



Inquiry into political donations and disclosure

Report to Parliament
Electoral Matters Committee

April 2009

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Functions of the Committee

The Electoral Matters Committee is a Joint Investigatory Committee of the Parliament of Victoria. The Committee comprises seven Members of Parliament drawn from both Houses.

The powers and responsibilities of the Committee are determined by the *Parliamentary Committees Act 2003*. The functions of the Committee, as defined by Section 9A, are, if so required or permitted under this Act, to inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with—

- The conduct of parliamentary elections and referendums in Victoria;
- The conduct of elections of Councillors under the *Local Government Act 1989*; and
- The administration of, or practices associated with, the *Electoral Act 2002* and any other law relating to electoral matters.

Matters are referred to the Committee either by resolution of the Council or the Assembly or by Order of the Governor in Council. The *Parliamentary Committees Act 2003* also enables a Joint Investigatory Committee to inquire into and report to Parliament on any annual report or other document relevant to its functions and which have been laid before either House of Parliament.

Terms of Reference

On 16 April 2008 the Legislative Council of the Parliament of Victoria referred to the Committee a new inquiry to consider and report no later than 30 April 2009 on—

- Whether the *Electoral Act 2002* should be amended to create a system of political donations disclosure and/or restrictions on political donations; and
- The outcome resulting from similar legislative reforms introduced in Canada, the United Kingdom and other relevant jurisdictions.

Acknowledgements

The Electoral Matters Committee would like to thank Mignon Turpin for her editing work and Matt Clare of Mono Design for the cover design.

Chair's Foreword

The Electoral Matters Committee ("the Committee") is pleased to present this report to the Victorian Parliament on whether the *Electoral Act 2002 (Vic)* should be amended to create a system of political donations disclosure and/or restrictions on political donations.

The issue of political finance reform is a difficult subject for a cross-party parliamentary committee to tackle since intrinsic to the subject matter is the underlying philosophical divide between that of civil liberties and equality. I am pleased to report, however, that the philosophical divide that was apparent between Committee members enhanced rather than hindered the workings of the Committee.

This philosophical divide was also apparent in the evidence submitted by witnesses to the inquiry both in Australia and throughout the countries the Committee visited.

Those advocating from a civil libertarian perspective argue that banning or capping donations and expenses breaches the right to freedom of speech. In contrast, those advocating for reform contend that improvements in accountability, transparency, and equality justify these restrictions.

Victoria, along with the Commonwealth, is amongst the least regulated jurisdictions in the western world in terms of political finance law. However, it is important to note that Victoria is a jurisdiction that has a relatively clean record when it comes to proven cases of political finance related scandals.

Despite Victoria's relative clean record, it is important to recognise that political finance reform is a sound method of managing risk against political corruption, and maintaining Victoria's clean reputation.

This inquiry was referred to the Committee by the Legislative Council on 16 April 2008, and comes at a time of significant interest both in Australia and internationally in the regulation and reform of political finance.

In December 2008, the Commonwealth Government released the Electoral Reform Green Paper – Donations, Funding and Expenditure – which provides for public consideration a number of alternative models for political finance reform. The Committee believes its submission to the Electoral Reform secretariat will assist the Commonwealth with its inquiries.

In addition, the introduction of the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth) into the House of Representatives in March 2009 signalled the Commonwealth Government's on-going commitment to amend the political donations and disclosure provisions of the *Commonwealth Electoral Act 1918 (Cth)*. The Commonwealth Parliament Joint Standing Committee on Electoral Matters also released an advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008.

The terms of reference for this inquiry required the Committee to consider the experiences of international jurisdictions in relation to political finance, in particular Canada and the United Kingdom. Evidence from these countries,

and the United States of America and New Zealand, has been invaluable to the work of the Committee.

During the Committee's international investigations in the US, the Committee was informed that the ever-increasing costs of election campaigns has resulted in a situation where it is difficult, if not impossible, for most Americans to run for public office. This statement is easy to understand in light of reports indicating the combined cost to candidates contesting the 2008 US presidential election campaign was in excess of US\$1 billion.

This provides one of the arguments in favour of the case for reform of political finance arrangements. In Australia, current upward trends in election expenditure by the major political parties are potentially unsustainable and could undermine public confidence in the democratic process. Addressing this "arms race", and ensuring that all Victorians and Australians have a fair and equal opportunity to stand for election, is an issue of great importance.

Evidence gathered during this inquiry about the Canadian political finance system has proven especially valuable to the Committee. Canada has a strong history of electoral reform, and many commentators regard it as a model for successful political finance regulation. It is significant that some of the first major reforms to political finance in Canada, which are still in place today, were in response to many of the same issues that the Committee has considered throughout this inquiry: concern about the rising costs of election campaigns and increasing cost and use of media advertising during elections.

Unlike Victoria, Canada's recent experience with electoral reform has been mainly driven in response to political scandal. During its international investigations, the Committee was told that reforms introduced in 2004 and 2006 came in response to the so-called "Adscam" scandal involving political sponsorship.

Experience from New Zealand suggests that demand-side management strategies, that is, the capping of candidate, party and third party expenditure,* might have a role to play in Victoria's political finance system. This system has the advantage of relative regulatory simplicity, in that; the "arms race" is reduced by limiting the demand for donations by candidates and political parties. The New Zealand system also has the advantage of not creating additional grounds for an increase in public funding. In contrast, the adoption of the Canadian system, with its strong emphasis on banning and capping donations, will raise the issue of the adequacy of current levels of public funding. During these times of economic uncertainty, and in the absence of a large scale national political finance scandal such as the "Adscam" scandal in

* Expenditure caps for third parties were introduced with the passing of the *Electoral Finance Act 2007* (NZ) by the New Zealand Labour Government following the experience of the 2005 New Zealand general election, where a number of parallel third party campaigns were run in favour of the National Party. These campaigns were designed to avoid the spending caps on political parties and candidates contained in the *Electoral Act 1993* (NZ). The *Electoral Finance Act 2007* (NZ) was subsequently repealed on 1 March 2009 by the incoming National Party Government pending further changes to the political finance legislation pursuant to the *Electoral Amendment Act 2009* (NZ).

Canada, an increase in public money going to the election of politicians is highly likely to be unpopular in the electorate.

New Zealand's experience with political finance reform also demonstrates the importance of bipartisan support whenever major decisions are made affecting electoral finance law.

The Committee is supportive of a national effort to harmonise Australia's electoral finance laws, and believes that electoral reform should happen collaboratively, not just be the end result of independent decisions and reforms by the States or the Commonwealth. Given this, and the significant administrative and constitutional issues which underpin this debate, together with the current Commonwealth Government's efforts at reform, the Committee has elected not to make a comprehensive series of recommendations in this report, but instead await developments at the Commonwealth level.

On behalf of the Committee, I would like to thank all those who provided submissions and appeared before the Committee to give evidence, both in Victoria and internationally. The Committee was pleased with the wide range of inquiry participants, which included political parties and candidates, electoral administrators, corporations, academics and interest groups.

Given the politically sensitive nature of this inquiry, I believe that the Committee members' bipartisan approach has contributed to a report that lays the foundations for future investigations by the Committee, subject to developments at a Commonwealth level. I would like to express my gratitude to the Deputy Chair, Mr Michael O'Brien MP and fellow Committee members for their commitment to the inquiry.

I would also like to take this opportunity to thank the Committee secretariat for their work on this inquiry. I would like to acknowledge the secretariat's Executive Officer, Mr Mark Roberts, and commend him for his leadership throughout the inquiry. I would also like to thank Dr Natalie Wray, the principal researcher for this inquiry, on her significant contribution. Mr Nathaniel Reader also provided valuable research assistance and administrative support to the Committee.

Adem Somyurek MLC

Chair

Electoral Matters Committee

April 2009

Recommendations

Recommendation 1: The Victorian and Commonwealth Governments consider how best to harmonise political finance laws to ensure a uniform and consistent approach.

Recommendation 2: The Victorian Government updates the caps on political donations contained in the *Electoral Act 2002 (Vic)* in light of forthcoming changes to the structure of licensing of electronic gaming machines.

Recommendation 3: The Victorian Government amend the *Electoral Act 2002 (Vic)* to ensure that the reporting and disclosure provisions that apply federally to registered political parties, also apply to independent candidates and political parties registered in Victoria.

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Abbreviations

ABC	Australian Broadcasting Corporation
ACCC	Australian Competition and Consumer Commission
AEC	Australian Electoral Commission
ALP	Australian Labor Party
ASX	Australian Securities Exchange
C\$	Canadian dollars
CTH	Commonwealth
IDEA	International Institute for Democracy and Electoral Assistance
IFES	International Foundation for Electoral Systems
JSCEM	Joint Standing Committee on Electoral Matters (Commonwealth Parliament)
MLC	Member of the Legislative Council
MP	Member of Parliament
NSW	New South Wales
NYC	New York City
NZ	New Zealand
NZ\$	New Zealand dollars
QLD	Queensland
UK	United Kingdom
US	United States of America
US\$	[United States of] American dollars
VEC	Victorian Electoral Commission
VIC	Victoria
WA	Western Australia

Chapter 1: Introduction

- 1.1 The Electoral Matters Committee (“the Committee”) welcomed this inquiry into political donations and disclosure and/or restrictions. This chapter examines the scope of the inquiry and the inquiry process, and finishes with an outline of the chapters comprising the body of this report.

The scope of the inquiry

Terms of reference

- 1.2 On 16 April 2008 the Electoral Matters Committee received terms of reference from the Legislative Council of Victoria to inquire, consider and report no later than 30 April 2009 on:
- Whether the *Electoral Act 2002* (Vic) should be amended to create a system of political donations disclosure and/or restrictions of political donations; and
 - The outcome resulting from similar legislative reforms introduced in Canada, the United Kingdom and other relevant jurisdictions.¹

Legislative framework

- 1.3 The *Electoral Act 2002* (Vic) is Victoria’s principal electoral legislation. Part 12 of the Act deals with election expenditure.²
- 1.4 Division 3 of Part 12 focuses specifically on the capping of political donations from holders of casino and gaming licences.³ Gaming companies cannot donate more than \$50,000 in each financial year to a registered political party.⁴ There are no other restrictions on political donations.
- 1.5 The *Electoral Act 2002* (Vic) does not enact a separate political donations disclosure scheme. Registered political parties must comply with the Commonwealth disclosure provisions set out in the *Commonwealth Electoral Act 1918* (Cth) which requires only federally registered political parties in Victoria to lodge a Political Party Annual Return with the Australian Electoral

¹ Mr Greg Barber MLC, *Parliamentary debates*, Legislative Council, Parliament of Victoria, Melbourne, 16 April 2008, p. 1261.

² *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, Part 12. See http://www.austlii.edu.au/au/legis/vic/consol_act/ea2002103/

³ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, Part 12, Division 3.

⁴ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, s. 216.

Commission (AEC).⁵ There are no disclosure provisions for independent candidates or political parties registered in Victoria only.

- 1.6 As at 1 July 2008, the Political Party Annual Return required federally registered political parties to disclose for the financial year the details of the people and organisations from whom political donations of more than \$10,900 were received.⁶

Key issues

- 1.7 Much of the work of the Committee is guided by the evidence gathered. The responsibilities of the Committee are to listen, understand and interpret the views of experts and the wider community to establish the priorities and direction of the inquiry.

- 1.8 The key issues raised by inquiry participants in relation to political donations disclosure and/or restrictions were as follows:

- Definition of a political donation;
- Sources and types of political donations;
- Bans or caps on political donations;
- Consistency of disclosure provisions;
- Political donation disclosure threshold; and
- Timeliness of reporting obligations.

- 1.9 Some of these issues were raised as part of the Committee's inquiry into the conduct of the 2006 Victorian state election and matters related thereto.⁷

- 1.10 Inquiry participants, including the Public Interest Advocacy Centre,⁸ Dr Joo-Cheong Tham⁹ and Dr Sally Young¹⁰ were of the view that a rigorous inquiry into political donations requires investigating all aspects of political finance, including election expenditure.¹¹ At the public hearing Dr Sally Young, an academic with expertise in campaign finance and the media, said:

What I feel is that often we think about the input — who is donating, how much are they giving, how can we control it, should we have spending limits and so on — but I think it is more productive to think about the outputs. Why do the parties feel the need to raise

⁵ *Electoral Act 2002 (Vic)*, Australia, Act No. 23/2002, s. 222.

⁶ See Political Party Annual Return; disclosure threshold is for the financial year 1 July 2008 – 30 June 2009.

⁷ Parliament of Victoria, *Inquiry into the conduct of the 2006 Victorian state election*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, pp. 111-124.

⁸ The Public Interest Advocacy Centre is an independent, non-profit law and policy organisation which advocates for individuals and groups affected by issues of public interest.

⁹ Dr Joo-Cheong Tham is a senior lecturer with the Law Faculty, University of Melbourne (Australia). He has written extensively on Australian political finance.

¹⁰ Dr Sally Young is a member of the Democratic Audit of Australia and a senior lecturer with the School of Culture and Communication, University of Melbourne (Australia). Her research is primarily focused on media and politics in Australia.

¹¹ Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008, p. 2; Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 2.

tens of millions of dollars and where is it going to? That is the question that should be at the forefront.¹²

- 1.11 The relevancy of election expenditure to this inquiry was made evident two days before the Committee received the terms of reference. On 14 April 2008, *Four Corners* aired a program – “Dirty, Sexy Money” – about the relationship between political donations and government policy. The program alleged that the “skyrocketing” cost of election campaigns was dependent on political donations.¹³
- 1.12 It was the prerogative of the New South Wales Legislative Council Select Committee on Electoral and Political Party Funding to include political donations and election expenditure in their investigation of electoral and political party funding.¹⁴ The Electoral Matters Committee also takes the view that an investigation of restrictions and/or disclosure of political donations must run parallel to an examination of election expenditure.

