights and freedoms. We now have our own Constitution. We were under the British system previously with no written Constitution. It was only about a decade ago that we were patriated as a Constitution and were just trying certain rights and freedoms including the right to vote and the right to run as Member of the House of Commons, as well as freedom of conscience. Interesting or not, the right to vote is defined as every Canadian Citizen has the right to vote or to run as a Member of a Federal or Legislative Assembly. Theoretically, the first clause of the Constitution is that it is reasonably justified in that it is a democratic society. So every challenge we get to any restrictions has to be framed within that provision. In the last election, we had challengers. We didn't allow judges to vote, we had restrictions on the mentally handicapped and those were challenged in the Court, and we had to change them because the Judges were given the right to vote.

Federally, the voting age limit is 18. Across the country it is 18, in British Columbia it's 19. We still don't have voting by privilege.

Political parties are not mentioned in the Constitution. They are recognised through political conditions and controlled by the provision of the Election Act 1974. Once a party is organised, if they wish to be involved officially in Federal Elections and receive the benefits, they must register with us and make certain criteria and they get certain protection from the result of that. The party affiliation of candidates have been shown on ballots since 1972. There is no requirement that candidates have party affiliations and candidates can run as independent or non associated.

You can be a political party in Canada without registering with the Chief Electoral Office. The register allows you certain benefits and requires that you assume certain responsibilities. If a party is registered normally, the candidates that that party presents are known as candidates of that party on the ballot paper. The law states you are automatically designated as an

Independent unless you specifically submit a request to the Chief Electoral Officer.

If a candidate joins the House and they want to get into a party after the election there is nothing to stop them, but if they're Independent they're Independent.

In one instance we had the Rhinoceros Party putting in a person with a name of John C. Kerr in the same electorate as John M. Kerr, (although they didn't do much better than what they originally would of with a different name).

The situation here in terms of election in Canada. Our organisation is an agency of Parliament, not the Government. The Chief Electoral Officer is accountable to Parliament, is appointed by the House of Commons and there is no term. The Chief Electoral Officer reports to the Speaker.

The Chief Electoral Officer can be removed, but only by both Houses. But that has never happened. The office is quite independent and small. We have about 55 people, all the rest of the people are public servants. There are several exceptions, with the position of Assistant Chief Electoral Officer which is an appointment by the Governor Council. Theoretically it was to have a representative of the Government present in an electoral candidate to convey the Government view. In the last 15 to 20 years the Government has agreed to accept the recommendation of the Chief Electoral Officer. The other two positions which are also exceptions are the Commissioner of Candidate Election and the Broadcasting Arbitrator, who is responsible for negotiating with most of the parties and the broadcasting organisations.

There is one returning officer for each of the electoral districts appointed by the Government Council. There is a total of 295 returning officers. They in turn appoint enumerators and various others. At each new distribution, if the electoral boundaries change, the returning officers continue on.

Voting is not compulsory. In the general election around 70-75% vote.

We have a multi-million dollar advertising campaign. What we do in our advertising campaign is to emphasis the fact that enumeration is going on now so make sure you get your name on the list. Then later on, when enumeration is over and you have not got your card, call your returning officer right away, and we provide information of who your returning officer is, where your electoral district is located, etc. It is an information programme, not just there to get your vote.

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In the enumeration process, a lot of this is based on trust. They have a list provided to them by the party to the returning officers by the candidate representing the first and second highest winning candidate in the previous election, they have the right to submit the list. They must go in pairs representing two different electoral new points and they must work together. They are given an area and list of addresses which they must cover in an electoral district.

If, after the enumeration period, the cards have been sent out and you did not receive one, you can apply to get on the list or the names on the list can be challenged. There is a Revising Officer, who is usually a lawyer, and they finalise the list.

A candidate must file a nomination by the 28th day before the election. The countdown is from the day the list is issued. All the candidates get copies of the list and it is only at that point that the candidates can start advertising.

Enumeration runs from the 38th day to the 32nd day.

On the rural side, the returning officer can, without sending any letters around using information available prepare the list. On polling day you can come into the poll with another elector on the list and that elector can vote for you and you can get on the list.

At the 21st day prior to election you can vote in the office of the returning officer. On the 9th, 7th and 6th day before the election, you can vote in a number of locations in the riding of the electoral district.

There is one other element in our voting system which is available only to members of the Canadian armed forces and their dependents, diplomats and federal public servants and their dependents who are outside of Canada and that is a mail balloting system.

The vote itself is very simple. You have one ballot with the number of names that are candidates and normally they don't exceed 14 and the average is around 4 or 6. You walk into the poll, they check your name off the list, the deputy returning officer will hand you a ballot, you go behind the screen, put an "X" on the spot then return it to the deputy returning officer who drops it in the box.

The election cannot be shorter than 50 days but it can be longer. It can be any length of time considerably not more than 5 years. There has to be an

election every 5 years.

There hasn't been any moves yet for Canada to combine with the Federal Election to create the one Canada-wide electoral administration organisation. The provinces jealousy guard their independence. Each one has their own system, the closest thing to the kind of evolution developing has been the Royal Commission. The Royal Commission, in carrying out its work, has involved the provinces frequently and in depth and there is some discussion of solving this problem, for example, that of enumeration and voting registry by a joint effort from the provinces and the Federal whereby there would be one massive registration list which could be maintained by the Federal, fed into by the provinces and insured by both. We do have an unofficial organisation who, every year there is a meeting of all the Chief Electoral Officers and the Election Official in Canada, compare notes and discuss matters. We then independently go off and do our own thing. With the advent of the Constitution it has become very important that the left hand knows what the right hand is doing because, for example, Quebec, by giving prisoners the right to vote, has set a precedent which any Constitutional challenge, if it hits the Court, will have to take into account. At the last election Manatoka got into deep trouble and we were flying back and forth with resolutions and Court situations and they could have gone either way.

You have your high profile candidates, but in many cases the voter is not necessarily aware of who the candidate is because of the publicity of the Party and Prime Minister or the Party Leader.

On a ballot paper we have water marks across it so it cannot be forged and it is very difficult to see through it.

When a voter goes to vote, they are asked their name and their name is checked off. If one of the candidates agents knows at the poll that that isn't John Smith, the individual must take an oath before the Deputy Returning Officer saying "I am John Smith". If the individual refuses to take an oath, the Deputy Returning Officer can then ask for satisfactory proof of identity. If the identification is not sufficient, then the Deputy Returning Officer can refuse that vote.

In terms of public funding, both political parties and candidates are eligible for public funding in two specific ways under our Legislation. There is a provision under the Canadian Income Tax Act for tax credit to register political parties for full contribution. So once a party is registered under the Legislation, they can give official receipts to people contributing to the party

10 OVERSEAS SUMMARIES

and these official receipts may be used for tax credit so when you do your tax return you get a credit, if not a deduction in your taxable income. There is no limit to the amount of money you can give to registered political parties and there is no limit as to the source of the contribution, although there is a limit of \$500 maximum tax credit. Corporations and the individual are the same. As far as candidates are concerned, this only applies at an election, so there must be an election called. During that period, from the moment the candidate is officially nominated until polling day, that candidate can also receive contributions for which he will give official receipts which may give right to tax credit. At the end the percentage is the same thing so I can give to my favourite candidate during an election and to my favourite political party during an election or to a registered party outside the election period - but not candidates because they only exist at an election. That is the first form of public funding.

The second form is the reimbursement and basically candidates who are elected or who receive a percentage of the vote which is 15% of the valid vote passed can be or is eligible for a reimbursement representing one half of his election expenses paid. There is a limit as to what a candidate can spend in the particular district and he is entitled to one half of the expenses he has paid.

The candidate must appoint an auditor and the auditor is basically a public accountant. Most of them are chartered accountants.

The limits are based on the lists of enumerator electors. It is a formula set out in the Act so much per elector, for the first 15,000 so much for the next 10,000 and so much for any elector in excess of 25,000.

Once the lists are published following enumeration, candidates are given copies of the lists and then they go through the list with a lot of scrutiny. From that they determine what areas have been missed or people who should be on the list and are not, then they have means of insuring that these people get on the list.

The national average is 58,000 people but if you have a district where there are only 20,000, you add half of the difference between your district and the national average.

If you come from a large geographic area, or small, say the density of the electorate is less than 10, and that is the number of enumerators, if it less than 10 per square kilometre, you add to your figure 16 cents per square

kilometre to the basic figure and then that can never be more than 25% of the basic fee. When the product of those three steps is added together then there is an indexing factor which applies because the formula for the limit was passed in the law back in 1981. The law now says that since 1981 you will index those three steps by the factor which is published annually by the Chief Electoral Officer. We calculate what the increase has been in the consumer living in depth. Then we will publish that factor in the official gazette and that will apply at any election by-election or general election which is called from April 1st and from the ensuing 12 months. That is the candidates formula.

In the case of a party, the same list applies, however if large parties have candidates in all 295 electoral districts, in the case of some of the lesser known parties, they will only have candidates in no less than 50. The average is around 50-55 per party. What you do in the case of the party, you take the district, where they have the candidate you take the electoral population in that district and add it up and, with that total, we supply 30 cents. The product of 30 cents times the total number of the electors in the district.

In the 1988 election the average expenditure for candidates was about \$47,000. In 1984 the figure was about \$39,000. The parties who had candidates in the whole 295 districts had a spending limit just in excess of \$8 million.

Federally there is no limit to the amount of contributions you can receive or no limit on the source. Therefore, it is possible for a political party or candidate to receive funds from a provincial name from that party or a provincial party of the same persuasion. The options are not that open on a provincial level. There are certain provinces that restrict the transfer of funds back and forth.

The limit's lack of effectiveness is not due to the fact that there are no limitations to the contributions.

About 50% qualify for reimbursement. About 50% also had a surplus from their funds at that election. What happens is the candidates cannot keep this money themselves. A few of the candidates that are sponsored by a registered party have a few choices, such as turning the money over to the registered party. Very few candidates do that. You can turn the money over to a local association or organisation or the local member representing the party that you run for in the district that you ran. There are some candidates who come out after an election in a deficit situation. Although most candidates generate enough money to pay their bills.

10 OVERSEAS SUMMARIES

A party will qualify for a reimbursement at an election provided that it has spent in excess of 10% of its election expense limit. In other words, there is a minimum threshold for a party to qualify. So you must spend your election expense limit plus one penny and then you qualify automatically from that to a reimbursement. In the case of parties, the reimbursement is 22.5% of the election expenses. At the last election in 1988, for the first time we had a lesser known party qualify. Usually only the three major parties qualify for reimbursement.

We recommended to the commission that they remove the minimum threshold because even if you reimburse all of the 9 lesser known parties at the 1988 election the total would have represented under \$100,000. The 3 major parties were reimbursed in excess of \$1 million.

At the 1988 election, out of the 1600 or so candidates, 864 qualified for a reimbursement and about 837 had surplus funds at that election. One candidate had \$97,000.

Under the Canadian system, candidates can incur personal expenses like travelling and meals. Personal expenses are not limited, therefore the candidate can spend beyond his election expenses limit by the amount of his personal expenses. The amounts must be reasonable and they must be personal, relating to the candidate only, no one else.

There is no limit in terms of the amount in one constituency. All candidates in the same district have the same limit.

A party must submit an annual return to the office here of their operative expenses and the contributions received during a year. They must list the contributions by class of donors, individuals, organisations or businesses. In any case, where the contributions from any one source during the year exceed \$100, the name of the contributor as well as the amount must be listed in the annual return. The annual return in most cases is a computer printed with a list of thousands of donors. These returns are filed 6 months after the year's end, therefore the end of June, at the office here and they are a public document at that time. Anybody can consult the information. The parties also at an election must also file an election expenses return. Where they set out their election expenses incurred during the election, this return is also submitted 6 months after polling day to the office here and then is subject to an auditor to verify the return. This return is again a public document.

The candidate exists only at an election, and they file an election expenses

10 OVERSEAS SUMMARIES

return in relation to the election, the candidate election expenses return must be filed no later than 4 months after polling day it is filed at the Returning Officers office, a copy of that is sent into the auditors here by the Returning Officer. We then verify it, see if they qualify for a reimbursement, or identify if the candidate has a surplus. Most candidates who have surpluses were also reimbursed but there are also a few who do not qualify for reimbursement and still may have a surplus. If a candidate does have a surplus we will send that candidate a notice saying you have a surplus and this is what the law requires you to do.

The average fine for not disclosing is about \$150. There have not been any instances of people going to jail."

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ROBERT PATTERSON:

LINDA M. JOHNSON:

Chief Electoral Officer

Acting Deputy Chief Electoral
Officer

ELECTIONS BC, VANCOUVER

15 February, 1991

"The areas that we mostly get into are dealing with tax credits and receipts for political contributions. We don't get into the public funding of campaigns or candidates.

We don't have public funding here, other than tax credit provisions. There is no disclosure of the contributions of the respective tax payers money and there is limited disclosure with respect to the election expenditures.

We do require a statement from the parties and from each candidate that states the money that was spent and in which areas it was spent, advertising offices, travelling etc. But there is actually no requirement to produce supporting documentation for that. If it was determined there should be an audit, then they have to give up the books for a year.

A speaker can initiate an inquiry, or it can go through the Court.

If I thought something was amiss, I would report that to the Speaker. I have to prepare a report for the Speaker on the activities and conduct of the election. If anything was amiss it would be in that report.

At this stage, there generally hasn't been a proposal for spot auditing or complaint investigation because I believe both sides watch each other and can pretty much come to a fair estimation as to what the other parties are spending. When they hear what the reporting happens to be, they feel that that is pretty much in line with what they estimated, that it hasn't been much out of line.

On average, candidates spend \$70-90,000. The major parties in British Columbia probably spend \$2-3 million.

The population of British Columbia is around 3 million.

We now have on the average of 38-39,000 electorates. The number of \$70-

90,000 comes from previous elections based on 52 constituencies.

All the candidates have a two year fixed term but they only spend 6 months of that two years actually preparing the new legislation. There are no set time limits for a session in Columbia. Last year's session would have been about mid-March to around the end of July. We expect that the House will call back again early March this year. The speculation is that they will have a month long session. Generally speaking, that has been lengthened every session from March to June/July.

John Reynolds was appointed Minister of Employment last summer, but resigned in December over a dispute with the Premier.

The level of campaign expenditure would decline with a smaller size of the electoral district or where there is an increase in members or the reduction of size of the riding this would primarily be here in Vancouver.

Most of the parties spend their money promoting careers. There are two major parties social credit which probably saves a coalition in the circuit of Liberal and then you have the Democrat party, which would be equivalent to your Labor party.

Every province has its own registration with respect to representation. They tend to create a national quota based on population in the province.

In BC, prior to this redistribution of Electoral Districts, we have one enormous select problem with 2500 registered voters and a suburban electoral district returning two members with the sum of 80,000 registered voters. Redistribution was brought in to equalise the voting so you could have 2500 having a voice in the house and then 80,000. So now we have a total minus 25%. One reason for that is the way the population is distributed in British Columbia. It is a very large geographical area for a province but nearly everybody is in Vancouver with the remainder strung along the American border with a couple of large cities. So if we wanted to totally balance representation, we would have about the top 2/3 of the province returning one or two people.

I don't think that we distribute well. We haven't done any kind of analysis of transfers from the old riding to the new.

We have never had a public funding committee. As an issue it has never come up in previous elections that there should be control on this sort of thing.

10 OVERSEAS SUMMARIES

Generally speaking, experience around the world seems to be that all public funding disclosure and campaign spending limitations usually comes forward out of the point where there is a dissension about the relationship between campaign donors and politicians of one sort or another.

Funding elections is based on people saying there ought to be equal access for all candidates.

We have a maximum fixed term of five years here.

The Municipal Government has also now got a fixed term which was just amended about two years ago to implement the first of triennium elections so now, every three years, we have municipal elections on a set date. Participation is extremely low.

The tax credit starts out at 75% credit up to the first \$100 of donation. at 50% of the next and then 1/3 credit over that to a total maximum credit of \$500 but basically you can make a contribution of \$1150 and you get a \$500 credit.

The amount that comes into the parties from the tax credits is not known. It is not reported, there is no public reporting of what the parties receive as donations, who they receive it from - none of that is public.

The only time that an issue came up in the media, and we don't know if that was a public issue or a media issue, was during party leadership.

There have certainly been debates in the House that have suggested there should be something introduced, whether it will be on contributions or expenditures or both, we don't know.

The various schemes that you see across Canada probably have every option available to you whether you have material regarding contributions, how much you receive or who it comes from. There are places that don't really care where the money comes from or what individual. Personally, I think it is harder to control contributions than it is to set an expenditure level.

Some of the members are actually sponsored by corporations.

There is an average of 36,000 for the elections and 9,000 for the primary.

Those are numbers of two major parties and the other Liberal and you get all

kind of fringe candidates.

We have about on average four candidates standing for each electorate. We have some that may be eight or nine, some might be only two or three.

The Federal Commission prepares the electoral roles.

Our voters registration age is 19. (They can also drink)

If we run out of ballot papers, we have postal votes and a number of different absentee options and we also have a ballot with a blank face. If you are going away from where you are supposed to vote, it goes into a ballot envelope and it is returned to that returning officer. Absentee votes are counted at final count, which is almost two weeks after election date in the officer of the returning officer. The only different one to that is postal voting, and that is where votes from registered voters who are outside the province must be received by the returning officer by the close of the polls.

We require your signature on the original registration and we then ask for the insurance number to ensure there are no multiple votes. Although it is voluntary, we get that from about 90% of the population. When you sign your registration paper, that is compared to your original registration card at the poll.

Our smallest poll would probably have ten voters in it."