Local Government Act 1989 (Vic)

- 1.13 The Committee through its terms of reference was directed to review the provisions of the *Electoral Act 2002* (Vic).
- 1.14 Mr Greg Barber MLC, Australian Greens (Victoria) member for Northern Metropolitan region, introduced the reference in the Legislative Council and anticipated that the broad nature of the terms of reference may entice stakeholders to lodge submissions relating to the *Local Government Act 1989* (Vic).¹⁵ Dr Joo-Cheong Tham was the only inquiry participant who provided evidence which addressed the local government funding and disclosure scheme.¹⁶
- 1.15 Given that the Committee only received one submission on local government, and in view of the political donations and disclosure provisions already contained in the *Local Government Act 1989* (Vic), the Committee focused specifically on the *Electoral Act 2002* (Vic), consistent with its terms of reference.

Stakeholders

- 1.16 The Committee identified the main stakeholders for this inquiry as being registered political parties in Victoria, independent members of parliament,

¹² Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

¹³ Australian Broadcasting Corporation, "Dirty, sexy money", *Four Corners*, 14 April 2008.

¹⁴ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, pp. 120-138.

¹⁵ Mr Greg Barber MLC said “[F]or the moment we will just be reviewing the provisions of the *Electoral Act 2002* (Vic). However, if this reference is successful we may receive submissions on matters relating to local government”. See Mr Greg Barber MLC, *Parliamentary debates*, Legislative Council, Parliament of Victoria, Melbourne, 16 April 2008, p. 1263.

¹⁶ Dr Joo-Cheong Tham, *Submission*, no. 1, received 7 June 2008; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008; Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008.

associated entities, corporations, unions, non-government organisations and the public.

Conduct of the inquiry

Submissions

- 1.17 The Committee advertised the inquiry terms of reference and called for submissions in the *Herald Sun*, *The Age* and *The Australian* on Saturday, 10 May 2008. The Committee also issued a media release on 12 May 2008 and wrote to targeted stakeholders inviting them to lodge a submission. The closing date for submissions was Friday, 27 June 2008; late submissions were also received and accepted.
- 1.18 The Committee received 20 written submissions from a wide range of stakeholders including political parties and independent candidates (6), electoral administrators (3), corporations (2), academics (3) and interest groups (6). All submissions are displayed on the Committee's website at <http://www.parliament.vic.gov.au/emc/>. A list of submissions can be found at Appendix 1.
- 1.19 Correspondence was received from several of the organisations that were formally invited to lodge a submission advising the Committee of their decision not to participate in the inquiry process.
- 1.20 The Victorian Electoral Commission (VEC), which is "responsible for the administration of the enrolment process and the conduct of parliamentary elections and referendums in Victoria",¹⁷ wrote to the Committee advising that although the VEC was pleased that the Electoral Matters Committee was conducting an inquiry into this important aspect of the state's electoral system, "the question of whether Victoria should institute a system of financial disclosure is a matter of policy decision rather than administration. As such a matter is outside the role of the VEC", the VEC advised it would not lodge a submission for this inquiry.¹⁸
- 1.21 However, during the public hearings Mr Steve Tully, Electoral Commissioner of the VEC, noted that the VEC could participate in the inquiry by informing the Committee of the administrative implications of particular political financing models.¹⁹

Public hearings

- 1.22 A number of individuals and organisations were invited to elaborate on their written submissions at public hearings which were held at Parliament House on 23 and 24 July 2008. On the first day of public hearings an opportunity was provided for the public to make a comment from the floor. The Committee heard from one interest group in this way. The Committee heard evidence from

¹⁷ *Electoral Act 2002 (Vic)*, Australia, Act No. 23/2002, s. 8(1).

¹⁸ Victorian Electoral Commission, *Submission*, no. 4, received 17 June 2008, p. 1.

¹⁹ Mr Steve Tully (Electoral Commissioner), Victorian Electoral Commission, *Transcript of evidence*, Melbourne, 24 July 2008, p. 20.

15 witnesses, four of whom participated via teleconference. A list of witnesses can be found at Appendix 2.

- 1.23 The Committee published the transcripts of evidence on the Committee's website at <http://www.parliament.vic.gov.au/emc/>.
- 1.24 Questions on notice provided an opportunity for Committee members to seek additional information from inquiry participants post public hearings. A list of responses from questions on notice can be found at Appendix 3.

International investigations

- 1.25 The terms of reference required the Committee to review the regulation of political donations and disclosure in Victoria in light of legislative reforms in Canada, the United Kingdom (UK) and other relevant jurisdictions.
- 1.26 The Committee travelled to Canada, the United States of America (US), the UK and New Zealand to learn about the outcomes of legislative reforms. The Committee identified relevant international experts and organisations and held meetings with academics, electoral commissions, political funding authorities, parliamentary committees and non-government organisations. The meeting schedules can be found at Appendix 4 and Appendix 5. The meetings were transcribed and the evidence assisted with the inquiry. The Committee also collected secondary data including reports, booklets and brochures.
- 1.27 The Committee tabled in the Victorian Parliament, a report on its international investigations in December 2008 entitled *Report on international investigations into political donations and disclosure and voter participation and informal voting*. Salient issues from that report are discussed as required throughout this report.

Data analysis

- 1.28 Thematic analysis was conducted to identify issues and proposed recommendations in the submissions, transcripts of evidence and meeting transcripts. Each theme was analysed in detail and sub-themes emerged. The themes were not predetermined but were identified by the frequency with which they appeared in the evidence. Secondary data including legislation, reports and websites supplemented the evidence gathered via submissions, public hearings and visits. This publication reports on the main findings and recommendations of the Committee.

Feedback on inquiry

- 1.29 Providing the public with an opportunity to contribute to parliamentary discussion is pivotal to the work of parliamentary committees. Mr Greg Barber MLC, when speaking to the members of the Legislative Council about the political donations reference, noted that:

Supporting this reference to this committee at this time creates an opportunity for members of a joint committee to have those sorts of round-table discussions that are a

hallmark of committee work, and it also allows members of the public who have concerns to bring them forward.²⁰

- 1.30 The Committee was pleased that the inquiry has been welcomed by stakeholders and interested persons. Many stakeholders, including the VEC, Dr Joo-Cheong Tham and the Public Interest Advocacy Centre mentioned the timeliness and importance of the inquiry.²¹
- 1.31 Many stakeholders expressed gratitude for being invited to participate in the inquiry process and, for some, being granted an extension to lodge a submission. It seemed that many political parties, corporations and non-profit organisations welcomed the opportunity to comment on current issues associated with political donations and disclosure as well as offer possible solutions.²²
- 1.32 One inquiry participant – the Public Interest Advocacy Centre – was concerned about the conflict of interest associated with political parties, via parliamentary committees, creating and amending electoral law in Australia.²³ Mr Brendan McCaffrie, an academic with the Democratic Audit of Australia, shared a similar view and wrote a discussion paper proposing an Independent Electoral Law Committee as a way of removing partisan bias from the formulation of Australia’s electoral laws.²⁴
- 1.33 The Committee does not believe that a bipartisan parliamentary committee jeopardises the formulation of electoral law. The Committee comprises seven Members of Parliament drawn from both Houses, as well as from two political parties.²⁵ While Committee members acknowledge that they are also electoral participants, being parliamentary members enables them to bring a sound understanding of the complexities of electoral administration to their committee work. Second, because independent and non-partisan technical specialists and interested parties provide evidence to the Committee, its decision making is informed by inquiry participants as well as its own further investigation. Third, an independent electoral law committee may remove the partisan bias but it

²⁰ Mr Greg Barber MLC, *Parliamentary debates*, Legislative Council, Parliament of Victoria, Melbourne, 16 April 2008, p. 1262.

²¹ Dr Joo-Cheong Tham, *Submission*, no. 1, received 7 June 2008, p. 1; Victorian Electoral Commission, *Submission*, no. 4, received 17 June 2008, p. 1; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 1.

²² Australian Labor Party (Hawthorn Branch), *Submission*, no. 19, received 7 August 2008, p. 1; The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 1 of letter; Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 1; Australian Greens (Victoria), *Submission*, no. 11, received 27 June 2008, p. 1; Foster's Group, *Submission*, no. 13, received 27 June 2008, p. 1; Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 1; News Limited, *Submission*, no. 12, received 27 June 2008, p. 1; Property Council of Australia, *Submission*, no. 10, received 27 June 2008, p. 1.

²³ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, pp. 8-9.

²⁴ Brendan McCaffrie, *Removing partisan bias from Australian electoral legislation: A proposal for an independent electoral law committee*, Democratic Audit of Australia, Australian National University, Canberra, January 2008.

²⁵ The Committee comprises of four Members of Parliament from the Legislative Assembly and three from the Legislative Council. Four of these Committee members are members of the Australian Labor Party (Victorian Branch) and three are members of the Liberal Party of Australia (Victorian Division).

would not be possible to remove independent committee members' political philosophies.

Outline of the report

- 1.34 Chapter 2 provides a contextual background to the inquiry by examining the public and political concerns relating to political donations, the parliamentary responses pertaining to the regulation of political donations and harmonisation of political finance law.
- 1.35 Chapter 3 provides an overview of the current levels of political donations, arguments for and against restricting and/or banning political donations, and the sources of political donations which were raised by inquiry participants.
- 1.36 Chapter 4 outlines the issues associated with the disclosure of political donations. The first part of this chapter establishes the current arrangements in Victoria. The second part explores disclosure practices in Australian and international jurisdictions. The third part discusses arguments for and against disclosure provisions. The fourth part of the chapter investigates possible pathways to enhancing disclosure.
- 1.37 Chapter 5 provides a discussion of the current levels of campaign expenditure. The second half of this chapter considers international and Australian practice and proposed initiatives to ameliorate the issues associated with campaign expenditure, including arguments for and against election expenditure caps and free or minimum broadcasting rates. This chapter also considers disclosure of campaign expenditure.
- 1.38 Chapter 6 explores the public funding system in Victoria. It provides an overview of the current arrangements in Victoria and comparative public funding provisions in Australia and internationally. The second half of the chapter considers issues associated with direct and indirect public funding.
- 1.39 Chapter 7 explores administrative and penalty issues associated with political donations disclosure and/or restrictions.
- 1.40 Chapter 8 draws the report to a close and outlines the Committee's conclusions.

Chapter 2: Background to inquiry

- 2.1 The inquiry has been conducted during a time in which the integrity of funding and disclosure schemes in Australia have been closely scrutinised. This chapter discusses the context of the inquiry including the growing political and public concern relating to political donations, the parliamentary response, including inquiries and legislative reforms pertaining to the regulation of political donations and harmonisation of political finance law.

Political and public concern

- 2.2 This inquiry has developed out of political and public concern about political finance.
- 2.3 The VEC indicated that an emerging concern is funding for political parties. In the Committee's previous inquiry into the conduct of the 2006 Victorian state election and matters related thereto, the Victorian Electoral Commissioner, Mr Steve Tully, said:
- ... [E]lectoral funding and disclosure is probably the biggest issue for the Electoral Commission; it is, "Where is the money coming from for political parties and candidates?"²⁶
- 2.4 The Committee was informed of numerous examples of former and current politicians and political administrators who, in the past, expressed discontent and concern regarding the current political financing situation in Australia including Mr Eric Roozendaal,²⁷ Mr Mark Arbib,²⁸ The Honourable Morris Iemma,²⁹ Mr Malcolm Turnbull,³⁰ Dr Carmen Lawrence³¹ and Mr Andrew Murray.^{32,33}

²⁶ Mr Steve Tully (Electoral Commissioner), Victorian Electoral Commission, *Transcript of evidence*, Melbourne, 29 August 2007, p. 7.

²⁷ Mr Eric Roozendaal was a former General Secretary of the Australian Labor Party (NSW).

²⁸ Mr Mark Arbib was a former General Secretary of the Australian Labor Party (NSW) and is currently a Federal Senator for New South Wales.

²⁹ Mr Morris Iemma was former Premier of New South Wales and former leader of the Australian Labor Party (NSW).

³⁰ Mr Malcolm Turnbull is the current Federal Opposition Leader and Leader of the Liberal Party.

³¹ Dr Carmen Lawrence was a former Premier of Western Australia and former Federal ALP President.

³² Mr Andrew Murray was a former Federal Senator for Western Australia.

³³ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 2-3.

- 2.5 In Victoria, independent member for Gippsland East, Mr Craig Ingram MP was critical of amendments to the Electoral Bill 2002 (Vic) during the time it was being considered by the Parliament, given that the Bill had the purpose of strengthening political funding and disclosure laws. Mr Craig Ingram MP informed the Committee that 40 pages of political finance disclosure provisions were removed from the Bill by way of amendments. He further noted that the Parliament of Victoria has not addressed the gaps in disclosure requirements since then.³⁴
- 2.6 Submissions were received from the smaller parliamentary and non-parliamentary parties. These inquiry participants were concerned that political donations created an unfair playing field as the two major political parties were the main recipients of political donations. In addition, it was felt that political donations provided donors with greater access to politicians than non-donors.³⁵
- 2.7 The Committee did not receive any submissions from the three major political parties in Victoria for this inquiry: Australian Labor Party, Liberal Party of Australia and The Nationals.
- 2.8 The community's concerns about the current funding and disclosure arrangements are not reflected in the number of submissions received by the Committee from members of the public. One explanation for the lack of submissions from individuals may be the lack of a major scandal in Victoria, as was reported by Dr Joo-Cheong Tham and Professor Brian Costar³⁶ at the public hearings.³⁷
- 2.9 Nevertheless, the issue of political donations and charges levied for attendance at dinners and other fundraising events has been a topic on talkback radio, an important forum for expressing community concerns in Australia. A review of the letters to the editor in metropolitan Victorian newspapers and comments attached to online news stories also highlighted that the issue is in the public consciousness.³⁸
- 2.10 Public perception of political donations has seen a historical shift. For example, Urban Taskforce Australia indicated that current community sentiment suggests that political donations are no longer considered philanthropic contributions:

Traditionally the wider community has respected a person who makes a financial contribution to a cause they believe in. It was admirable for a gentleman/lady of means to give support to civic institutions, including political parties. ... [S]omewhere along the

³⁴ Mr Craig Ingram MP, *Submission*, no. 17, received 15 July 2008, pp. 2-3.