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10.2.2 ONTARIO

LEGISLATION:	Election Finances Act
REPORTING REQUIRED BY:	Candidate, Constituency Association and Party
DETAILS REQUIRED:	For contributions - name, address, amount (threshold is \$100).
FILING REQUIREMENTS:	Parties and constituency associations must file on an annual statement on or before 31st May. In a general election candidates must file within 6 months after the election.
TIME RECORDS ARE KEPT:	Six years
AVAILABILITY OF RECORDS:	Published summary in local newspapers and public inspection.
TYPE OF FUNDING:	Tax credit and reimbursement. <u>Candidates</u> - if a candidate receives 15% of the vote then they can be reimbursed up to 20% of the maximum expenditure limitation. <u>Party</u> - if a party receives 15% of the vote then can be reimbursed 5c for each elector entitled to vote. <u>Constituency Association</u> - reimbursement for the aggregate of \$2 for the first 15,000 eligible voters, \$1 for a number more than 15,000 but less than 25,000 and 25c for the number of votes above 25,000.
LIMITATIONS ON EXPENDITURE:	For parties - 40c x the number of elections

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entitled to vote.

Advertisements must only be placed in the three week period before an election.

LIMITATIONS ON CONTRIBUTIONS:

DONOR	LIMIT - \$	DONEE
Individual	\$4000	Reg Party
Company	\$750	Constituency Association (aggregate not to exceed \$3000)
Unions		
<hr/>		
Federal Political Parties	\$100	Each candidate

Also any advertising in excess of \$100 paid for by someone other than a candidate with the candidates knowledge and consent is considered to be a contribution.

Prohibitions include anonymous contributions, contributions in excess of \$25 or in someone else's name and contributions from non-residents.

Provision of any goods and services less than \$100 is not a contribution.

At fund raises any charge up to \$25 is not considered a contribution.

Membership fees more than \$25 are considered a contribution as are union payroll deduction of more than 15c per month.

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PENALTIES:

BRANCH	PENALTIES
Exceeding contribution limits	* individuals - \$1000 * corporations - \$10,000 * unions - \$10,000
Accepting excess contributions or exceeding expenditure limits	* individuals - \$1000 * parties - \$2000
Failure to file	* must vacate office
Campaign expenses exceeded	* reduction or subsidy on a dollar for dollar basis

JEAN MARC HAMEL:
LESLIE SEIDLE:

Special Consultant
Senior Research Co-ordinator

ROYAL COMMISSION ON ELECTORAL
REFORM AND PARTY FINANCING

OTTAWA, ONTARIO

15 February, 1991

"The Commission was set up in November, 1989 to look into all aspects of electoral reform, not only finance but also registration of voters and voting. For a number of reasons, we have an electoral system that has served reasonably well over the years but unfortunately, primarily over the past 10-12 years, has not kept up-to-date with some of the changes in our lifestyles. Probably the most important single element that happened was in 1983 with the adoption of the charter of rights and freedoms. Our lifestyles and conditions have changed quite substantially so, as a result, our legislation had not anticipated this. The charter branch in Section 3 is the basic rights, the right to be candidate and the right to vote.

We have direct financing, which is the reimbursement of election finances, and indirect financing of elections in the form of the tax credit scheme which seems to be working extremely well during an election. Because candidates have limits, the result following the election for many of them have a substantial surplus on top of which there is the direct subsidy of the reimbursement of 15% of their election expenses.

We have had very comprehensive legislation on the Federal level for over 15 years. We have had, throughout this century, a very elementary form of candidates reporting, where candidates had to actually report after the election on their spending and donations.

There were a number of events that led to the legislation. One was the cost of elections for political parties, which was the key factor that led to the establishment of the Committee on Election Expenses which then led to the legislation.

In the Federal arena, it is not unusual for the provinces of the state to be the laboratory's for reform, which is very much the case in Canada.

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In 1963 they adopted legislation which limited the spending of parties. Recognised parties limited the spending of candidates and provided for reimbursement for direct public funding of candidates. Up to 50% of what they spend is paid back by the Government, provided they meet certain criteria.

The Committee met for most of 1965 and 1966 and in its Report recommended that parties be recommended spending limits, but only for candidates and only for their advertising expenses. As far as public funding, the only element they recommended was free mailing for all candidates and an indirect measure tax conception. They recommended a fairly developed form of disclosure that would apply to parties as well as candidates.

In 1971, the House of Commons Committee referred to the report. It reported more along the lines of the Committee recommendations in that some areas area to be more rigorous, for example, they recommended party spending limits and in the area of disclosure, they recommended that donations be disclosed by categories such as unions, corporations, individuals and so on but no names. They proposed reimbursement for candidates but not free mailing so there was some shift in the agenda.

Then a bill was put down in 1972 following on the lines of the committee. We call it disclosure, spending limits in this case, and reimbursement and tax credit. That bill died before Parliament was dissolved and in the election of 1972 a minority government was returned. The final shape of the legislation was very much influenced by this, where the minority democratic party was able to influence not only the shape of the legislation but the priority that it was given. The legislation now has no regulations on contributions.

The spending limit is set when the election is called. They are intended to be comprehensive for a candidate and a registered political party over time. Part of our agenda in the Royal Commission debate has come up as to just how comprehensive they are. The political party agreed on guidelines and in the guidelines for candidates of the party there are some things which are considered not to be election expenses because of the legislation.

At the local level candidates are spending a smaller proportion than the party.

There are no restrictions on who donates, or how much can be donated.

The basic party financing for the two larges parties is just about half and half individuals and business and, for the Democratic party, it is half individuals,

10 OVERSEAS SUMMARIES

about 15% trade unions, and the balance from organisations. The average size of contributions is not large. The individual are increasing donations by the tax credit.

In all the parties the number of individual contributions has been relatively fine. The average contribution is not that high.

The two forms of reimbursement are;

- 1) the party get back about a quarter of their expenses providing they spend 10% of their limit.
- 2) the candidates get back half but they have to meet a special which is to get 50% of the vote in the district.

In an election year, public funding accounts for about 45% of what candidates and parties spend. If you take an election cycle, a four year period including an election year, public funding accounts for about 31% of what the party spends during that time and what the candidates spend during the election year.

The Conservative party may have spent as much as five or even six million dollars in addition to their official expenses on things which most people would consider election spending.

Our best estimate is a proportion of total election spending.

The average for a non-election year is \$10-11 million. There is a jump of traditionally \$7-8 million in an election year.

The tax credit system in Canada costs taxpayers 75c per electorate per year.

There are different forms of public funding available:

- (a) reimbursement to candidates
- (b) reimbursement to parties
- (c) annually funding to parties

A Federal system reimburses candidates who have submitted their auditor's report and personal declaration to the Chief Electoral Officer and who have been elected or obtained 15% of the vote. They are reimbursed 50% of their election expenses to a maximum of 50% of their expense limit. What is mostly important is the threshold. Many other jurisdictions have something similar to the Federal Government, like a threshold of 50%, whereas Manitoba has a threshold of 10% and Quebec a threshold of 20%.

10 OVERSEAS SUMMARIES

In terms of reimbursement to parties, Canada along with Statron, Manatoba and Ontario have this particular form of public funding. Canada reimburses political parties 22.5% of election expenses, provided that in the aggregate the party spends at least 10% of its expense limit. In 1986 the rate of reimbursement for parties was less than \$148,000 for one third the actual expenses.

Another form of public funding, is annual funding. There are only three jurisdictions in Canada that provide annual allotments of money for parties. These are annual allowances that are given each year to a political party. Much of the debate surrounding such public funding focuses on the differences between providing parties with enough money to allow them to operate their offices and not to be solely concerned with fundraising, and the potential for parties to become wards of the state. Each of the three provinces that provide annual funding for political parties uses its calculation to determine the level of funding. The real difference lies in how much money they offer and how difficult it is for both sides. One form of calculating is by multiplying the total number of valid votes per candidate of a party by an amount that has been registered annually against the person. In 1987 that amount was \$1.80 and the total amount of annual funding given to parties was \$725,000.

Another form of public funding is political contribution tax credit. Only two provinces use this system. Canada initiated the political contribution tax credit system in 1974. It has served as a model for other provinces.

Disclosure is not the biggest killer of our system, but nevertheless it is an important part of it. It allows for the importance of spending limits after election, because the reports that must be submitted have to be audited and can be questioned. It does contribute to a reasonable level of confidence in the profit in a sense that, although perhaps some of the requirements could be more rigorous, there is a high level of disclosure. We, as Canadians, are not quite as curious about these things as Americans, so it is a question of whether we don't have as rigorous a system simply because we are not as curious or whether perhaps if we had a slightly more rigorous system people would actually be more curious.

After elections the registered parties have to report within 6 months. They have to give a record of their expenses broken down by various categories, the candidates have to report within 4 months. Similar requirements apply to them and they have to report all the contributors and the name of the any contributor who has given over a \$100. Parties don't do that after an election,

they do that on an annual basis.

There is no separate post election report on contributions for political parties.

The public can inspect the returns, whether it be the parties or the candidates return. Legal responsibility is attached to the chief agent of the national level and an official agent at the local level.

The parties at the local level have no disclosure requirement and they do not register. There is no conflict of agents as they are voluntary private bodies outside the hands of the law.