³⁵ For example Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 4.

³⁶ Professor Brian Costar is Chair of Victorian Parliamentary Democracy and a member of the Democratic Audit of Australia.

³⁷ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 18; Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008, p. 3.

³⁸ ABC Online, *Unleashed: Political donations*, 2008. Retrieved 17 February 2009 from <http://www.abc.net.au/unleashed/stories/s2401975.htm>; Mr Graham McGarvie, "... And another thing", *The Age*, 14 July 2008, p. 12; Mr Christopher Paul, "Some are winners, and some are not", *The Age*, 24 September 2008, p. 14.

way, making a donation to a political party has been recast as something unsavoury and distasteful.³⁹

- 2.11 Whilst this is the view of Urban Taskforce Australia, other organisations have challenged this and consider political donations a social obligation of good corporate citizens.⁴⁰
- 2.12 One reason for the shift in public perception may be allegations of corruption and misconduct in politics. For example, the relationship between candidates, sitting councillors and developers in the local councils of Tweed Shire (NSW), Strathfield (NSW), Gold Coast (QLD), Greater Geelong (VIC), Busselton Shire (WA) and Wollongong (NSW) have been investigated.⁴¹
- 2.13 The relationship between political donations, government contracts, fundraising and political parties has also been contentious in state and federal politics. There have been allegations in the media that through political donations, individual MPs may become lobbyists for an individual, patron developer, union or industry group. It has also been alleged that political parties favour businesses who host or attend functions by associated entities (business arm of political parties).⁴²
- 2.14 State politics in Victoria has not been coloured by a funding scandal.⁴³ However, the relationship between political donations by property developers

³⁹ Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 1.

⁴⁰ For example see Australia and New Zealand Banking Group Limited, *Public policy advocacy and political donations policy*, 2008. Retrieved 30 September 2008 from www.anz.com/documents/au/policies/PublicPolicyAdvocacy_PoliticalDonations.pdf.

⁴¹ Dr Joo-Cheong Tham, *Submission*, no. 1, received 7 June 2008; See the following submission and reports for information on these allegations. Emeritus Professor Maurice Daly, *Tweed Shire Council Public Inquiry: Second Report*, NSW Government, Sydney, 2005; Emeritus Professor Maurice Daly, *Tweed Shire Council Public Inquiry: First Report*, NSW Government, Sydney, 2005; Queensland Crime and Misconduct Commission, *Independence, influence and integrity in local government: A CMC inquiry into the 2004 Gold Coast City Council election*, Queensland Crime and Misconduct Commission (Chair: Robert Needham), Brisbane, 2006; Western Australian Corruption and Crime Commission, *Report on the investigation of alleged public sector misconduct linked to the Smiths Beach development at Yallingup*, Western Australian Corruption and Crime Commission (Acting Commissioner: Neil McKerracher QC), Perth, 2007; New South Wales Independent Commission Against Corruption, *Report on investigation into corruption allegations affecting Wollongong City Council: Part 1*, New South Wales Independent Commission Against Corruption, Sydney, 2008.

⁴² Nick McKenzie & Richard Baker, "Liberals in cash-for-visa allegations", *The Age*, p. 1-2; Nick McKenzie & Richard Baker, "Men of influence", *The Age*, p. 11; Australian Broadcasting Corporation, "Dirty, sexy money", *Four Corners*, 14 April 2008; Richard Baker & Nick McKenzie, "Vanstone defends visa decision", *The Age*, 26 September 2008, p. 3; Steve Lewis, "Opposition attack no funds, no contract", *The Advertiser*, 10 April 2008, p. 2; Royce Millar, "With strings attached?" *The Age*, 7 July 2008, p. 11; Royce Millar, "Party donations good for democracy, says Premier", *The Age*, 9 July 2008, p. 5; Royce Millar, "Access to the ALP? Priceless", *The Age*, 8 July 2008, p. 1-2; Royce Millar, "Political donations linked to developers, contractors", *The Age*, 7 July 2008, p. 1; Michael Owen, "Makris unbowed at ALP dinner", *The Advertiser*, 20 September, p. 13; Kim Wheatley, "Big business pays, just ask Labor", *The Advertiser*, 9 September 2008, p. 1-2.

⁴³ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 18; Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008, p. 3.

and the approval of tenders by the Victorian Government came under parliamentary scrutiny.⁴⁴

Parliamentary responses

2.15 This inquiry was referred to the Committee during a time of significant parliamentary investigation in Australia and abroad regarding the regulation and disclosure of political donations.

Commonwealth

2.16 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 was introduced into the Senate on 15 May 2008. The main purpose of the Bill was to amend the *Commonwealth Electoral Act 1918* (Cth) so as to:

- Reduce the donations disclosure threshold from \$10,900 (current rate, CPI-indexed) to \$1,000 and remove CPI indexation;
- Prohibit foreign and anonymous donations to registered political parties, candidates and members of Senate groups and also prevent the use of foreign and anonymous donations for political expenditure;
- Limit the potential for 'donation splitting';
- Introduce a claims system for electoral funding and tie funding to electoral expenditure;
- Introduce a biannual disclosure framework in place of annual returns and reduce timeframes for election returns; and
- Introduce new offences and increase penalties for a range of existing offences.⁴⁵

2.17 The Bill was subsequently referred to the Commonwealth Parliament's Joint Standing Committee on Electoral Matters (JSCEM). JSCEM recommended two changes to the Bill as follows:

- That the definition of 'electoral expenditure' in Part XX of the Commonwealth Electoral Act should be broadened to include reasonable costs incurred for the rental of dedicated campaign premises, the hiring and payment of dedicated campaign staff, and office administration; [and] ...
- To allow anonymous donations below a threshold of \$50 to be received without a disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth.⁴⁶

⁴⁴ Parliament of Victoria, *Select Committee of the Legislative Council on Public Land Development: Final Report*, Select Committee of the Legislative Council on Public Land Development (Chair: Mr David Davis MLC), Melbourne, 2008, pp. 115-117.

⁴⁵ D. Spooner & N. Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008", *Bills Digest*, vol. 2007-08, no. 6, 20 August 2008, p. 3.

⁴⁶ Parliament of Australia, *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, Joint Standing Committee on Electoral Matters (Chair: Daryl Melham MP), Canberra, 2008, pp. xiv,xvi.

- 2.18 The Government introduced the amendments to the 2008 Bill to reflect JSCEM's recommendations. However, the Bill was defeated in the Senate on 11 March 2009.⁴⁷
- 2.19 On 12 March 2009, a revised Bill – the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth) – was introduced into the House of Representatives with further minor amendments to the categories of “electoral expenditure” against which public funding can be claimed following an election. The Bill passed the House of Representatives on 16 March 2009 and is currently before the Senate.
- 2.20 The Commonwealth Parliament's JSCEM received two references to inquire into the 2007 federal election. The first reference was referred by the Special Minister of State on 27 February 2008 and the second by the Senate on 12 March 2008. The terms of reference referred by the Senate to JSCEM were:
- All aspects of the 2007 Federal election and matters related thereto, with particular reference to:
- (a) the level of donations, income and expenditure received by political parties, associated entities and third parties at recent local, state and federal elections;
 - (b) the extent to which political fundraising and expenditure by third parties is conducted in concert with registered political parties;
 - (c) the take up, by whom and by what groups, of current provisions for tax deductibility for political donations as well as other groups with tax deductibility that involve themselves in the political process without disclosing that tax deductible funds are being used;
 - (d) the provisions of the Act that relate to disclosure and the activities of associated entities, and third parties not covered by the disclosure provisions;
 - (e) the appropriateness of current levels of public funding provided for political parties and candidates contesting federal elections;
 - (f) the availability and efficacy of ‘free time’ provided to political parties in relation to federal elections in print and electronic media at local, state and national levels;
 - (g) the public funding of candidates whose eligibility is questionable before, during and after an election with the view to ensuring public confidence in the public funding system;
 - (h) the relationship between public funding and campaign expenditure; and
 - (i) the harmonisation of state and federal laws that relate to political donations, gifts and expenditure.⁴⁸
- 2.21 On 28 March 2008 the Special Minister of State announced that the Commonwealth Government would produce a Green Paper on wider electoral reform. Released in two parts, the first part is relevant to the Committee's inquiry (the second part is related to examining a broader range of issues), as it

⁴⁷ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, p. 3.

⁴⁸ D. Spooner & N. Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008", *Bills Digest*, vol. 2007-08, no. 6, 20 August 2008, p. 8.

examines donations, funding and expenditure issues.⁴⁹ The first part of the Electoral Reform Green Paper was released in December 2008.

2.22 While Mr Greg Barber MLC acknowledged that the timing of the Victorian inquiry “may not match well with the federal process”, he anticipated that:

[I]t is possible within the flexibility of these committees for the committee to do its work using the remainder of this year and still be timely with regard to the federal process.⁵⁰

2.23 The Committee lodged a submission to the Commonwealth Government’s Electoral Reform Green Paper consultation and outlined comparative models for the regulation of political donations identified during its international investigations. The Committee’s submission can be found at Appendix 6.⁵¹

States

2.24 States have referred inquiries to parliamentary committees to investigate disclosure, expenditure and donations. The New South Wales Legislative Council Select Committee on Electoral and Political Party Funding tabled its report on Electoral and Political Party Funding in New South Wales on 19 June 2008. The report recommended, as outlined in the Chairman’s foreword, that:

Donations by corporations and other organisations be banned, and that only small donations by individuals be permitted. Election spending would be capped. Political donations and election spending would be disclosed in a timely, transparent and accessible manner. There would be greater policing of the electoral funding scheme, and tougher penalties for non-compliance.⁵²

2.25 In Tasmania, an inquiry into the disclosure of political donations was referred to the Working Arrangements of the Parliament Committee.⁵³

2.26 The Parliament of Queensland’s Legal, Constitutional and Administrative Review Committee was conducting an inquiry into electoral law reform in Queensland.⁵⁴ Upon the dissolution of the Parliament of Queensland for the 2009 Queensland state election, the inquiry lapsed.

⁴⁹ Senator J. Faulkner (Special Minister of State), *Media release: Electoral reform*, 28 March 2008. Retrieved 16 September 2008 from http://www.smos.gov.au/media/2008/mr_062008.html; Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008.

⁵⁰ Mr Greg Barber MLC, *Parliamentary debates*, Legislative Council, Parliament of Victoria, Melbourne, 16 April 2008, p. 1263.

⁵¹ Submissions to the Commonwealth Government’s Green Paper can be found at http://www.pmc.gov.au/consultation/elect_reform/submissions.cfm.

⁵² Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. xi.

⁵³ Parliament of Tasmania, *Votes and proceedings*, House of Assembly, 1 April 2008. Retrieved 28 April 2008 from <http://www.parliament.tas.gov.au/HansardHouse/isysquery/67bed8f3-8375-4d72-9c0d-00c82c670e12/1/doc/h1april2.htm>.

⁵⁴ Parliament of Queensland, *Electoral reform in Queensland*, 2008. Retrieved 14 April 2009 from http://www.parliament.qld.gov.au/view/committees/LCARC.asp?SubArea=inquiries_electoralReform.

2.27 Legislation has also been introduced to various state parliaments. On 18 June 2008, a day before the NSW report was tabled, the Election Funding Amendment (Political Donations and Expenditure) Bill 2008 (NSW) was introduced into the New South Wales and subsequently received Royal Assent on 30 June 2008.⁵⁵ The main purpose of the *Election Funding Amendment (Political Donations and Expenditure) Act 2008* (NSW) was to amend the *Election Funding Act 1981* (NSW) as follows:

- Candidates and groups must be registered with the EFA [Election Funding Authority] before accepting political donations;
- Candidates and groups must appoint and register an official agent before receiving or spending \$1,000 or more for an election;
- Party agents and official agents must successfully complete an on line training program;
- Six monthly disclosure for parties, MPs [members of Parliament] and councillors;
- Uniform political donation disclosure limit of \$1,000;
- Mandatory disclosure of loans;
- New rules for managing campaign finances;
- Ban on certain 'in kind' donations over \$1,000;
- New offences for failing to lodge a declaration and making a false statement; and
- Increased powers for the Election Funding Authority.⁵⁶

2.28 In 2008, legislation was also introduced into the Parliaments of Western Australia, South Australia and Queensland which sought to change the disclosure requirements of political parties. In Western Australia, the Electoral Amendment Bill proposed to change the disclosure threshold to \$1,000, but lapsed with the prorogation of the Parliament of Western Australia.⁵⁷ In South Australia, the Legislative Council did not pass the private member's Bill – known as the Development (Political Donations) Amendment Bill 2008 – which proposed to require disclosure of donations made to political parties that accompany large development applications.⁵⁸ The Parliament of Queensland passed the *Electoral Amendment Act 2008* (Qld) on 9 September 2008. The provisions of which included:

- Reducing the disclosure threshold to \$1,000;
- Introducing twice-yearly disclosure;
- Banning of donations from foreign property;⁵⁹
- Verifying candidates' electoral spending; and

⁵⁵ *Election Funding Amendment (Political Donations And Expenditure) Act 2008* (NSW), Australia, Act No. 43/2008.

⁵⁶ Election Funding Authority (New South Wales), *New election funding and disclosure rules*, 2008. Retrieved 17 September 2008 from <http://www.efa.nsw.gov.au/>.

⁵⁷ Electoral Amendment Bill 2008 (No. 2) (WA), Australia.

⁵⁸ Development (Political Donations) Amendment Bill 2008 (SA), Australia.

⁵⁹ The term foreign property refers to (a) money standing to the credit of an account kept outside Australia, or (b) other money (for example, cash) that is located outside Australia, or (c) property, other than money, that is located outside Australia.

- Reporting of donations within 14 days each time donations from a single donor reaches \$100,000 within a half-year period.⁶⁰

International

- 2.29 As part of the Committee's international investigations, the Committee visited Canada, New Zealand, the UK and the US and learnt about how other parliaments have responded to the political and public concern about political finance.⁶¹
- 2.30 In Canada, the Gomery Commission, formally known as the Commission of Inquiry into the Sponsorship Program and Advertising Activities, was established to investigate allegations of corruption within the Canadian Government. The Gomery Commission reported that political donations had bought influence with the Canadian Government in the awarding of government grants. This finding ensured that legislative reforms proposed by the Conservative Government gained cross-party support.⁶²
- 2.31 A number of factors led to the consideration of the funding of UK political parties by the House of Commons' Committee on Standards in Public Life. First, the relative degree of secrecy that existed in the UK in relation to electoral funding. Second, the perceived influence of foreign political donations. Third, the rapid escalation of election campaigning in the 1990s and lastly, controversy relating to the Labour Party's policy on tobacco sponsorship. The findings of the Committee informed the *Political Parties Elections and Referendums Act 2000* (UK). The legislation, among other things, banned foreign donations, introduced a national spending cap per party and required political parties to disclose donations greater than or equal to £5,000.⁶³
- 2.32 More recently in 2006, Sir Hayden Phillips reported on the funding of political parties in the UK. The impetus for the inquiry was to reassess the funding of political parties given that there was lower party membership, decreasing voter turnout and an increasing lack of identification by people with political parties. The inquiry recommended limiting donations, limiting election spending and increasing public funding and regulation.⁶⁴
- 2.33 In New Zealand, the Auditor-General was responsible for investigating how publicly funded party advertising for the 2005 New Zealand General Elections

⁶⁰ *Electoral Amendment Act 2008* (Qld), Australia.

⁶¹ See Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008.

⁶² Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability. Phase 2 of the Report of the Commission of Inquiry into the Sponsorship Program and Advertising Activities (Gomery Commission)*, Canadian Government Publishing, Ottawa, 2006; Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 8.

⁶³ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 35.

⁶⁴ Sir Hayden Phillips, *Strengthening democracy: Fair and sustainable funding of political parties (Review of the funding of political parties)*, The Stationery Office, London, March 2007.

was managed following allegations that political parties had breached election and parliamentary spending rules. The inquiry found that there had been significant breaches of the appropriations administering parliamentary advertising.⁶⁵ In light of these findings and others issues, including third party campaigning at the 2005 New Zealand General Elections, the *Appropriation (Parliamentary Expenditure Validation) Act 2006* (NZ) and the *Electoral Finance Act 2007* (NZ) were passed to reform electoral finance laws.

- 2.34 Subsequent to the Committee's investigations in New Zealand, the *Electoral Finance Act 2007* (NZ) was repealed on 1 March 2009 by the newly elected National Party Government. The repealing of this Act was predicted by representatives the Committee met with in New Zealand because the *Electoral Finance Act 2007* (NZ) had, in their opinion, passed swiftly through the Parliament without sufficient consultation or bipartisan support.⁶⁶ The New Zealand Parliament has since enacted the *Electoral Amendment Act 2009* (NZ) which includes provisions relating to candidates' and political parties' election expenses and donations.

Committee's comment

- 2.35 While Victoria arguably has not suffered a major political finance scandal, the scandals which have taken place in other jurisdictions combined with the increased scrutiny by the media, members of parliament and parliamentary committees have seen the issue of political donations enter and remain in the public domain.
- 2.36 With the escalating costs of campaigning and access to democratic processes impacting on confidence, the Committee welcomed the timely opportunity to contribute to the public debate through its inquiry and develop findings and recommendations which will strengthen the public's trust in the democratic process.

Harmonisation of political finance law

- 2.37 Regulation of political finance in Australia rests with the Commonwealth and each state and territory. This means that the Commonwealth, states and territories are able to legislate on the subject, which has the potential to create numerous sets of rules on political finance. This section discusses the evidence gathered by the Committee in regard to a disparate approach to political donation disclosure regulation in Australia, and whether a harmonised approach would be more desirable.

⁶⁵ Controller and Auditor-General, *Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 general election*, New Zealand Government, Wellington, October 2006.

⁶⁶ Mr Alex Penk (Policy & Research Manager), Maxim Institute, *Discussions*, Auckland, 9 February 2009, p. 2.

- 2.38 Inquiry participants recognised the need for consultation with the Commonwealth Government to discuss harmonisation and/or best practice measures.⁶⁷
- 2.39 Some inquiry participants preferred harmonising funding and disclosure laws guided by the Commonwealth Government's agenda for electoral reform regarding donations, disclosure and expenditure. For example, the Property Council of Australia noted that:
- While we welcome the Committee's inquiry into the matter, any changes to the current system should be consistent with the outcomes of the Federal Government Green Paper on electoral reform. ... The Property Council does not support different rules for different jurisdictions.⁶⁸
- 2.40 There are a number of benefits to harmonisation of electoral law. Elections New Zealand identified that ease of compliance and coherence of rules increases the likelihood of electoral participants adhering to rules.⁶⁹ Electoral Commission Queensland indicated that "the administrative burden on electoral participants would be greatly reduced through the implementation of uniform legislation".⁷⁰ The Commonwealth Parliament's JSCEM, in its 2006 inquiry into disclosure of donations to political parties and candidates, reported similar principles.⁷¹
- 2.41 The Committee is aware of the benefits of harmonisation and is willing to participate in a deliberative process. Given the Committee has tabled its report before the finalisation of the Commonwealth Government's Electoral Reform process, the Committee anticipates that many of these discussions with Commonwealth, state, and territory governments about political finance funding and disclosure provisions may occur after this report has been tabled. As a consequence of this inquiry and report, the Committee believes that Victoria will be well placed to contribute to these discussions.
- 2.42 Several inquiry participants indicated that Victoria should adopt an approach independent of the Commonwealth if a uniform approach did not offer greater transparency.⁷² For example, Mr David Kerslake urged the Committee to "go with a separate scheme if the Commonwealth's [disclosure] level was very high".⁷³

⁶⁷ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 4; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 1; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 2; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5.

⁶⁸ Property Council of Australia, *Submission*, no. 10, received 27 June 2008, pp. 1-2.

⁶⁹ Elections New Zealand, *Submission to the Justice and Electoral Committee's 2005 general election inquiry*. Retrieved 14 November 2008 from <http://www.elections.org.nz/administration/ec-corp-info/submission-2005-election-inquiry.html>.

⁷⁰ Electoral Commission Queensland, *Submission*, no. 9, received 27 June 2008, p. 3.

⁷¹ Parliament of Australia, *Funding and disclosure: inquiry into disclosure of donations to political parties and candidates*, Joint Standing Committee on Electoral Matters (Chair: Peter Lindsay MP), Canberra, 2006, p. 7.

⁷² Mr David Kerslake, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 2.

⁷³ Mr David Kerslake, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

- 2.43 The Committee had heard similar sentiments at the public hearing for the Committee's inquiry into the conduct of the 2006 Victorian state election and matters related thereto.⁷⁴
- 2.44 The Committee considered inter-related jurisdictional issues which would arise if the Parliament of Victoria amended the *Electoral Act 2002* (Vic) to create a system of political donations disclosure and/or restrictions on donations to political parties registered in Victoria. Where Victorian law conflicts with Commonwealth law, section 109 of the Commonwealth Constitution stipulates that the Commonwealth law prevails to the extent of the inconsistency. Dr Anne Twomey, Associate Professor at the University of Sydney Law School who prepared a paper entitled *The reform of political donations, expenditure and funding* for the New South Wales Department of Premier and Cabinet, recommended that:
- Any proposal for a state law must take into account whether it might give rise to an inconsistency with other Commonwealth laws (or the laws of other states) and the potential for future inconsistency in the absence of a co-operative arrangement.⁷⁵
- 2.45 The Committee was also concerned about the implications of amending the *Electoral Act 2002* (Vic) to restrict donations to political parties registered in Victoria. Given that Dr Twomey also advised the New South Wales Department of Premier and Cabinet that:
- Any state law that interfered with Commonwealth elections, by banning or regulating the receipt or expenditure of funds by a state-registered political party that would have been used to support candidates in Commonwealth elections, would be vulnerable to constitutional challenge.⁷⁶
- 2.46 Dr Twomey went further and noted:
- As long as there are national parties in Australia which through state registered branches fund candidates in both Commonwealth and state elections, then there is a significant risk that any state attempt to go it alone to regulate party funding will be either constitutionally invalid, or legally ineffective (due to an inconsistency with other Commonwealth or state laws) or simply ineffective on a practical level (due to loopholes that would be necessary to avoid unconstitutionally). A Commonwealth attempt to go it alone would also risk being held invalid if it interfered with state elections. Accordingly, it would be preferable for any substantial reforms to be undertaken nationally on a co-operative Commonwealth and state basis.⁷⁷
- 2.47 The Committee agreed that wherever practical, the merits of harmonising electoral laws between the Victorian and Commonwealth jurisdictions is desirable. The Committee also recognises that electoral law should be

⁷⁴ Dr Ken Coghill, *Transcript of evidence*, Melbourne, 28 August 2007, p. 7.

⁷⁵ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 4.

⁷⁶ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 5.

⁷⁷ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 6.

consistent between state and Commonwealth jurisdictions to facilitate compliance.

Recommendation 1: The Victorian and Commonwealth Governments consider how best to harmonise political finance laws to ensure a uniform and consistent approach.

Chapter 3: Restricting political donations

- 3.1 The terms of reference directed the Committee to inquire, consider and report on whether the *Electoral Act 2002* (Vic) should be amended to restrict political donations.
- 3.2 This chapter begins with an overview of the current levels of political donations in Victoria and sets out comparative approaches in Australia and internationally to restricting political donations. The majority of this chapter is devoted to the arguments for and against restricting political donations, as well as the sources and types of political donations the Committee considered restricting.

Current arrangements in Victoria

- 3.3 In Victoria, the *Electoral Act 2002* (Vic) contains provisions for the capping of political donations from holders of casino and gaming licences,⁷⁸ such that they cannot donate more than \$50,000 in each financial year to a political party registered in Victoria.⁷⁹
- 3.4 Given Victoria “piggybacks” on the *Commonwealth Electoral Act 1918* (Cth), anonymous donations over \$10,000 are also prohibited.

Current levels of political donations

- 3.5 There is no accurate record of *all* political donations received by political parties and candidates in Victoria. As prefaced in Chapter 1, Victoria “piggybacks” on the Commonwealth disclosure scheme, which requires only federally registered political parties in Victoria to disclose all political donations received of more than \$10,900; independent candidates and political parties registered only in Victoria are not required to comply with any disclosure laws.
- 3.6 News reports have suggested that political donations from private sources account for 80 per cent of the income for major parties.⁸⁰ In the financial year preceding the 2006 Victorian state election (2005-2006), the AEC Annual Party

⁷⁸ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, Part 12, Division 3.

⁷⁹ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, s. 216.

⁸⁰ Michelle Grattan, “Tackling the political arms race”, *The Age*, 19 December 2008. Retrieved from <http://www.theage.com.au/opinion/tackling-the-political-arms-race-20081218-71mp.html>.

Returns indicated that the three major registered political parties in Victoria – the Australian Labor Party, the Liberal Party of Australia and The Nationals – received between them approximately \$4.8 million in political donations. Given that the donations threshold moved from \$1,500 to \$10,000 halfway through the 2005-2006 financial year, this figure, as detailed in Table 3.1, does not accurately portray the total amount of political donations received because it does not include any donations lower than the threshold.

Table 3.1: Total donations to the three major political parties in Victoria 2005-2006⁸¹

Political Party	Political donations
Australian Labor Party (Victorian Branch)	\$1,876,604.00
Liberal Party of Australia (Victorian Division)	\$2,321,324.00
The Nationals (Victoria)	\$570,256.60
Total	\$4,768,184.60

3.7 In February 2009, the three major political parties in Victoria disclosed reportable donations, together worth approximately \$5.8 million,⁸² as set out in Table 3.2.

Table 3.2: Total donations to the three major political parties in Victoria 2007-2008⁸³

Political Party	Political donations
Australian Labor Party (Victorian Branch)	\$1,409,733.30
Liberal Party of Australia (Victorian Division)	\$4,352,424.00
The Nationals (Victoria)	\$45,000.00
Total	\$5,807,157.30

3.8 As shown in Tables 3.1 and 3.2, the total reportable political donations received by the three major political parties in Victoria increased between the financial years of 2005-2006 and 2007-2008.

⁸¹ Figures compiled from the Australian Electoral Commission, *2005-2006 annual financial disclosure returns*, 1 February 2007. Retrieved 21 October 2008 from <http://periodicdisclosures.aec.gov.au/Party.aspx>.

⁸² Figures compiled from the Australian Electoral Commission, *2007-2008 annual financial disclosure returns*, 2 February 2009. Retrieved 26 February 2009 from <http://periodicdisclosures.aec.gov.au/Party.aspx>.

⁸³ Figures compiled from the Australian Electoral Commission, *2007-2008 annual financial disclosure returns*, 2 February 2009. Retrieved 26 February 2009 from <http://periodicdisclosures.aec.gov.au/Party.aspx>.

Comparative approaches

Australia

3.9 Historically Australian jurisdictions have not banned or restricted political donations to registered political parties, candidates or third parties.⁸⁴ While anonymous donations above specified amounts are prohibited in the following jurisdictions in Australia – Commonwealth, New South Wales, Queensland, Western Australia, Australian Capital Territory and Northern Territory⁸⁵ – Victoria and New South Wales have only recently legislated to prohibit political donations from certain sources. Table 3.3 outlines the types and sources of political donations which are prohibited in Australian jurisdictions.