At the national level, parties are recognised as legal entities actually since 1970. The party leader has the right to declare whether the candidate can use the name on the ballot, and there have been two cases where the party leader declined to do so.

The national parties have to submit a report within 6 months of the end of the calendar year. They have to submit their expenses broken down by a number of categories and the names and aggregate amounts of anyone getting over \$100 during the year.

In our system you are not allowed to donate someone else's money. It is illegal.

We are conscious in our analysis of the fact that a large donation means more at the local level than it does at the national level. If there are donations of \$10,000 at the local level that probably closed up things, because the average at the last election was \$46,000.

You will find some candidates have far too much money, and therefore the temptation to use the money for purposes other than the original intention for the contribution is always there."

10 OVERSEAS SUMMARIES

ONTARIO

Ontario campaign finance is regulated by the Election Finances Reform Act, R.S.O. 1980, C134.

Essentially a contribution is valued as the giving of something of value provided it is not goods produced by way of voluntary labour or the provision of individual voluntary services. The main point being whether or not some outside compensation results from the donation and whether or not it is a truly voluntary donation. If the value of the goods and services is not produced voluntarily, the contributor must be valued at the commercial retail basis in the same market in which the goods or services would normally be available for purchase or for hire.

The minimum cut off for a contribution is one hundred dollars and contributors below this amount are not viewed as contributors for the purpose of this legislation.

Contributions cannot be in the form of a loan unless they come from a registered political party (s37(2)).

If a third party, with the knowledge and concern of the party or candidate concerned advertises or published information which is the party or candidate then this expenditure shall be deemed to be a contribution for the purposes of the legislation providing that the amount of expenditure exceeds \$100. (s23(1)).

Any money of which belongs to the candidate and which is used in the election is also viewed of as a contribution (s19(3)).

Leadership contests or pre-selection conventions are excluded for compliance with this Act and there are no limits on contributions - either who may contribute or how much and there are no disclosure requirements.

In terms of donations, contributions may be made only by persons, corporations and trade unions. If a contribution is given to a unincorporated association or organisation, it is still deemed to be an individual donation as the unincorporated associated is required to maintain a list of the sources of donations and the amounts of money received. Also, any donation in excess of \$10 must only be made by cheque and must have the name of the contributor legibly printed on it. It must also be signed by the contributor and drawn on an account in the contributors name. No anonymous contributions over ten dollars are permitted.

10 OVERSEAS SUMMARIES

Section 20(1) of the legislation also requires any contribution to actually belong to the person who is making the donation ie. funds given to a person for the purpose of making a contribution cannot be accepted.

A transfer of funds, goods or services between ties in a political party are not regarded as contributions but records of the original source must still be retained (s22).

As to transfers of money between federal and state parties, a federal party may only transfer up to one hundred dollars per candidate. These funds are also not regarded as contributions and the true source must be recorded for each donation. (s21).

This section is designed to ensure that the contributors are prevented from channelling money to a state party via a federal party as there are no limits on the amount of money one can contribute to a federal party.

All contributions must be accepted by the Treasurer or Chief Financial Officer for a candidate. No contribution may be accepted by a candidate (s33).

Donations to parties may be accepted by candidates but not by trade unions or companies (s35).

S17 of the Act prevents anyone accepting anonymous donations over ten dollars. If the contributors identity cannot be ascertained, the money must be forwarded to the Commission on Election Contributions and Expenses. If, however, the contributors identity can be determined the money must be returned.

INTERPROVINCIAL CONTRIBUTIONS

Interprovincial contributions are prohibited. If such a contribution occurs, this donation must be returned.

Any contributions to an organisation which is not registered under the Act are prohibited.

MAXIMUM CONTRIBUTIONS

The Act also restricts the amount of money which may be contributed ie:

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	PARTY	REGIONAL CONSTITUENCY ASSOCIATION	REGIONAL CANDIDATE
PERSON	\$2,000 or tax credit of \$500 & donation of \$1,500	\$500	\$500
CORPORATION	\$2,000 or \$4,000 max. tax credit	\$500	\$500
TRADE UNION	\$2,000	\$500	\$500

This is distinct from the situation where the Federal Government, British Columbia and Manitoba which restricts the amount of money which can be spent on an election.

ELECTION EXPENSES

There is no definition of election expenses in the legislation.

PARTY EXPENDITURE

As mentioned there are no restrictions on the amount of money which may be spent in an election campaign except as detailed by s36(1) and s(39).

S30(1) refers to the limit on advertising expenditure which may be expended during an election campaign. This amount is calculated by multiplying the total number of names which appear on the list of voters in each electorate by twenty five cents for a general election or by fifty cents for a by-election.

Advertising expenses refer to expenses incurred for broadcasting purposes or advertising in newspaper, journals, magazines or outdoor display.

The legislation also ensures that the rate charges is a fair commercial rate and s38(4) states that the rate charges must not exceed the lowest commercially charged rate.

The Act also states that if any third party advertises or undertakes advertising on behalf of a candidate, party or registered constituency association, then this must be

treated as a contribution as defined in s19(1). This, of course, is presuming that the candidate is aware of this advertising.

Thus, the legislation limits the area of expenditure which is traditionally the most expensive area of an election campaign. Candidates and parties are still permitted to spend as much as they can collect on other areas.

ELECTION RETURNS

Returns must be submitted by each party, candidate and constituency association.

All donations in excess of \$10 must be recorded by the Chief Financial Officer and the name and address of the donor must also be recorded. This return must be filed within six months of the campaign period. Annual returns must also be filed setting out all contributions received.

If for any reason the Chief Financial Officer fails to file the return, then the candidate is ineligible to stand for any election including the next general election unless it is field. If the candidate is elected and then neglects to file his return, the member is not allowed to resume their seat and, if the file is still not lodged after six days, the seat will be declared vacant (s44(1)).

The Commission on Election Contributions and Expenses must also publish information relating to each candidate's contributions and expenditure in a newspaper which has a general circulation in the electorate that the member stood in.

REIMBURSEMENT

The Act provides for partial reimbursement of election expenditure for candidates only.

S45(1) sets a threshold of 15% of the vote as entitlement to be reimbursed by the Commission. Candidates must get at least this percentage of the vote in order to qualify for funding.

Funding is worked out by paying whichever is the smaller amount that is, either:-

- (1) The amount of money spent on election expenses or
- (2) 16 cents per first 25,000 voters and
14 cents per additional voter.

No payment is made unless the return previously referred to is lodged.

The Joint Select Committee upon the Proceess and Funding of the Electoral System

10 OVERSEAS SUMMARIES

COMMISSION ON ELECTION CONTRIBUTIONS AND EXPENSES

The Commission is set up under s2 of the Act and comprises of nominees from each party which has firstly elected representatives in the Assembly and secondly which has fielded candidates in at least 50% of the electorates at the last general election in the province.

Appointments do not exceed a five year term and they are nominated by the Leader of the Party. Appointees may also not be Members of Parliament or candidates or hold any type of political office.

All prosecutions require the consent of the Commission s54.

OFFENCES

S47(1) states that failure of a treasurer to lodge a s43 return results in a fine of not more than \$2,000 for the constituency association and candidate is also liable to the fine of not more than \$1,000.

S49 says that any other contravention is punishable by a fine of up to \$1,000.

10.2.3 QUEBEC

LEGISLATION:	Election Act
REPORTING REQUIRED BY:	Candidate, Constituency Association and Party
DETAILS REQUIRED:	For contributions - name, address and amount (the threshold is \$100). For expenditure (other than electoral) any amounts spent in excess of \$25. For electoral expenditure any amount spent in excess of \$50 is required to be discussed.
FILING REQUIREMENTS:	Candidates must file within 90 days of the election. Parties and Constituency Associations must file annually - due April 1st for previous year. Independents must file both 90 days after an election and on April 1st the year after the election.
TIME RECORDS ARE KEPT FOR:	Two years minimum.
AVAILABILITY OF RECORDS:	Public inspection and publication of summaries.
TYPE OF FUNDING:	Tax credit, reimbursement and public funding. <u>Tax credit:</u> Taxpayers can deduct from tax payable 50% of the first \$280 for a maximum deduction of \$140. <u>Reimbursement:</u> Once candidates receive

10 OVERSEAS SUMMARIES

at least 20% of the vote they are entitled to be reimbursed an amount equal to 50% of election expenses incurred provided they were incurred in compliance with the legislation.

Public Funding: A sum of money equal to 25c x the number of election on the roll is divided amongst the parties according to the votes received by them at the last election the money is paid monthly.

LIMITATIONS ON EXPENDITURE:

Election expenses must not exceed 25c per elector in the aggregate of electorates in which a party has candidates.

Election expenses for candidates must not exceed 80c per elector in a general election or \$1.05 per elector in a by-election.

Party agents must not incur election expenses in by-elections.

LIMITATIONS ON CONTRIBUTIONS:

Elections may only contribute \$3,000 per year.

No one else is entitled to make contributions.

Anonymous contributions over \$100 and cash contributions over \$100 are prohibited.