Table 3.3: Donor prohibitions by state⁸⁶

Jurisdiction	Prohibition
Commonwealth	Anonymous donations over \$10,000 are prohibited
NSW	Anonymous donations Donations from a source (other than an individual) which does not hold an Australian Business Number (ABN) In kind donations that exceed \$1,000 in value, such as the provision of office accommodation, vehicles and computers Loans unless the details of the loan are recorded and disclosed
QLD	Anonymous donations of more than \$1,000 to parties and \$200 to candidates prohibited Banning of donations from foreign property
VIC	Holders of casino and gaming licences may not make political donations of more than \$50,000 a financial year to each political party. Victoria is also bound by the provisions of the <i>Commonwealth Electoral Act 1918</i> (Cth)—i.e anonymous donations over \$10,000 are prohibited
WA	Anonymous donations of \$1,800 or more to parties, groups or candidates prohibited
ACT	Anonymous donations of \$1,500 or more to parties, groups, MLAs or candidates prohibited
NT	Anonymous donations of \$1,500 or more to parties, groups, MLAs or candidates prohibited

⁸⁴ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 14.

⁸⁵ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 14.

⁸⁶ The information for this table is drawn from Gareth Griffith & Talina Drabsch, *Election finance law: Recent development and proposals for reform*, New South Wales Parliamentary Library Research Service, Sydney, 2007, p. 40, *Election Funding and Disclosures Act* (NSW), Australia, Act No. 78/1981, ss. 96D, 96E and *Electoral Amendment Act 2008* (Qld).

- 3.10 Victoria is the only jurisdiction to prohibit holders of gaming and casino licences from donating to a political party more than \$50,000 each financial year.⁸⁷
- 3.11 As mentioned earlier, on 12 March 2009 the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth) was introduced into the Commonwealth Parliament. The main purpose of the Bill is to amend the *Commonwealth Electoral Act 1918* (Cth) so as to:
- Prohibit foreign donations to registered political parties, candidates and members of Senate groups and prevent the use of foreign donations for political expenditure;
 - Prohibit anonymous donations above \$50 to registered political parties, candidates and members of Senate groups and also prevent the use of anonymous donations above \$50 for political expenditure;
 - Permit anonymous donations of \$50 or less in certain circumstances; and
 - Limit the potential for 'donation splitting'.⁸⁸
- 3.12 The Bill passed the House of Representatives on 16 March 2009 and is currently before the Senate.

International

- 3.13 The Committee was informed that approximately 156 countries from 192 member states of the United Nations allow political donations to be made to political campaigns and political parties⁸⁹ and 30 countries (out of 111 countries surveyed by the International Institute for Democracy and Electoral Assistance) specify the maximum amount a donor can donate.⁹⁰
- 3.14 During the Committee's international investigations, it heard that donations to political parties, candidates and third parties are not currently banned or capped in the UK and there are no general caps in New Zealand.⁹¹ However, Canada and the US cap donations given by individuals to political parties and candidates.⁹²
- 3.15 Some international jurisdictions prohibit particular sources from making political donations. For example, in Canada donations from non-resident non-citizens, corporations, trade unions, and anonymous donations are prohibited. New

⁸⁷ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, s. 216.

⁸⁸ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, pp. 1-2.

⁸⁹ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 23.

⁹⁰ IDEA (International Institute for Democracy and Electoral Assistance), *Funding of political parties and election campaigns handbook*, 2003 cited in Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

⁹¹ Associate Professor Andrew Geddis (Researcher and Lecturer), *Discussions*, Wellington, 10 February 2009, p. 20; Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 47.

⁹² Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, pp. 6, 7, 11, 25, 26.

Zealand, the UK and the US have banned anonymous donations above specified amounts.⁹³

- 3.16 Table 3.4 compares the capping and banning of types and sources of political donations in Canada, New Zealand, the UK and the US.
- 3.17 Not included in this table are the provisions enforced by the New York City Campaign Finance Board who the Committee met with as part of its international investigations. The Committee was informed that political donations from corporations, limited liability companies, limited liability partnerships, or any other kind of partnership are unlawful if the candidate is a recipient of public funding.⁹⁴
- 3.18 Urban Taskforce Australia was critical of US electoral law and noted that a “legislative loophole” which allows political action committees to receive donations and direct them into political parties, may explain why a ban on political donations from corporations and charities has not had the desired effect of increasing public confidence in the political system.⁹⁵

Arguments for and against restricting political donations

Support for restricting political donations

- 3.19 To date, Victoria is the only Australian jurisdiction to restrict holders of casino and gambling licences and their related companies from making political donations of over \$50,000 per financial year to each registered political party.⁹⁶ Debate in the Parliament of Victoria noted that this provision in the *Electoral Act 2002 (Vic)* has set a precedent in terms of restricting the source of political donations.⁹⁷
- 3.20 As mentioned earlier in this chapter, there is also a precedent set in Commonwealth and some state and territorial jurisdictions in terms of restricting donations from particular sources.⁹⁸ The Commonwealth Parliament is also currently debating whether to prohibit anonymous donations above \$50 and foreign donations.⁹⁹

⁹³ Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, pp. 28-31, 92-93.

⁹⁴ Amy Loprest, “The best democracy money can’t buy”, *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 2.

⁹⁵ Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 2.

⁹⁶ *Electoral Act 2002 (Vic)*, Australia, Act No. 23/2002, s. 216.

⁹⁷ Mr Greg Barber MLC, *Parliamentary debates*, Legislative Council, Parliament of Victoria, Melbourne, 16 April 2008, p. 1263.

⁹⁸ *Election Funding and Disclosures Act (NSW)*, Australia, Act No. 78/1981, s. 96D & 96E; Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 14.

⁹⁹ Nicholas Horne, “Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009”, *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, p. 1.

Table 3.4: Comparison of selected overseas funding and disclosure schemes¹⁰⁰

	Canada	New Zealand	United Kingdom	United States
Caps on donations	Yes. Donors are allowed to give up to C\$1,100 in a calendar year to political parties and candidates.	There are no general caps; however limits apply to donations from a single source above NZ\$1,000 made to a political party or third party via the Electoral Commission where the donor wishes to remain anonymous to the party and the public (protected donations). Limits also apply to the amounts that parties can receive as protected donations.	No.	Yes. Individuals can donate up to US\$2,300 to a candidate for election (for each of the primaries and general elections) and up to US\$28,500 to a national party committee during any one year. Individuals are also subject to a biennial contributions limit for donations to federal candidates, party committees and political action committees.
Bans on donations	Yes. Donations from non-resident non-citizens, corporations and trade unions; and anonymous donations are prohibited.	Yes. Anonymous donations directly to a political party or candidate above NZ\$1,000. Anonymous donations can be made above NZ\$1,000 to a political party, but not to a candidate, as protected donations (see caps on donations above).	Yes. Bans on anonymous donations of more than £200.	Yes. Bans on anonymous and foreign donations and donations from corporations, banks, unions and federal government contractors.

¹⁰⁰ Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, pp. 28-31, 92-93.

- 3.21 There is also evidence that indicates political parties and candidates impose “voluntary restrictions” on sources of private funding. Since February 2004, the ALP has had a policy to no longer accept political donations from tobacco companies; the Australian Democrats and the Australian Greens also do not accept tobacco company donations.¹⁰¹
- 3.22 A few inquiry participants, notably Urban Taskforce Australia and Dr Ken Coghill, believed banning or restricting political donations has the potential to remove the perception of favouritism and control election expenditure.¹⁰²
- 3.23 Other inquiry participants contended that public funding had not satisfactorily curbed political parties’ reliance on political donations.¹⁰³
- 3.24 Some inquiry participants supported the banning of political donations to registered political parties, independent candidates and third parties.¹⁰⁴ One advocate of a “blanket ban”, Mr Aaron Gadiel, Chief Executive Officer of Urban Taskforce Australia, explained the importance of a total prohibition on political donations:
- I think what is really important at the moment is that people have confidence in their democracy and their democratic institutions. ... If we can move to a system where everyone can see that the way that political parties are funded has got nothing to do with the pattern of government decisions, then our democracy will be strengthened.¹⁰⁵
- 3.25 Rather than a “blanket ban”, other inquiry participants including Dr Ken Coghill, Dr Joo-Cheong Tham and the Democratic Audit of Australia supported the restriction of political donations.¹⁰⁶
- 3.26 The New South Wales Legislative Council Select Committee on Electoral and Political Party Funding recommended that political donations be banned except for small individual donations, voluntary labour, the purchase of merchandise, and intra-party transfers.¹⁰⁷ Subsequent legislation adopted many of the Select

¹⁰¹ Michelle Scollo & Margaret Winstanley. *Tobacco in Australia: Facts and issues*. Third Edition, The Cancer Council Victoria, 2008, p. 64.

¹⁰² Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, pp. 6-7; Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 2.

¹⁰³ Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 3; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 12; Laurie Oakes, “Money talks: It also stirs up trouble and spreads ugly gossip”, *The Daily Telegraph*, 8 March 2008, p. 24 cited in Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 4.

¹⁰⁴ Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 2; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 3; Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 8.

¹⁰⁵ Mr Aaron Gadiel (Chief Executive Officer), Urban Taskforce Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 3.

¹⁰⁶ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 21; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2; Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 5.

¹⁰⁷ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, pp. 113-114.

Committee's recommendations. However, the recommendations to ban political donations by corporations and organisations and ban intra-party transfers were not included.¹⁰⁸

Opposition to restricting donations

3.27 A number of inquiry participants were concerned about whether the restriction or banning of political donations may contravene human rights and constitutional law. Emeritus Professor Colin Hughes noted that:

Bans, a total prohibition on any category of donations or all donations, raise constitutional questions on which the Committee might wish to take advice, not least in the light of protections of human rights, including presumably free speech, recently introduced in Victoria.¹⁰⁹

3.28 Family Voice Australia took a libertarian approach and opposed the banning or restricting of political donations on the basis that it is the individual's right to use their financial resources to further their political objectives. Family Voice Australia noted that "any constraint on the freedom of a citizen to fund political candidates or parties needs to be fully justified".¹¹⁰

3.29 The Public Interest Advocacy Centre's submission noted the proposition that a complete ban on donations may be perceived to be in direct conflict with political expression, political association and freedom of speech. However, the Public Interest Advocacy Centre contended that these rights "belong to individual citizens, not to corporations or organisations or political parties".¹¹¹ This was also the sentiment of other inquiry participants.¹¹²

3.30 In Dr Anne Twomey's paper for the New South Wales Department of Premier and Cabinet she stated:

An outright ban on political donations is likely to be struck down as constitutionally invalid on the ground that it is not "reasonably appropriate and adapted" to serving the legitimate end of reducing the risk of corruption and undue influence. Banning small donations from individuals, for example, would not assist in achieving that end.¹¹³

3.31 However, she noted that:

Caps upon political donations are more likely to be constitutionally acceptable, but this would depend upon the level of the cap and its effect upon the capacity of parties and candidates to communicate with electors.¹¹⁴

¹⁰⁸ The *Election Funding Amendment (Political Donations and Expenditure) Act 2008* (NSW) amended the *Election Funding Act 1981* (NSW). See *Election Funding Amendment (Political Donations And Expenditure) Act 2008* (NSW), Australia, Act No. 43/2008, Division 4.

¹⁰⁹ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 2.

¹¹⁰ Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 1.

¹¹¹ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 11.

¹¹² Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 2; Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 34.

¹¹³ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, pp. 1-2.

¹¹⁴ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 2.

3.32 Inquiry participants were also concerned that restricting or banning political donations may lead to “smurfing” and other avoidance practices.¹¹⁵ Emeritus Professor Colin Hughes noted that restrictions can produce concealment and should be avoided:

On balance I think any prohibition is undesirable because of its encouragement of concealment and the difficulty in drawing a clean line. ... Good investigative journalism will probably be a better tool for getting at the truth than any statutory prohibitions.¹¹⁶

3.33 Emeritus Professor Hughes was also concerned that focusing on restricting political donations detracts from what he believes should be the goal: disclosure.¹¹⁷ However, he noted that if the Committee decided to go down the path of restricting political donations, the Committee should consider investigating how to manage “smurfing”, particularly seeking the advice from “existing money-laundering and terrorist-monitoring governmental bodies ... on the practicality and resource demands of operating effectively in this field”.¹¹⁸

3.34 Professor Brian Costar also had reservations about prohibiting particular donors because of the difficulties associated with enforcement.¹¹⁹

Sources and types of donations

3.35 The *Electoral Act 2002 (Vic)* defines a political donation as a “gift to a registered political party”.¹²⁰ A “gift” in the Act refers to:

... any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including-

(a) the provision of a service (other than volunteer labour); and

(b) the payment of an amount in respect of a guarantee; and

(c) the making of a payment or contribution at a fundraising function- but excluding-

(a) a payment under this Part; and

(b) an annual subscription paid to a political party by a person in respect of the person's membership of the party.¹²¹

3.36 Political donations are a source of financial support for political parties and candidates. Inquiry participants used the term “donation” to include types of political donations – monetary and non-monetary – which are given to political

¹¹⁵ “Smurfing” is the act of packaging a large financial transaction into a number of smaller transactions which avoids scrutiny. In his submission, Emeritus Professor Colin Hughes provided the following example to illustrate smurfing: A bank intends to give a political party a donation worth \$100,000. A bank could donate by giving its 10 directors \$10,000 each, or its 100 managers \$1,000 each, or 1,000 tellers \$100 each. Mr Aaron Gadiel (Chief Executive Officer), Urban Taskforce Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4; Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 2.

¹¹⁶ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 3.

¹¹⁷ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 2.

¹¹⁸ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 3.

¹¹⁹ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 15.

¹²⁰ *Electoral Act 2002 (Vic)*, Australia, Act No. 23/2002, 206.

¹²¹ *Electoral Act 2002 (Vic)*, Australia, Act No. 23/2002, 206.

parties, candidates, associated entities and third parties. This section outlines the evidence gathered on the sources and types of donations for the Committee's consideration.

Individual citizens

3.37 A number of inquiry participants supported individual citizens being the only source of political donations. However, inquiry participants stipulated eligibility requirements including:

- An individual should be an elector;¹²²
- An individual should not have been convicted of an electoral offence;¹²³ and
- An individual should be an Australian citizen or permanent resident.¹²⁴

3.38 In comparison, under the *Canada Elections Act* (Canada) only citizens and permanent residents can give political donations to registered political parties in Canada.

3.39 Inquiry participants referred to the maximum amount an individual can contribute to candidates and parties for US federal elections¹²⁵ and candidates contesting New York City Council mayoral elections (US\$4,950).¹²⁶ Dr Joo-Cheong Tham's submission outlined the contribution limits for individuals donating to candidates and political parties contesting US federal elections as shown in Table 3.5.

3.40 The number of small online political donations received by Barack Obama during his presidential election campaign was also an issue raised during the inquiry.¹²⁷ A Committee member stated that while these donations were made by individuals, many were made in family groups so that young children were

¹²² Citizens Electoral Council of Australia, *Submission*, no. 16, received 14 July 2008, p. 4.

¹²³ The Committee notes Emeritus Professor Colin Hughes does not support prohibiting political donations from particular sources. However, in discussion with the Committee he gave an opinion on eligibility. See Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 5.

¹²⁴ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 11.

¹²⁵ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 46-47; Amy Loprest and Peter Mares, "The best democracy money can't buy", *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 2; Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 2.

¹²⁶ Amy Loprest and Peter Mares, "The best democracy money can't buy", *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 2.

¹²⁷ Journalist Jose Antonio Vargas from *The Washington Post* reported that "3 million donors made a total of 6.5 million donations online adding up to more than \$500 million. Of those 6.5 million donations, 6 million were in increments of \$100 or less. The average online donation was \$80, and the average Obama donor gave more than once." For more information see Jose Antonio Vargas, "Obama raised half a billion online", *The Washington Post*, Retrieved 11 March 2009 from http://voices.washingtonpost.com/44/2008/11/20/obama_raised_half_a_billion_on.html.

also giving political donations up to the maximum limit; this practice was designed to bypass limits.¹²⁸

Table 3.5: US contribution limits on individual donations¹²⁹

Limits on individual donations to candidates	Limits on individual donations to parties etc
US\$2,100 to each candidate per election cycle	US\$26,700 to each national party committee per election cycle
US\$40,000 to all candidates per election cycle	US\$5,000 to each political committee or state party committees per election cycle
US\$101,400 per election cycle for all contributions	US\$61,400 for political committees per election cycle
	US\$101,400 per election cycle for all contributions

3.41 The majority of inquiry participants referred to the Canadian model.¹³⁰ For example, the Cancer Council of Victoria noted that the limits on political donations established by the *Canada Elections Act* (Canada) represented the “gold standard”.¹³¹

3.42 The limit on donations in Canada was set out in Dr Ken Coghill and Dr Joo-Cheong Tham’s submission. These are as follows:

C\$1,000 in total in any calendar year to a registered party;

C\$1,000 in total in any calendar year to the constituency associations, nomination contestants and candidates of a registered party;

C\$1,000 to the contestants in a leadership contest; and

C\$1,000 in total to a candidate in an election, where that candidate is not a candidate of a registered party.¹³²

3.43 This figure is subject to indexation and is currently C\$1,100.¹³³

¹²⁸ The Hon Candy Broad MLC, Committee member cited in Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 4.

¹²⁹ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 46-47.

¹³⁰ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 43; The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 4; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, pp. 10-11; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

¹³¹ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 4.

¹³² Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 43.

- 3.44 Dr Ken Coghill favoured the Canadian model because he believed that for most Victorians, a contribution of approximately \$1,000 in a calendar year would be considered a significant donation.¹³⁴
- 3.45 The amount that a political donation should be capped varied among other inquiry participants. The highest cap was a cumulative total of \$20,000 per year.¹³⁵ The Country Alliance stated that the individual donations (cash and in kind) should be limited to \$10,000.¹³⁶
- 3.46 A Committee member was concerned that prohibiting temporary residents would adversely affect vulnerable groups such as refugees and international students because they would be prohibited from raising funds for political parties or candidates to lobby on their behalf.¹³⁷ In considering this scenario with several inquiry participants, Mr Stephen Luntz, Electoral Analyst for the Australian Greens (Victoria), proposed a “resident’s category” which he anticipated would improve the regulation of political donations and not disadvantage vulnerable groups.¹³⁸

Holders of gaming licences

- 3.47 Section 216 of the *Electoral Act 2002* (Vic) prescribes that it is unlawful for the holder of a relevant licence granted under section 13 of the *Casino Control Act 1991* (Vic) or section 3.4.29 or 4.3.8 of the *Gambling Regulation Act 2003* (Vic) to make political donations to a registered political party during a financial year the total amount or value of which exceeds \$50,000.¹³⁹
- 3.48 Mr Greg Barber MLC in his address to the members of the Legislative Council questioned whether this provision in the *Electoral Act 2002* (Vic) will also apply to anyone who owns a poker machine, given that the Victorian Government changed the structure of ownership of poker machines in Victoria.¹⁴⁰
- 3.49 Family Voice Australia stated that given the gaming industry’s “disproportionate influence on government in Victoria due to the size of its net contribution to revenue ... the existing limitation is entirely appropriate and should be maintained”.¹⁴¹ Apart from the gaming industry, Family Voice Australia does not support “setting a maximum limit as applies in Canada or excluding or imposing limits on other categories of donors”.¹⁴²

¹³³ Elections Canada, *Limits on contributions*, 2008. Retrieved 27 February 2009 from <http://www.elections.ca/content.asp?section=fin&document=limit&dir=lim&lang=e&textonly=false>.

¹³⁴ Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 5.

¹³⁵ Citizens Electoral Council of Australia, *Submission*, no. 16, received 14 July 2008, p. 4.

¹³⁶ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 3.

¹³⁷ Mr Robin Scott MP, Committee member cited in Ms Deidre Moor (Manager Policy & Programs), Public Interest Advocacy Centre Limited, *Transcript of evidence*, Melbourne, 24 July 2008, p. 4.

¹³⁸ Mr Stephen Luntz (Electoral Analyst), Australian Greens (Victoria), *Transcript of evidence*, Melbourne, 24 July 2008, p. 7.

¹³⁹ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, s. 216.

¹⁴⁰ Mr Greg Barber MLC, *Parliamentary debates*, Legislative Council, Parliament of Victoria, Melbourne, 16 April 2008, p. 1263.

¹⁴¹ Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 4.

¹⁴² Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 4.

- 3.50 On the other hand, Emeritus Professor Colin Hughes proposed that section 216 of the *Electoral Act 2002 (Vic)* be repealed:

I do not know whether there have been any threats to challenge the existing cap on gaming company donations, but such companies are rare and being tightly regulated already are unlikely to challenge such a provision on principle. My advice would be to delete the provision as a bad precedent.¹⁴³

Recommendation 2: The Victorian Government updates the caps on political donations contained in the *Electoral Act 2002 (Vic)* in light of forthcoming changes to the structure of licensing of electronic gaming machines.

Property developers

- 3.51 The construction and development sector has a *Code of Practice for the Building and Construction Industry* which “sets out specific principles and standards of behaviour that underpin best practice, and promotes attitudinal change in the industry”.¹⁴⁴ Despite that, the industry has come under scrutiny during inquiries and from the media regarding allegations of corruption and misconduct with developers, candidates and public officers.¹⁴⁵
- 3.52 For example, the role of political donations and gifts by developers to councillors and members of parliament in planning and development decisions has been investigated by the New South Wales Independent Commission Against Corruption on a number of occasions. The Tweed Shire Council was dismissed by the NSW Governor after a public inquiry found that the results of the 2004 local council election had been unduly influenced by donations from a pro-development group.¹⁴⁶ In 2005, “two councillors of the Strathfield Municipal Council and a property developer [were found] guilty of corrupt conduct because of bribes paid and received in relation to a proposed development of a

¹⁴³ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 3.

¹⁴⁴ Victorian Government, *Code of Practice for the Building and Construction Industry*, Department of Infrastructure, Victoria, 1999, p. 9.

¹⁴⁵ Dr Joo-Cheong Tham, *Submission*, no. 1, received 7 June 2008, pp. 2-5; Emeritus Professor Maurice Daly, *Tweed Shire Council Public Inquiry: Second Report*, NSW Government, Sydney, 2005; Emeritus Professor Maurice Daly, *Tweed Shire Council Public Inquiry: First Report*, NSW Government, Sydney, 2005; Queensland Crime and Misconduct Commission, *Independence, influence and integrity in local government: A CMC inquiry into the 2004 Gold Coast City Council election*, Queensland Crime and Misconduct Commission (Chair: Robert Needham), Brisbane, 2006; Western Australian Corruption and Crime Commission, *Report on the investigation of alleged public sector misconduct linked to the Smiths Beach development at Yallingup*, Western Australian Corruption and Crime Commission (Acting Commissioner: Neil McKerracher QC), Perth, 2007; New South Wales Independent Commission Against Corruption, *Report on investigation into corruption allegations affecting Wollongong City Council: Part 1*, New South Wales Independent Commission Against Corruption, Sydney, 2008; Parliament of Victoria, *Select Committee of the Legislative Council on Public Land Development: Final Report*, Select Committee of the Legislative Council on Public Land Development (Chair: Mr David Davis MLC), Melbourne, 2008; Parliament of Victoria, *Inquiry into the Victorian building and construction industry: The corruption of the tendering process*, Economic Development Committee (Chair: The Hon Gerald Ashman MLC), Melbourne, May 1993.

¹⁴⁶ Emeritus Professor Maurice Daly, *Tweed Shire Council Public Inquiry: Second Report*, NSW Government, Sydney, 2005; Emeritus Professor Maurice Daly, *Tweed Shire Council Public Inquiry: First Report*, NSW Government, Sydney, 2005.

car-park”.¹⁴⁷ The latest allegations of corruption at the Wollongong City Council prompted the Commission in 2008 to recommend that all civic offices in relation to Wollongong City Council be declared vacant. As a consequence, the Council was also dismissed by the NSW Governor.¹⁴⁸

3.53 In Western Australia, the Corruption and Crime Commission investigated an allegation concerning funding irregularities in a Busselton Shire Council election. The Commission also investigated allegations of misconduct by public officers in connection with the proposed Smiths Beach development.¹⁴⁹

3.54 In another example, two Gold Coast City councillors – David Power and Sue Robbins – were reported to have allegedly selected candidates to contest the 2004 council election. While these candidates were presented as independent, their election campaigns were secretly funded by “donors with development interests”¹⁵⁰ and “if elected, the candidates would be, consciously or unconsciously, beholden to Power and Robbins for that funding during their four-year term”.¹⁵¹

3.55 Despite the above examples, the Committee received conflicting evidence on this matter. Some inquiry participants suggested that political donations from developers raised suspicions among the public that developers were able to buy favourable planning outcomes.¹⁵² Other inquiry participants, who were representing property developers, stated that there was no evidence that political donations influence government decision making.¹⁵³

3.56 The Property Council of Australia and Urban Taskforce Australia did not support sector specific bans on contributions, donations and loans to political parties or candidates¹⁵⁴ and Urban Taskforce Australia also outlined the difficulties associated with creating a legal definition of a “developer”.¹⁵⁵

¹⁴⁷ This example was cited in Dr Joo-Cheong Tham, *Submission*, no. 1, received 7 June 2008, p. 2.

¹⁴⁸ New South Wales Independent Commission Against Corruption, *Report on investigation into corruption allegations affecting Wollongong City Council: Part 1*, New South Wales Independent Commission Against Corruption, Sydney, 2008.

¹⁴⁹ Western Australian Corruption and Crime Commission, *Report on the investigation of alleged public sector misconduct linked to the Smiths Beach development at Yallingup*, Western Australian Corruption and Crime Commission (Acting Commissioner: Neil McKerracher QC), Perth, 2007.

¹⁵⁰ Queensland Crime and Misconduct Commission, *Independence, influence and integrity in local government: A CMC inquiry into the 2004 Gold Coast City Council election*, Queensland Crime and Misconduct Commission (Chair: Robert Needham), Brisbane, 2006, p. iv.

¹⁵¹ Queensland Crime and Misconduct Commission, *Independence, influence and integrity in local government: A CMC inquiry into the 2004 Gold Coast City Council election*, Queensland Crime and Misconduct Commission (Chair: Robert Needham), Brisbane, 2006, p. ii.

¹⁵² Peter Mares, “The best democracy money can’t buy”, *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 1; Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 1; Mr Brian Walsh, Kew Cottages Coalition, *Transcript of evidence*, 23 July 2008, p. 2.

¹⁵³ Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 1; Property Council of Australia, *Submission*, no. 10, received 27 June 2008, p. 1.

¹⁵⁴ Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 2; Property Council of Australia, *Submission*, no. 10, received 27 June 2008, p. 1.

¹⁵⁵ Urban Taskforce Australia, *Submission*, no. 2, received 17 June 2008, p. 2.

Government contractors

- 3.57 The relationship between political donations and government contracts was raised as an issue by some inquiry participants.¹⁵⁶
- 3.58 Although Dr Ken Coghill and Dr Joo-Cheong Tham noted that:
- There is no evidence that ... corrupt processes occur under the current Victorian Government, ... the huge sums involved in government contracts for goods and services provide massive incentives for prospective suppliers to attempt to influence decisions on awarding those contracts.¹⁵⁷
- 3.59 This sentiment was confirmed when the Committee met with Associate Professor Andrew Geddis in New Zealand. He noted that with tendering, public-private partnerships and outsourcing, there is the potential for corruption.¹⁵⁸
- 3.60 For the Committee's consideration, some inquiry participants referred to international best practice as it applies to corporations holding government contracts.¹⁵⁹ It was put to the Committee that 27 countries, out of 111 countries surveyed by the International Institute for Democracy and Electoral Assistance, have bans on donations from government contractors.¹⁶⁰
- 3.61 In Canada, the Gomery Commission found a strong relationship between the awarding of government contracts and the giving of political donations.¹⁶¹ Subsequently, Crown corporations and corporations that receive more than 50 per cent of their income from the Canadian (federal) government are not entitled to give political donations.¹⁶²
- 3.62 In the US, it is unlawful for persons or companies with contracts with the federal government to make political contributions.¹⁶³ For New York City

¹⁵⁶ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, pp. 33-34; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 45-46; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 18.

¹⁵⁷ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 33.