PENALTIES:

Violating contribution limits - fine of between \$1,000 to \$25,000; exceeding expenditure limits or filing a false return - \$100 to \$10,000 fine and the offence is viewed as corrupt with a jail sentence of one month to one year also being imposed; failure to file - disqualifications, \$500 fine and \$50 per day until statement is filed.

PIERRE COTE:

Director General des Elections
du Quebec
President de la Commission de
la representation

QUEBEC

21 February, 1991

"I am a Chief Electoral Officer, and my bosses are the National Assembly.

We have three major responsibilities - the general election, the by-election or referendum.

The second branch deal with the financing of the political parties. We also deal with the boundaries of the electoral districts.

We are what we call in the Act an advisory council. I am the chairperson of the advisory council. The members of that council comprise of three representatives from each three political parties which are in the Assembly. For instance, right now there are three political parties which have representatives in National Assembly so there are nine members on the advisory council. There must be at least one Member of Parliament. The advisory council is a very special institution and is very useful to us because when I need some advice or suggestion or to put to effect some part from the Act, I call a meeting with the council and ask them. It is a private meeting, and with the help of that council we are able to reach agreement of the amendments that we may make to the Election Act.

Occasionally we have a special amendment, the last one for instance was to help the people in the province to organise a referendum and an election and also the electoral map of the province.

There are 1600 municipalities in Quebec. The population in Parliament is 6 million people. We have about 4,000,200 voters.

When a political party is authorised, it has the possibility to raise money. In each case, the candidate asks the individual, not a corporation not a company, to give money to a political party. On the provincial level the maximum amount that one person can give to a political party per year is \$3,000. But every year there is a public disclosure of the administration of the political

10 OVERSEAS SUMMARIES

party. We make public each year a financial report coming from each political party. A political party must disclose every donation that is over \$100. They are allowed to receive money all year long not only during the electoral campaign. The main thing is to try to find a solution to the problem that was big in the 60's in the province (the special fund that was the way of doing things in politics and the hidden funds coming from corporations and companies). We decided that we must have a financing tax that would provide what I just said.

On a municipal level the maximum amount of contribution is \$750 a year. On the provincial level we have 15 political parties, and if someone wanted to give \$3,000 to each of the parties it is allowed.

On the provincial level the principal objectives for the council is to ensure control of financing of political parties by knowing their total expenditures, to allow electoral loan contributions financing of political parties and to encourage small contribution.

The main purpose of the Act is the abolition and prohibition of the practice involving secret election funds.

We also have in the Act that a party must have an official agent. We call that person an electoral representative when it is not in electoral period. The official agent has the authority to collect the money and to issue the receipt.

During an electoral campaign it is forbidden to add a third party of 1,000 members.

Each political party receives an amount of money from the Government to administer their costs.

The tax credit can deduct from the contacts report, but it is equal to 50% of the first \$280 in addition to what they get from Federal government.

If there is a rumour going around that there may be a fraud going on or money not being disclosed. I have total power to enquire even if it is something that has happened in the newspaper. According to the Act I have the total power, and I have to give notice, although it would depend on the enquiry as to how much. I have three private investigators who are working in conjunction with the law department here and usually we receive a complaint from a political party and we just tell them we are going to enquire what is going on. After that the procedure is when I receive the report, our three main people decide

if I will take up a law suit or not. Firstly there must be a real breach of the Act. Secondly I must have enough proof to have some success in Court, and thirdly, I must have an example that I am not aiming to prosecute in every case. Often, if there is a breach in the Act we will send a letter to the person involved and say you have committed a wrong doing, but if you are more careful we will not prosecute the committee. First time you get a warning. In the political campaign, there are a lot of people who are on a crusade and they don't know all the provisions of the Act. So we first of all we ask the association to provide the information.

A contributor has to be a qualified voter and resident in Quebec and must also be a Canadian citizen.

During a short period of 45 days, [during an election period] 4 years long, advertising is not allowed.

We have a simple prohibition of law against third party advertising. That has not been tested in the provincial Supreme Court. It has been in action since 1977.

Last campaign there was a big issue for the opening of stores on Sunday. But I sent them letters saying that they were not allowed to advertise.

Electoral expenses for candidates will be reimbursed after election.

At the beginning of a campaign, each candidate is allowed to receive 50% of the total amount of money that he may claim at the end of the election.

The whole political financing, effectively, is in two categories. There is political financing of registered political parties, which is only annual and that is based on the percentage of the vote those registered parties got at the last election and there is no threshold - if they only get 1% of the vote they only get 1% of the money. Then there is reimbursement of people at elections but only for the candidates.

Exempted are transfer of funds between the various authorised party authorities. We authorise the authority. One of the main things is the public opinion.

We have a system where all our registered parties have to report annually there income and expenditure.

We have a redistribution of our boundaries each general election. We only

10 OVERSEAS SUMMARIES

have census figures every 10 years. Enumeration is voluntary. You do not have to give your name to vote. We have public campaigns to encourage people to vote.

In September, 1989 we had 3.3 million voting out of 4.6 million."

DISSENTING OPINIONS



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**JOINT SELECT COMMITTEE ON THE PROCESS
AND FUNDING OF THE ELECTORAL SYSTEM
DISSENTING REPORT**

HON ELISABETH KIRKBY, MLC

SUMMARY

Dissenting opinion on Recommendation 1

That a full definition of what is meant by the terms campaign contribution, political contribution and/ or contribution be included in NSW legislation.

That this wording be similar to the wording in the Texas Election Code.

The current inadequate situation should not continue.

Dissenting opinion on Recommendation 3

That the minimum threshold for a contribution to a party or group be lowered from \$2 500 to \$1 500.

That the minimum threshold for a contribution to a candidate be lowered from \$500 to \$200.

That the Electoral Funding Authority be given the power to conduct random audits on suspicion.

Dissenting opinion on Recommendation 4

That any third party that incurs expenditure in excess of \$200 must file a return indicating whether this money was obtained by way of donations and if so, the true source of these donations.

That persons making donations should be required to declare that they are the true source of the donation.

Dissenting opinion on Recommendation 6

That the definition of "fund-raiser" in the legislation state that the amount of profit received on each ticket (ie. excluding the cost of food, printing and beverages) shall be declared as a political contribution on the candidate's declaration form if it is over the \$200 threshold.

Dissenting Opinion on Recommendation 7

That a system of pre-poll disclosure be introduced so voters can determine who is financing or supporting a candidate prior to casting their vote.

That no donation in excess of the threshold limit may be accepted after the date of the election for a period of 3 months.

That if the amount of money to be spent by a third party is comprised of membership fees of no more than \$200 per member per annum, then all that is required to be disclosed is the number of members times the membership fee.

If fees are greater than \$200 then the usual disclosure requirements will apply.

Error in Recommendation 8

Recommendation that any donation despatched with membership fees be treated as a political contribution already exists, to the best of my knowledge.

Dissenting opinion on Recommendation 14

That the goal of political education be carried out by a special section of the Electoral Commission or the publication of a free Voter Guide.

Dissenting Opinion on Recommendation 15

Retrospective declarations should not only apply to Independents but also to political parties.

Dissenting Opinion on Recommendation 16

A candidate guilty of knowingly withholding or giving false information in a return lodged by the agent should have his/her seat declared vacant.

Dissenting Opinion on Recommendation 17

The solicitation of campaign funds in exchange for the awarding of or promise of awarding a contract should be made a separate offence.

Dissenting Opinion on Recommendation 18

That a more explicit definition of electoral expenditure be inserted in the legislation.

Dissenting Opinion on Recommendation 19

Any third party that has incurred electoral expenditure in excess of \$200 should be able to be approached by the Election Funding Authority and required to furnish returns of expenditure.

Dissenting Opinion on Recommendation 20

Campaign costs will not necessarily increase with fixed-term parliaments.

Dissenting Opinion on Recommendation 29

That the Electoral Funding Authority be made more independent by including the Deputy Electoral Commissioner for NSW and either the Chief Accountant of the Accounting and Funds Division of the NSW Department of Treasury or the Director of the Internal Audit Bureau of the NSW Treasury on the Board of the EFA. The Chairman shall be the Electoral Commissioner for NSW.

Dissenting Opinion on Recommendation 30

That local government candidates and aldermen be subject to the same disclosure requirements as occurs at state level for candidates, parties and groups.

Additional Recommendation 1

That a ceiling of \$200 be placed on the amount of cash which may be donated to a candidate, party or group.

Additional Recommendation 2

That explicit discounting of professional or other services be detailed in the declaration of in-kind donations. As a market value is required to be declared, the accuracy of the value placed on the donation can be further verified by the Election Funding Authority.

Introduction

Members of parliament are entrusted with the power to make decisions which affect the people who live in a State. It is therefore imperative that they act and be seen to act with impartiality and in the public interest.

While there is nothing wrong in wanting to give or receive donations to political parties or candidates, per se, a problem arises when donations are made in order to purchase influence.