¹⁵⁸ Associate Professor Andrew Geddis (Researcher and Lecturer), *Discussions*, Wellington, 10 February 2009, p. 14.

¹⁵⁹ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 8; Property Council of Australia, *Submission*, no. 10, received 27 June 2008, p. 2.

¹⁶⁰ IDEA (International Institute for Democracy and Electoral Assistance), *Funding of political parties and election campaigns handbook*, 2003 cited in Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

¹⁶¹ Crown, *Who is responsible?: Summary*, Gomery Commission, Ottawa, 2005, p. 6.

¹⁶² Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 43; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 46.

¹⁶³ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 43; Dr Joo-Cheong Tham, *Submission: Appendix A*

Council elections, those individuals who hold a government contract can only donate up to US\$400, compared with US\$4,950 for all other individuals.¹⁶⁴

3.63 Dr Ken Coghill and Dr Joo-Cheong Tham contend that “such regulation reflects the notion that contributions from donors that have a particularly strong interest in governmental action carries a serious danger of graft and, therefore, should be limited”.¹⁶⁵

3.64 For the Committee’s consideration, inquiry participants proposed four different methods of ameliorating the potential for graft:

- Any entity that has contracts with state or federal governments ... be prohibited from making donations to political parties, candidates and associated entities;¹⁶⁶ or
- A prohibition on organisations which tender for government work from making political donations;¹⁶⁷ or
- Corporations, related entities and persons donating cash or any other resources to (a) organisations which advertise or otherwise campaign in support of particular policies or candidates or (b) political parties or candidates be banned from holding or tendering for government contracts for the entire life of the parliament elected following any such donation;¹⁶⁸ or
- The Victorian Government’s tendering process should be robust and transparent enough to deal with potential conflicts of interest.¹⁶⁹

Anonymous donors

3.65 As specified earlier in this chapter, New South Wales, Queensland, Western Australia, the Australian Capital Territory and the Northern Territory prohibit anonymous donations, the threshold being dependent on the jurisdiction.¹⁷⁰ The Commonwealth Parliament is also currently debating whether to amend the *Commonwealth Electoral Act 1918* (Cth) so as to:

- Prohibit anonymous donations above \$50 to registered political parties, candidates and members of Senate groups and also prevent the use of anonymous donations above \$50 for political expenditure;

(*Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election*), no. 1, received 7 June 2008, p. 46.

¹⁶⁴ Amy Loprest and Peter Mares, “The best democracy money can’t buy”, *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, pp. 2-3; Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 26.

¹⁶⁵ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 43; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 46.

¹⁶⁶ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 18.

¹⁶⁷ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 3.

¹⁶⁸ Dr Ken Coghill, *Submission*, no. 14, received 7 July 2008, p. 5.

¹⁶⁹ Property Council of Australia, *Submission*, no. 10, received 27 June 2008, p. 2.

¹⁷⁰ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 14.

- Permit anonymous donations of \$50 or less in certain circumstances.¹⁷¹

- 3.66 Inquiry participants Dr Ken Coghill and Dr Joo-Cheong Tham supported banning the receipt of anonymous donations of equal to or more than \$200 by candidates, registered political parties and associated entities.¹⁷²
- 3.67 The Democratic Audit of Australia, in its submission to the inquiry into the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 (Cth), noted that a lower threshold (\$50) is preferable because a complete ban may be impractical for those who make small donations at branch fundraising events.¹⁷³ The Commonwealth Parliament's JSCEM recommended that the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 (Cth) be amended to:
- Allow for anonymous donations below a threshold of \$50 to be received without a disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth.¹⁷⁴
- 3.68 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth) stipulates that it would be lawful for registered political parties, candidates and Senate groups to receive anonymous donations of \$50 or less at either a general public activity or a private event.¹⁷⁵
- 3.69 Anonymous donations of more than £200 are banned in the UK.¹⁷⁶ In New Zealand, anonymous donations of less than NZ\$1,000 can be given directly to the party, while anonymous donations of more than NZ\$1,000 can be given to a registered political party or candidate via the New Zealand Electoral Commission.¹⁷⁷ In addition, anonymous donations of more than €500 are considered unlawful in Germany.¹⁷⁸

Foreign donors

- 3.70 The *Electoral Act 2002* (Vic) and the *Commonwealth Electoral Act 1918* (Cth) currently do not prohibit political parties or candidates receiving donations from

¹⁷¹ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, pp. 1-2.

¹⁷² Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 21.

¹⁷³ Democratic Audit of Australia, Submission No.1, p. 4 cited in Parliament of Australia, *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, Joint Standing Committee on Electoral Matters (Chair: Daryl Melham MP), Canberra, 2008, p. 60.

¹⁷⁴ Parliament of Australia, *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, Joint Standing Committee on Electoral Matters (Chair: Daryl Melham MP), Canberra, 2008, p. 64.

¹⁷⁵ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, p. 4.

¹⁷⁶ Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, p. 30.

¹⁷⁷ Ms Kristina Temel (Manager of Electoral Affairs), Chief Electoral Office, Ministry of Justice, *Discussions*, Wellington, 10 February 2009, p. 7.

¹⁷⁸ Parteigesetz, trans. The Law on Political Parties (Party Law) cited in Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

foreign donors.¹⁷⁹ However, the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth) aims to amend the *Commonwealth Electoral Act 1918* (Cth) so as to:

Prohibit foreign donations to registered political parties, candidates and members of Senate groups and prevent the use of foreign donations for political expenditure.¹⁸⁰

- 3.71 Political donations from entities without an Australian Business Number (ABN) have been banned in New South Wales.¹⁸¹
- 3.72 Internationally, 40 countries (out of 111 countries surveyed by the International Institute for Democracy and Electoral Assistance) have banned political donations from foreign sources including Canada, US and the UK.¹⁸² This issue was discussed with the relevant authorities when the Committee was in the UK.¹⁸³
- 3.73 The Commonwealth Parliament's JSCEM has previously reported the sources and amounts of foreign donations received by registered political parties. Between 1998 and 2005, five foreign donations given to Victorian political parties from foreign sources amounted to \$27,848.¹⁸⁴ More recently, the 2007-08 Political Party Annual Returns noted a reportable donation valued at \$400,000 from a foreign source.¹⁸⁵
- 3.74 While some inquiry participants suggested that foreign donations should be banned,¹⁸⁶ other inquiry participants felt that foreign donations were perceived as problematic by the public but was not a serious issue in Australia.¹⁸⁷
- 3.75 As mentioned previously, a Committee member was concerned about the implications of banning donations from overseas sources for Australian

¹⁷⁹ Electoral Bill 2002 (Vic), Australia, s. 229(1).

¹⁸⁰ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, pp. 1-2.

¹⁸¹ Election Funding Authority (New South Wales), *Funding and disclosure guide: Parties and party agents*, Election Funding Authority of New South Wales, Sydney, 2008, p. 6.

¹⁸² IDEA (International Institute for Democracy and Electoral Assistance), *Funding of political parties and election campaigns handbook*, 2003 cited in Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

¹⁸³ Professor Keith Ewing, *Discussions*, London, 1 September 2008, pp. 1, 2, 4, 19; Mr Sam Younger, Ms Caroline Evans, Mr Clinton Proud & Ms Lisa Klein, Electoral Commission UK, *Discussions*, London, 1 September 2008, pp. 11-12; Mr Peter Hawthorne (Assistant Secretary), Committee on Standards in Public Life, *Discussions*, London, 3 September 2008, pp. 5, 16.

¹⁸⁴ Parliament of Australia, *Funding and disclosure: inquiry into disclosure of donations to political parties and candidates*, Joint Standing Committee on Electoral Matters (Chair: Peter Lindsay MP), Canberra, 2006, pp. 43-45.

¹⁸⁵ Figures compiled from the Australian Electoral Commission, *2007-2008 annual financial disclosure returns*, 2 February 2009. Retrieved 26 February 2009 from <http://periodicdisclosures.aec.gov.au/Party.aspx>.

¹⁸⁶ Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5; Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 8; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 18.

¹⁸⁷ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 17; Mr Stephen Luntz (Electoral Analyst), Australian Greens (Victoria), *Transcript of evidence*, Melbourne, 24 July 2008, p. 7.

residents on permanent, temporary or humanitarian visas.¹⁸⁸ Ms Deidre Moor, Manager of Policy and Programs of the Public Interest Advocacy Centre agreed with the member's concerns and that the Public Interest Advocacy Centre's decision to support the restriction of sources of donations to Australians citizens did not intend to disadvantage residents on permanent, temporary or humanitarian visas participating in the political process.¹⁸⁹

- 3.76 Emeritus Professor Colin Hughes sympathised with the intentions of prohibiting donations from foreign sources. However, given that political parties operate in a global context and often have affiliations with foreign organisations and political parties, he argued that banning donations from foreign sources would be “ineffectual in practice and therefore undesirable on balance”.¹⁹⁰

Media

- 3.77 Country Alliance was the only inquiry participant who specifically proposed to ban media organisations from being able to make political donations.¹⁹¹

Tobacco industry

- 3.78 Action on Smoking and Health and the Cancer Council of Victoria support the prohibition or restriction of political donations from tobacco companies. Action on Smoking and Health identified that as “governments around Australia have legislated to ban tobacco promotion and sponsorship in many forms ... this makes it all the more inappropriate that money, gifts or the ‘sponsorship’ of political parties or candidates should still be permitted”.¹⁹² The Cancer Council of Victoria informed the Committee that Australia has ratified the Framework Convention on Tobacco Control (FCTC)¹⁹³ and:

[it] has committed under Article 5, paragraph 3 (General obligations) to protecting its public health policies with respect to tobacco control from the commercial and other vested interests of the tobacco industry. A ban on the acceptance of donations from tobacco companies would maximise the effectiveness of Australia's implementation of its general obligations under Article 5 of the FCTC.¹⁹⁴

- 3.79 The Committee was further informed by Action on Smoking and Health of some alleged examples of legislation being delayed and/or weakened after representations by tobacco companies to governments, which have had negative health consequences.¹⁹⁵

¹⁸⁸ Mr Robin Scott MP, Committee member cited in Ms Deidre Moor (Manager Policy & Programs), Public Interest Advocacy Centre Limited, *Transcript of evidence*, Melbourne, 24 July 2008, p. 4.

¹⁸⁹ Ms Deidre Moor (Manager Policy & Programs), Public Interest Advocacy Centre Limited, *Transcript of evidence*, Melbourne, 24 July 2008, p. 4.

¹⁹⁰ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 3.

¹⁹¹ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 8.

¹⁹² Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 2.

¹⁹³ The Framework Convention on Tobacco Control sets out guiding principles and general obligations, measures relating to the reduction of demand and supply of tobacco and the protection of the environment and the health of persons. Australia ratified it on 27 October 2004. See http://www.who.int/fctc/signatories_parties/en/index.html.

¹⁹⁴ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 3.

¹⁹⁵ Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 2.

- 3.80 Some registered political parties no longer accept donations from tobacco companies.¹⁹⁶
- 3.81 In February 2004 Labor Party member Duncan Kerr MHR introduced a Private Members' Bill – the Commonwealth Electoral Amendment (Preventing Smoking Related Deaths) Bill (2004-05) – into the Commonwealth Parliament, supported by Dr Mal Washer MHR, a member of the Liberal Party. The bill proposed to deny public funding to political parties and individual candidates who accept donations from tobacco companies or a person who derives substantial revenue from the manufacturing, distribution or retail sale of tobacco products.¹⁹⁷
- 3.82 A Committee member stated that it was improbable that tobacco companies had greater access to government ministers as a result of political donations given that it is ALP policy not to accept political donations from tobacco companies, and at the time of the public hearings there were no Liberal Governments in Australia.¹⁹⁸
- 3.83 In response, the Cancer Council Victoria and Action on Smoking and Health alleged tobacco companies direct donations to political parties via third parties.¹⁹⁹

Third parties and associated entities

- 3.84 The *Electoral Act 2002* (Vic) does not offer a definition of a third party or an associated entity. Dr Sally Young and Dr Joo-Cheong Tham defined third parties as “entities other than registered parties, their associated entities, candidates, donors with disclosure obligations and broadcasters and publishers”.²⁰⁰ Examples of associated entities include registered clubs, service companies, trade unions and corporate party members.
- 3.85 At the public hearing, Ms Deidre Moor, Manager Policy and Programs at the Public Interest Advocacy Centre noted that the definition of a third party is complex and can inadvertently capture many organisations. Accordingly, she stated that there needs to be a distinction made between issue advocacy organisations and organisations “set up basically to support one political party”.²⁰¹

¹⁹⁶ Michelle Scollo & Margaret Winstanley. *Tobacco in Australia: Facts and issues*. Third Edition, The Cancer Council Victoria, 2008, p. 64.

¹⁹⁷ Duncan Kerr, Extract from House of Representatives Hansard, 16 February 2004. Commonwealth Electoral Amendment Preventing smoking related deaths Bill 2004: First reading. Canberra, 2004. Retrieved from: http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2002-04/tob_adv_proh/documents_tor/1_read.pdf on 10 April 2009.

¹⁹⁸ Mr Michael O'Brien MP, Deputy Chair of the Committee cited in Ms Anne Jones (Chief Executive), Action on Smoking and Health, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

¹⁹⁹ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, pp. 2-3; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 3.

²⁰⁰ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 10.

²⁰¹ Ms Deidre Moor (Manager Policy & Programs), Public Interest Advocacy Centre Limited, *Transcript of evidence*, Melbourne, 24 July 2008, p. 3.