We may not be able to completely dissect the motives of those involved in public decision-making, but disclosure of political donations and their source is crucial to the ability of the public to evaluate the pressure brought to bear on a Member of Parliament. It would not matter if the Tobacco Institute or some other powerful and wealthy lobby group gave large donations to political parties as long as voters were aware of the source of election and publicity funds and could make their own judgements accordingly.

At the risk of stating the obvious, money is of the utmost importance for a politician or a political party to operate successfully. Money, therefore, strikes at the very ability of a political party to survive and thrive and clearly affects the mindset of those who receive significant donations from a single source, whether they be conscious of it or not.

Mr Kevin Zervos of the ICAC told the Committee: "Serious difficulty arises distinguishing between the honest and the corrupt when donations are made secretly and not openly and publicly...If official corruption is to be minimised, public officials cannot be allowed to have confidential or private financial dealings which could give rise to a conflict of interest." [Evidence, 25/11/91, p.3-4]

I believe that the aim of disclosure laws should be to:

- a) discourage attempts to purchase influence
 - b) to encourage openness where not only is there no corruption, but also no appearance of corruption.
- or as Mr Kevin Zervos put it, "so that disclosure of political donations is effective, full and frank." [Evidence, 25/11/91, p.11]

In this respect, the current laws relating to disclosure are in urgent need of reform. Although one of the objects of the current Election Funding Act is to ensure the public disclosure of substantial donations made to political parties or candidates for electoral purposes, there are two blatant loopholes because donations can be channelled through third parties and thereby mask the true source of a donation and because of an artificial distinction between donations for administrative and electoral purposes which allows donations for administrative purposes to go undeclared.

More importantly, it is the spirit of the law that is being violated.

One of the aims of the committee was to "recommend ways in which the system of election funding could be improved in relation to:

- a) The disclosure of true sources of funding to candidates, groups and political parties; and
- b) The disclosure of the expenditure of funds by candidates, groups and political parties."

The recommendations of the committee [3,4,6] relating to thresholds for the declaration of donations clearly do not fulfil this objective and in some instances, are a retrograde step.

It is hard to avoid the conclusion that there is a lack of political will to reform the laws. Mr Roden, who conducted the ICAC investigation into North Coast Land Development put it neatly when he wrote in his report:

"Here is a law that is meant to govern the lawmakers. It is being either broken and not enforced, or avoided and not tightened. That provides little incentive to others to obey the law that governs them and provides a poor example in the campaign against corruption." [Report on Investigation into North Coast Land Development, p.531]

Dissenting Opinion on Recommendation 1 Definition of Contributions

At present, there is NO definition of either a political contribution or contribution in the Election Funding Act 1981.

Only section 87 of the Act could be said to approach a definition but assumes a prior knowledge of what a political contribution is by specifying those that are to be disclosed.

The loopholes in this "definition" are glaring and have been documented in reports such as the ICAC Report on North Coast Land Development.

The loopholes include the exemption of payments made on the condition that the money is not be used for electoral expenditure (ie.the false distinction between electoral and administrative expenses); and the failure to acknowledge donations in kind.

The recommendation of the majority of the Committee merely preserves the current inadequate situation. I believe that the need for a tightening of the definition is already evident.

This Committee has already been discussing this issue, amongst others, for almost two years. The definition must be change now.

Having said that, I acknowledge the need to find a definition which is neither too limited nor too broad.

The wording should be similar to that in the Texas Election Code:

1. Campaign contributions is defined as "a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution."

2. Political contributions is defined as "a campaign contribution or an office holder contribution."

Dissenting opinion on Recommendation 3.

Threshold for contributions to be declared

On the question of threshold for a contribution to a party or group to be declared, the committee has actually recommended an increase in the threshold.

The minimum threshold for a contribution to a party or group to be declared will be raised from \$2 500 to \$10 000.

The minimum threshold for a contribution to a candidate will be raised from \$500 to \$1 500.

These recommendations are clearly conducive to greater secrecy.

While the size of a political donation has a bearing on its ability to influence a political decision, the overall question is the secrecy surrounding a donation. The fewer donations that are exempt from disclosure, the better. This is even without going into the issue of donations being split up in order to use the anonymity afforded by thresholds.

The committee heard evidence in favour of far greater openness in the disclosure of donations from Mr Kevin Zervos of the ICAC and Dr Ernie Chaples of the Department of Government at Sydney University.

However, there were also many arguments put forth against tighter disclosure laws. It is necessary to analyse these.

First there is the argument that disclosure invades the privacy of a donor; that a donor has the right to spend money as they wish. This argument assumes that a donor is acting in a purely private capacity when giving money to a political party. It is an invalid assumption because political parties have a direct influence on public decisions and affairs and money given to political candidates or parties has definite public consequences.

As Dr Chaples said to the Committee:

"political parties and candidates are not like the Smith Family, people really are not involved in political campaigns for altruistic purposes". [Evidence, 28/10/91, p.12]

There was also the argument that greater disclosure would involve administrative costs that could not be substantiated. This kind of cost-benefit argument is inherent in the Committee's recommendation when arguing that thresholds should be increased because it "expresses confidence in the good faith of overwhelming majority of political candidates who comply with these requirements". It all comes down to which principle one feels is more important. And while we are not unheeded of cost and practicality of the mechanisms which must be in place to administer tighter disclosure laws, we believe that the political process should be conducted as far as possible, in a spirit of openness and accountability.

I also question the administrative burden of tighter disclosure laws. As Senator Karin Sowada told the Committee:

"I would point out again the issue that parties and candidates have had to set up...an internal party regime to comply, with the existing funding and disclosure laws that are in place both in NSW and federally.

So, to extend the disclosure mechanism to cover all income would simply extend the organisational processes already in place." [Evidence, 28/10/91, p.69]

But foremost, there is the unstated fear that tighter disclosure laws will scare away potential donors. The question must be asked as to what these donors have to hide if their donations are not harmful to the public interest. Again quoting Dr Chaples,

"There are many people who would be totally discouraged from being public donors who are better left out of the process, quite frankly." [Evidence, 28/10/91, p.21]

Other individuals and groups who have a valid reason for donating, will still do so. What would be considered "valid" would be tied to public perceptions of propriety, which is what should happen in the political process anyway.

Finally, there is the suggestion that low thresholds encourage the splitting up of donations. However, this would be true of any threshold. It is nevertheless, more difficult to disguise splitting up if the threshold is lower and certainly more inconvenient.

Ultimately, I would like to see full disclosure. It is only through full disclosure that we could avoid splitting up of funds. But failing that, state laws must be brought in line with Federal provisions which set thresholds of \$1 500 for groups or parties and \$200 for individual.

It is also important that laws be enforceable, particularly through the power of random audit on suspicion, by a truly independent body. At the moment, the Electoral Funding Authority has the power under s110 of the Electoral Funding Act to inspect party books and records and relevant bankers' books and has the power to enter premises for the purpose. Unfortunately, this power can only be exercised if there is no (privately appointed) auditor's certificate accompanying a declaration. Mr Adrian Roden in the ICAC Report on North Coast Land Development commented that "a provision in those terms is not capable of being 'complied with'". There has yet to be an inspection carried out or even an inspector appointed for such a purpose. [Report on Investigation into North Coast Land Development, p.535].

The Electoral Funding Authority should be made more independent and constituted by the Electoral Commissioner, Secretary of the NSW Electoral Commission and two persons nominated and agreed to by both the Leader of the Government and the Leader of the Opposition. [Evidence, 25/10/91, p.6]

Dissenting Opinion on Recommendation 4.

Third Parties

While it is important that the Committee has recommended that any third party that incurs expenditure in excess of \$1 500 indicating whether this money was obtained by way of donations and if so, the true source of these donations, the thresholds must be brought in line with Federal requirements and also with those applying to political parties.

As Mr Robert Maher told the Committee:

"I think they [third parties] should come within the same parameters as what political parties do...They certainly do participate in the process and they don't only participate in the process during elections either." [Evidence, 9/12/91]

We must not allow donors to hide behind third parties.

Federal law provides that any third party that incurs expenditure of \$200 or more must furnish a return and indicate what they spent on the campaign and give details of gifts as well. State law must be brought in line with this.

I also believe that one way of tracking down the true source of a donation would be to place the onus on the donor to declare that they are the true source of the donation. This declaration could be made on the back of a receipt.

Dissenting Opinion on Recommendation 6.

Definition of "fund-raiser".

Furthermore, the Committee's recommendation that an event not be considered a "fundraiser" unless the profit on each ticket exceeds \$1 500 is quite ridiculous.

The point has often been made that it is very easy for the true source of a donation to be hidden through the purchase of tickets for a fundraiser.

It is easy to conceive a situation where someone wishing to donate \$14 000 anonymously could do so simply by buying 10 tickets to an event where there was a profit of \$1 400 on each ticket.

There is an added danger in that with this kind of event one expects multiple units of equal amounts to be donated all around the same time. ie splitting up is facilitated.

A profit of \$200 on a ticket should be declared as a donation, coming as it would in the form of cash.

Dissenting Opinion on Recommendation 7

Pre-Poll Disclosure

A system of pre-poll disclosure be introduced so voters can determine who is financing or supporting a candidate prior to casting their vote.

Timing of disclosure is critical and disclosure after an election does not give voters the opportunity to make an informed decision about the source of funds that a candidate is receiving.

Arguments against this type of disclosure do not take into account the enormous technological developments made in recent years.

All politicians and most candidates would either have or be able to arrange access to facsimile machines, computers in order that returns be filed by due dates.

Also, the returning officers for each electorate could be made the depository for these disclosure forms prior to the election. These forms could then be forwarded to the Election Funding Authority at a later date. This would ensure that the Election Funding Authority is not deluged with information at a late point in time.

This works well overseas and some states have up to seven types of financial reports required. For example, Ohio requires:

1. pre-primary (12 days prior)
2. post-primary election (38 days post)
3. pre-general election (12 days prior)
4. post-general election (38 post)
5. pre-special election (12 days prior)
6. post-special election (38 days post)
7. annual (last business day in January)

Reports should be deemed filed only upon receipt. A postmark

is not sufficient.

Michigan also has a similar type of reporting system and has pre-poll disclosure statements due 11 days before the election, post-election statements due 30 days after the election as well as annual statements due before 31 January every year.

In order that donors are discouraged from donating large sums of money after the last date for disclosure passes, we recommend that any donation in excess of \$1 500 be instantly reported to the relevant Returning Officer by telephone or telegram in order that details may be displayed at the polling places.

No donation in excess of the threshold limit may be accepted after the date of the election for a period of three months. We recommend this so that donors are discouraged from donating after the election in order to avoid being declared prior to the election. Normal business practice also ensure that most bills are paid within a three month period.

If total contributions and expenditure for a candidate in an election period is under \$200 then I recommend that a reporting waiver be obtained from the Election Funding Authority.

Pre-poll disclosure will also be facilitated if the referendum for fixed-term parliaments is passed.

Furthermore, the recommendation that membership fees be declared simply by multiplying the membership fee by the number of members should only apply to annual membership fees below \$200. It is not likely that many legitimate fees will be greater than this amount and the intention is to prevent large donations from being split up and disguised as membership fees.

Dissenting Opinion on Recommendation 8.

The Committee recommendation that any donation despatched with membership fees be treated as a political contribution and disclosed if over the disclosure limit is erroneous as, to the best of my knowledge, this situation already exists.

Dissenting Opinion on Recommendation 14. Political Education Fund

The Committee's recommendation that parties be given money from a fund for the purpose of political education has two problems.

First, it is a dubious proposition that political parties be given money to carry out "political education". One must seriously question the way in which parties will choose to interpret the term, "political education". The existing

political education carried out by parties would be highly partisan.

The important task of educating the public about the political system would be far better served if carried out by an impartial body such as a special section of the Electoral Commission.

Second, the proposal that money from the political education fund be allocated on the basis of the formal vote received by each party in the preceding election for the Legislative Council militates against new political parties and independents becoming known to the public.

We believe that the goal of political education would be better served by a special section of the Electoral Commission or the publication of a free booklet containing information on all candidates standing for election. This is a procedure used in New York City.

A New York Voter Guide is issued by the New York Campaign Finance Board. It contains general information about the electorate, polling booths, date of the election, how to vote, voters' rights, electoral finance. Candidate information includes party affiliation, occupation, occupational and educational background, organisational affiliations, public sector experience, a photo and a half page mission statement.

Clearly this is a fairer system than the one suggested by the majority of the committee.

Dissenting Opinion on Recommendation 15

Retrospective Declarations for Independents

In my dissenting opinion on recommendation 7, I indicated my support for pre-poll disclosure. The recommendation by the Committee is a good one but discriminates against Independents. Retrospective declarations should apply equally to political parties.

Dissenting Opinion on Recommendation 16

Auditing

I welcome the Committee recommendation that the legislation be amended so that a candidate will be guilty of an offence where he/she has knowingly withheld or given false information which has been included in the return lodged by the agent.

However, it would be a travesty of justice if this particular offence only resulted in a financial penalty, as is recommended by the committee.

A candidate guilty of knowingly withholding or giving false information in a return lodged by the agent should have his/her seat declared vacant.

Dissenting Opinion on Recommendation 17

Funds in Exchange for Contracts

I disagree with the advice that it is not necessary to create a separate offence for any solicitation for campaign funds in exchange for the awarding or promise of awarding of a contract.

The argument that a separate offence is not needed provided that members of the public can easily locate the section in the legislation regarding offences shows an inadequate grasp of reality. The general public, in my experience, usually have difficulty locating various provisions in legislation.

The creation of a separate offence would assist in terms of clarity and help alert the public as to when the law is being broken.

Dissenting Opinion on Recommendation 18

Definition of Electoral Expenditure

Contrary to the opinion of the majority, electoral expenditure is insufficiently defined within the Act. Section 55 merely states in brief and general terms what electoral expenditure refers to and does not refer to. Section 88 of the Act defines the term by listing various kinds of purchases and subsection (3) (c) still makes the false distinction between electoral expenditure and administrative expenditure.

Definitions in some overseas have succeeded in being more conceptually specific. Most particularly, the Texas Election Act defines five related terms - campaign expenditure, expenditure, direct campaign expenditure, office holder expenditure and political expenditure.

There should be a more specific definition of electoral expenditure inserted in the legislation.

Dissenting opinion in Recommendation 19

Third Parties

In line with my dissenting opinion on recommendation 4, any third party that has incurred electoral expenditure in excess of \$200, should be able to be approached by the Election Funding Authority and be required to furnish returns of expenditure.

The \$1 500 figure is too high and not in line with Federal legislation.

Dissenting Opinion on Recommendation 20

Campaign Costs and Fixed Term Parliaments

I disagree with the statement that "one of the repercussions of fixed term parliaments may be increased campaign costs and an increased election season."

To the best of my knowledge, the Electoral Commission interprets the existing legislation so that campaign costs are those costs incurred strictly from the time an election is called until election day as distinct from the time that a person has been endorsed as a candidate.

As far as I am aware, there has been no indication of the time-frame which will apply for recoverable campaign costs when four-year terms are introduced.

Dissenting Opinion on Recommendation 29

A more independent Electoral Funding Authority

A more independently constituted Electoral Funding Authority would be in the public interest.

While I do not wish to cast aspersions on the members of the Electoral Funding Authority as currently constituted, I believe that there is a potential for conflict of interest because of the appointment of a member by the Premier and the Leader of the Opposition, respectively.

Mr Kevin Zervos told the committee, "if you want to have a truly independent organisation and you want to maintain and enhance public support and confidence in the parliamentary system, it is important that you have an organisation that is not made up of people who have some vested interest in this particular area." [Evidence, 25/11/91, p.6]

One option suggested to the committee would be to have a fully politicised EFA, allowing for the appointment of representatives from the Democrats, Call to Australia and Independents. Apart from the conflict of interest issue, there would also be the question of whether cross-benchers would be gaining a disproportionate level of representation on the EFA.

Ultimately, it would be best to make the EFA into a purely bureaucratic entity.

But for practical reasons a compromise solution would be to have the EFA consist of 5 members: the Chairman shall be the Electoral Commissioner for NSW; the other members will be the Deputy Electoral Commissioner for NSW; either the Chief Accountant of the Accounting and Funds Division of the NSW Treasury or the Director of the Internal Audit Bureau of the NSW Treasury; and one appointee each chosen by the Premier and the Leader of the Opposition.

Dissenting Opinion on Recommendation 30

Disclosure for Local Government Elections

In the Australian Democrats' original submission to the committee, it was pointed out that:

"Local Councils are directly responsible for building

applications, planning by-laws and decision that affect local investment opportunities and the quality of life of local residents. The potential for corrupt conduct is perhaps greater, given the nature of the decisions and responsibilities of Councils, and the fact that for many citizens, the first and only direct contact with any tier of Government is with Municipal officials."

Allegations of substantial donations by developers to Sydney City Council's Civic Reform Group and the findings of the ICAC investigation into North Coast Land Development make it clear that there is no reason why Local Council election activities should be exempt from disclosure laws.

Mr Adrian Roden wrote in his report,

"Elected members of Local Councils can be subject to the same pressures and the same temptations as their counterparts in State Parliament". [Report on Investigation into North Coast Land Development, p.536]

Very large amounts of money are involved, particularly in relation to development projects.

Therefore, to preserve the integrity of electoral disclosure, the regime should extend to Local Government level.

Additional Recommendation 1.

Ceilings on Cash Donations

We recommend that a ceiling of \$200 be placed on the amount of cash (as opposed to cheque) which may be donated to a candidate, party or group.

This is necessary to discourage "allegations of brown paper bags of money". There is a real need to lift politicians above any such perceptions. Indeed, Dr Chaples told the Committee: "I have seen in the years that I have been here a steady deterioration and belief in and acceptance of and trust in the general political system including parliamentarians. They go down the list to now where they are really vying with used car salesmen and journalists for a low place on the totem pole."

To place politicians beyond reproach, a threshold of \$200 should apply. These are significant amounts of anonymous cash. Furthermore, a lower threshold makes it more difficult for large amounts to be split up without drawing attention.

The giving or soliciting of campaign contributions (except for fundraiser functions) should be prohibited in Parliament House or the grounds.

There is a similar section in the South Dakota legislation which states in ss 8-13-1336 that

"campaign contributions may not be made on the Capitol complex or grounds"

(South Dakota, Campaign Finance Reporting Guidelines, 1992, p.13)

I also note that overseas campaign contributions have so flagrantly flouted the spirit of the law that situations such as "Chickengate" have occurred. That is, a chicken magnate started handing out \$10 000 cheques during a debate on the floor of the Texas State Senate and, although the behaviour was quite legal, it sparked an uproar over the "influence peddling" widespread throughout the political system. (The Economist, 26 January, 1991, p.30)

The Texas system has a number of similarities to NSW in that there are no limits on campaign contributions as long as the contribution is disclosed, no limits on spending and a lack of power in regard to enforcement.

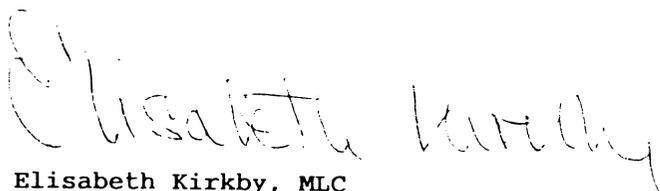
This type of scenario should be prevented from ever happening and a similar clause should be included in NSW legislation.

Additional Recommendation 2

Discounting of Services to be Detailed as In-kind Donation

Explicit discounting of professional or other services should be detailed in the declaration of in-kind donations. As a market value is required to be declared, the accuracy of the value placed on the donation can be further verified by the Election Funding Authority.

This is a loophole, which, if exploited, could escape disclosure provisions.



Elisabeth Kirkby, MLC
AUSTRALIAN DEMOCRATS



DISSENTING OPINION

DISAGREEMENT ON RECOMMENDATIONS

1. I dissent from Recommendation 3 which states that the minimum threshold for a contribution to a party or group to be declared be raised to \$10 000 and the minimum threshold for a contribution to a candidate to be declared be raised to \$1500.

I believe that the current legislative requirements are more than adequate and there is no need for this increase.

I dissent from Recommendation 3 which states that no ceiling be placed on the amount of money a candidate may receive in the form of political contributions and, on the contrary, recommend that a ceiling be placed upon the amount of money a candidate for political office may receive from donations.

I further recommend that this limit on contributions be on both the size of the individual donation that a candidate may receive as well as the total amount of money a candidate may receive from all donations in the relevant election period.

That is, no candidate may accept a contribution in excess of \$2,000 from the date of the return of writs from one election to the next election.

Further no candidate may receive from any election period funds in excess of \$50,000 regardless of the source of these funds.

The reason for this recommendation is that, despite what some participants in the political process may say, the fact remains that one must seriously question why large financial donations are given to political parties and candidates. One does not normally give large sums of money in return for nothing.

2. I dissent from the first sentence in Recommendation 14.

That is "that the effective functioning of the political party system is essential to the operation of the Westminster parliamentary form of government".

I believe that the party system has not helped nor aided the effective functioning of within Australia and instead has contributed to a climate of secrecy.

3. I recommend that Recommendation 20 be strengthened and I believe that the only way to effectively limit the effects of corruption in the political process is by instituting a system of limits on expenditure.

This would effectively ensure that opportunities for influence through donations are lessened.

I believe that a system of expenditure limits would also ensure that imbalances between candidates seeking election are reduced.

I recommend this issue be further investigated by the Committee Secretariat.

4. I dissent from Recommendation 31 which states that the state government should urge the federal government to make donations to political campaigns tax deductible.

I do not believe that this will improve the system of disclosure and the ramifications of all donations being tax deductible may well be to encourage donations in return for the purchase of political influence.

ADDITIONAL RECOMMENDATIONS TO BE MADE

5. The State Electoral Office/Election Funding Authority has no power to source political contributions if they are filtered by way of the "Canberra Shuffle".

I recommend that recipients of donations be obliged to state that they have sourced the donation back to the original donor as far as possible.

I further recommend that upon receipt of a donation above the limit for disclosure the recipient advise the donor of their obligations to report this donation under the Election Funding Act.

I also recommend that if the donor is acting on behalf of another, the donor can be charged as an accomplice to electoral fraud.

- 6A. I recommend that a system of pre-poll disclosure be introduced so voters can determine who is financing or supporting a candidate prior to casting their vote.

Timing of disclosure is critical and disclosure after an election does not allow

voters the opportunity of making an informed decision about the source of funds that a candidate is receiving.

Arguments against this type of disclosure do not take into account the enormous technological developments made in recent years.

All politicians and most candidates would either have or be able to arrange access to facsimile machines, computers in order that returns be filed by due dates.

Also, the returning officers for each electorate could be made the depository for these disclosure forms prior to the election.

These forms could then be forwarded to the Election Funding Authority at a later date. This would ensure that the Election Funding Authority is not deluged with information at a late point in time.

I note that this works well overseas and some states have up to seven types of financial reports required. For example, Ohio requires:

- " 1. pre-primary election (12 days prior)
- 2. post-primary election (38 days post)
- 3. pre-general election (12 days prior)
- 4. post-general election (38 days post)
- 5. pre-special election (12 days prior)
- 6. post-special election (38 days post)
- 7. annual (last business day in January)"

I also recommend that reports be deemed filed only upon receipt. A postmark should not be sufficient.

Michigan also has a similar type of reporting system and has pre-poll disclosure statement due 11 days before the election, post election statements due 30 days after the election as well as annual statements due before 31 January every year.

In order that donors are discouraged from donating large sums of money after the last date for disclosure passes, I recommend that any donation in excess of \$1500 be instantly reported to the relevant Returning Officer by telephone or telegram in order that details may be displayed at the polling places.

No donation in excess of the threshold limit may be accepted after the date of the election for a period of three months.

I recommend this so that donors are discouraged from donating after the election in order to avoid being declared prior to the election. Normal business practice also ensures that most bills are paid within a three month period.

If total contributions and expenditure for a candidate in an election period is under \$1000 then I recommend that a reporting waiver be obtained from the Election Funding Authority.

- 6B. I recommend that all political contributions in excess of the current legislative threshold be paid to the Election Funding Authority.

The Election Funding Authority can then obtain all necessary information from the donor and forward this donation to the donor's chosen candidate or political party.

Additionally this information could not be made public and this would ensure that participants in the political process are shielded from the knowledge of who major donors are in order that they are not influenced or tempted to act in any improper manner.

I recommend that consideration be given to implementing either of these two recommendations (6A or 6B. They are by definition mutually exclusive, however these ideas still need to be placed on the current political agenda.

7. I recommend that a ceiling of \$1,500 be placed on the amount of cash (as opposed to cheque) which may be donated to a candidate, party or group.

I recommend this ceiling as a means of discouraging allegations of brown paper bags of money.

I believe that recommendations such as this may assist in dispelling some of the negative myths surrounding the political sphere.

I also recommend that the legislation should contain an offence prohibiting the giving or soliciting of campaign contributions (except for fundraiser functions) in Parliament House or the grounds.

I note a similar section in the South Dakota legislation which states in § 8-13-1336 that:

"campaign contributions may not be made on the Capitol complex or grounds"

(South Dakota, Campaign Finance Reporting Guidelines, 1992, p13)

I endorse this and note that overseas campaign contributions have so flagrantly flouted the spirit of the law that situations such as "Chickengate" have occurred.

That is, a chicken magnate started handing out \$10 000 cheques during a debate on the floor of the Texas State Senate and, although the behaviour was quite legal, it sparked an uproar over the "influence peddling" widespread throughout the political system. (The Economist, 26 Jan, 1991, p30)

The Texas system has a number of similarities to New South Wales in that there are no limits on campaign contributions as long as the contribution is disclosed, no limits on spending and a lack of power in regard to enforcement.

I wish to avoid this type of scenario ever developing and recommend an inclusion to the effect in NSW legislation.

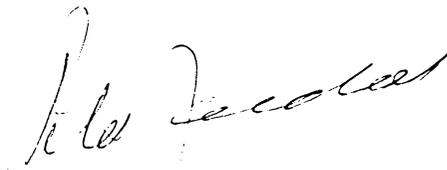
8. I recommend that explicit discounting of professional or other services be detailed in the declaration of in-kind donations.

As a market value is required to be declared the accuracy of the value placed on the donation can be further verified by the Election Funding Authority.

9. I endorse the registration of lobbyists and the Quebec system of differentiating according to whether the lobbying activity is a component of a job or the total job.

I recommend the establishment of a public register of lobbyists and recommend that the Election Funding Authority be the body to administer this register.

I also find that there is a need to ensure that the public is aware of the amount of money that lobbyists spend on influencing legislation and the areas of reform or bills that their attention is directed towards.



24.8.92