- 3.86 As part of its international investigations, the Committee learnt that in Canada there is a limit of C\$3,600 per year on the amount of money that can be donated by a third party to a political party or candidate.²⁰² In New Zealand and the UK, there are no restrictions placed on third party donations to political parties or candidates.²⁰³
- 3.87 The Public Interest Advocacy Centre proposed a ban on “all donations to ... associated entities from corporations, unions and organisations”.²⁰⁴

Corporations and trade unions

- 3.88 A review by the Secretariat of the political donations policies of the Top 50 ASX companies by market capitalisation (as at 8 October 2008) indicated that corporations:
- Make political donations to political parties (sometimes with the endorsement of shareholders) because they perceived political donations to contribute to representative government;²⁰⁵
 - Did not contribute to any political party, politician or candidate;²⁰⁶ and/or
 - Paid fees to attend events organised by political parties.²⁰⁷
- 3.89 The Committee heard conflicting evidence about the influence of political donations from corporations and trade unions. One inquiry participant perceived that “businesses believe they can influence the two major parties by providing political donations”.²⁰⁸ Another indicated that political donations do not influence government decision making.²⁰⁹
- 3.90 Out of 111 countries surveyed by the International Institute for Democracy and Electoral Assistance, 22 countries have “various types of bans on corporate donations” and 17 countries prohibit trade unions from making donations to political parties.²¹⁰ For example, Canada prohibits corporations and trade unions from giving political donations to candidates, political parties and

²⁰² Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 6.

²⁰³ Professor Keith Ewing, *Discussions*, London, 1 September 2008, pp. 20-21; Associate Professor Raymond Miller, Associate Professor Ann Sullivan & Dr Jennifer Curtin, University of Auckland, *Discussions*, Auckland, 9 February 2009, p. 15.

²⁰⁴ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 3.

²⁰⁵ For example Australia and New Zealand Banking Group Limited, *Public policy advocacy and political donations policy*, 2008. Retrieved 30 September 2008 from www.anz.com/documents/au/policies/PublicPolicyAdvocacy_PoliticalDonations.pdf.

²⁰⁶ For example Foster's Group, *Submission*, no. 13, received 27 June 2008, p. 1.

²⁰⁷ For example News Limited, *Submission*, no. 12, received 27 June 2008, p. 1.

²⁰⁸ Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

²⁰⁹ Mr Aaron Gadiel (Chief Executive Officer), Urban Taskforce Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 2.

²¹⁰ IDEA (International Institute for Democracy and Electoral Assistance), *Funding of political parties and election campaigns handbook*, 2003 cited in Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

leaders in Canada.²¹¹ For New York City Council elections, corporations are prohibited from donating to political parties while trade unions are able to donate to political parties subject to contribution limits.²¹²

3.91 Two inquiry participants intimated that trade unions and corporations should be subject to the same rules,²¹³ while others felt that they should be treated differently because trade unions, as well as social organisations including non-government organisations and not-for-profit organisations, represent broad social interests of citizens rather than corporate interests.²¹⁴

3.92 Several inquiry participants stated a preference for political donations from corporations and trade unions to be banned, or at the very least, limits established.²¹⁵

3.93 Country Alliance suggested that political donations by corporations and trade unions should be limited to \$50,000²¹⁶ and corporations and trade unions should be prohibited from using third parties or agents to donate on their behalf.²¹⁷

3.94 Dr Ken Coghill's submission sets out his proposed measures:

- Corporations be banned from making donations to political parties and candidates for elected political office;
- Corporations be banned from making donations to organisations which advertise or otherwise campaign in support of particular policies, political parties or candidates;
- Candidates for elected political office and political parties be banned from accepting donations from corporations;
- Candidates for elected political office be banned from expending funds received from corporations prior to candidature for purposes related to candidature; and
- Collective organisations be restricted to the same restrictions on donations as those applying to individuals.²¹⁸

²¹¹ Fred Fletcher and Peter Mares, "The best democracy money can't buy", *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 6; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

²¹² Amy Loprest and Peter Mares, "The best democracy money can't buy", *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 3.

²¹³ Mr Aaron Gadiel (Chief Executive Officer), Urban Taskforce Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 11.

²¹⁴ Dr Ken Coghill, *Submission: Appendix B ("A case against uniform contribution limits" by Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, pp. 1-15; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 25-37.

²¹⁵ Citizens Electoral Council of Australia, *Submission*, no. 16, received 14 July 2008, p. 4; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 11; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5; Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 2.

²¹⁶ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 3.

²¹⁷ Country Alliance, *Submission*, no. 6, received 26 June 2008, pp. 8-9.

²¹⁸ Dr Ken Coghill, *Submission*, no. 14, received 7 July 2008, p. 5.

- 3.95 Dr Joo-Cheong Tham proposed a number of recommendations for the Committee's consideration which would regulate the financing of political parties by trade unions (not only ALP-affiliated trade unions), religious and environmental groups, organisations of farmers and shareholders:
- Organisational contributions be subject to caps that vary according to the number of members who are natural persons and be subject to full democratic scrutiny within the organisation, as set out by the Power Inquiry (UK);
 - Trade unions should be required to set up a separate fund for political spending as in Western Australia; and/or
 - Businesses and trade unions respectively should seek authorisation from their shareholders and members at annual general meetings or at least every three or four years.²¹⁹
- 3.96 In considering restricting political donations from corporations and trade unions, the Committee gathered evidence which did not support uniform contribution limits for corporations and trade unions.²²⁰ Dr Joo-Cheong Tham outlined the other difficulties with uniform contribution limits in his submission including:
- It is misdirected at 'trade union bosses';
 - Adoption of uniform contribution limits will produce anomalies; and
 - Give rise to an unjustified limitation on the freedom of political association.²²¹
- 3.97 Dr Joo-Cheong Tham noted that uniform contribution limits would have a severe effect upon the trade union-ALP link.²²²

Party membership and affiliation fees

- 3.98 Trade union affiliation and party membership fees are a source of funding for political parties. However, the *Electoral Act 2002* (Vic) stipulates that an annual subscription paid to a political party by a person in respect of the person's membership of the party is not regarded as a gift (political donation);²²³ this is similar to the provisions in the *Commonwealth Electoral Act 1918* (Cth).²²⁴
- 3.99 Two inquiry participants differentiated trade union affiliation fees and individual membership fees from political donations from corporations. It was suggested that these are different because of the transparency of the funding: both types

²¹⁹ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 47-48.

²²⁰ Dr Ken Coghill, *Submission: Appendix B ("A case against uniform contribution limits" by Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, pp. 1-15; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 25-37.

²²¹ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 26.

²²² Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 31.

²²³ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, s. 206.

²²⁴ *Commonwealth Electoral Act 1918* (Cth), Australia, s. 287.

of fees openly declare that the member/s supports the party's Constitution, policies and principles. In regard to political donations by corporations, principled support is not required and the process is often not transparent.²²⁵

3.100 The issue of corporations becoming "corporate members" was raised at the public hearings between the Committee and Professor Brian Costar, Dr Joo-Cheong Tham and Mr Aaron Gadiel.²²⁶

3.101 Due to the historic relationship between the trade unions and the ALP, the Democratic Audit of Australia stated that affiliation fees should be:

Quarantined from the category of political donations for election campaigns and that state branches of the ALP provide annual, audited accounts to the electoral funding authority confirming that capitation fees have not been spent on election campaigning.²²⁷

3.102 A Committee member stated that respecting the historical links between trade unions and the ALP would give the ALP a significant financial advantage.²²⁸

Cash donations

3.103 Internationally, there is not a consistent approach to the limits placed on cash donations. In Germany, political parties can receive cash donations up to €1,000.²²⁹ While in Canada, no individual can make a cash contribution which exceeds C\$20.²³⁰

3.104 Dr Ken Coghill indicated that prohibiting cash donations was a "highly desirable move".²³¹ However, cash donations should be allowed subject to a threshold, a receipt being issued and the cash is banked in the name of the political party.²³²

²²⁵ Dr Ken Coghill, *Submission: Appendix B ("A case against uniform contribution limits" by Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 5; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 29.

²²⁶ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, pp. 10-13; Mr Aaron Gadiel (Chief Executive Officer), Urban Taskforce Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4; Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008, pp. 5-6.

²²⁷ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2.

²²⁸ Mr Michael O'Brien MP, Deputy Chair of the Committee cited in Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 12.

²²⁹ Parteiengesetz, trans. The Law on Political Parties (Party Law) s. 25(1) cited in Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

²³⁰ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 4; Elections Canada, *Backgrounders: New rules for federal political donations, 2007*. Retrieved 7 November 2008 from <http://www.elections.ca/content.asp?section=gen&document=ec90557&dir=bkg&lang=e&textonly=false>; Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 11.

²³¹ Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 8.

²³² Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 6.

- 3.105 In Canada, “a receipt must be issued for each contribution received of, or with a commercial value of, C\$20 or more”;²³³ Elections Canada regard this measure as key to enforcing the contribution limits.²³⁴
- 3.106 Emeritus Professor Colin Hughes considered the possibility of having a prescribed “donation form” which would formalise the process of cash donations and enforcement.²³⁵
- 3.107 At the public hearings Mr Craig Ingram MP, independent member for East Gippsland, noted that the payment of branch memberships should be by personal cheque or direct debit.²³⁶

Attendance charges

- 3.108 In his submission, Dr Joo-Cheong Tham reported that attendance charges may range from \$500 per head for general admission to \$45,000 to dine with a Premier. Political parties also offer corporations the opportunity to establish partnerships through sponsorship.²³⁷
- 3.109 While the Property Council of Australia reported that participation in fundraising events assists in the financing of political parties’ activities and encourages politicians to engage with sections of the community,²³⁸ there was a perception by several inquiry participants that attendance at fundraising events bought access to government ministers.²³⁹ During parliamentary debate, Mr Robin Scott MP, Committee member, indicated his support for the Committee considering this issue:

Those involved in the process of exercising political power speak regularly to rich people, ... and in speaking regularly to rich people their frame of reference for political discourse is changed. It focuses on those who are donating money. ... I think that issue of soft power and how people’s perceptions are changed by who they deal with naturally in their political engagement is one we should consider.²⁴⁰

- 3.110 Another Committee member offered a different view:

²³³ Elections Canada, *Backgrounders: New rules for federal political donations*, 2007. Retrieved 7 November 2008 from <http://www.elections.ca/content.asp?section=gen&document=ec90557&dir=bkg&lang=e&textonly=false>.

²³⁴ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 11.

²³⁵ Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 3.

²³⁶ Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 7.

²³⁷ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 14.

²³⁸ Property Council of Australia, *Submission*, no. 10, received 27 June 2008, p. 1.

²³⁹ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 13-19; Mr Craig Ingram MP, *Submission*, no. 17, received 15 July 2008, p. 3; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 3; Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 4.

²⁴⁰ Mr Robin Scott, *Parliamentary debates*, Legislative Assembly, Parliament of Victoria, Melbourne, 4 February 2009, pp. 102-103.

I have always had this view that this is one of the little secrets of political parties. This idea of people getting access to ministers at fundraising dinners is one of the big jokes. ... You do not discuss business at a 200-person dinner. You pick up the phone and you say, 'This is an issue, I need to discuss it with you. Can I please see the minister?' or, 'Can I please see the shadow minister?'.²⁴¹

- 3.111 Many inquiry participants proposed that attendance charges beyond actual reasonable/market costs should be considered as a political donation,²⁴² as is the case in Canada.²⁴³
- 3.112 On the other hand, News Limited argued that "payment for attendance at an event for commercial reasons is not a donation".²⁴⁴

Raffles

- 3.113 Fundraising activities such as bingo, raffles and appeals are regulated by state and territory authorities. In Victoria, Consumer Affairs Victoria and the Victorian Commission for Gambling Regulation, together with the Department of Justice are responsible for the regulation of fundraising practices.
- 3.114 Registered political parties are exempt from the requirement to register with Consumer Affairs Victoria to conduct a fundraising activity as set out in the *Fundraising Appeals Act 1998 (Vic)*.
- 3.115 Mr Craig Ingram MP noted that there are different rules regarding fundraising by political parties and independent candidates. Mr Ingram told the Committee at the public hearing that independent candidates are not exempt from having to apply to conduct raffles as a fundraising activity while political parties are exempt. Mr Ingram supports independent candidates being allowed access to the same exemptions as political parties.²⁴⁵

Intra-party transfers

- 3.116 The Australian Greens (Victoria) was concerned about donations being directed to a registered political party via a secretariat outside of Victoria.²⁴⁶ The New South Wales Legislative Council Select Committee on Electoral and

²⁴¹ Mr Michael O'Brien, Deputy Chair of the Committee cited in Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

²⁴² Dr Ken Coghill, *Submission*, no. 14, received 7 July 2008, p. 5; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 9.

²⁴³ *Canada Elections Act 2000* c. 9, s. 408 states that "if a fundraising activity is held for the primary purpose of soliciting a monetary contribution for a registered party, a registered association, a candidate, a leadership contestant or a nomination contestant by way of selling a ticket, the amount of the monetary contribution received is the difference between the price of the ticket and the fair market value of what the ticket entitles the bearer to obtain."

²⁴⁴ News Limited, *Submission*, no. 12, received 27 June 2008, p. 2.

²⁴⁵ Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, pp. 7-8.

²⁴⁶ Australian Greens (Victoria), *Submission*, no. 11, received 27 June 2008, p. 1.

Political Party Funding reported that these intra-party transfers gave the major political parties an electoral advantage and undermined transparency.²⁴⁷

- 3.117 There are no publicly available figures in Victoria on intra-party transfers. However, it could be assumed that the practice of intra-party transfers which occurs in other states is comparable to Victoria. The New South Wales Legislative Council Select Committee on Electoral and Political Party Funding reported that

In the four years leading up to the 2007 [New South Wales] state election, the ALP NSW received approximately \$500,000 in intra party transfers, and the Liberal Party NSW over \$2.7 million, all of which (except \$3,000 to the Liberal Party) came from the parties' national secretariats.²⁴⁸

- 3.118 The New South Wales Legislative Council Select Committee on Electoral and Political Funding recommended banning intra-party transfers to cover state election costs. However, intra-party transfers could be used, up to a "reasonable limit", to subsidise the costs of party administration.²⁴⁹ This recommendation was not accepted by the New South Wales Government when the legislation was introduced into the Parliament of New South Wales.

Voluntary labour

- 3.119 Voluntary labour is considered essential to the operations of political parties. The New South Wales Legislative Council Select Committee on Electoral and Political Party Funding noted the importance of voluntary labour:

[V]olunteering is a crucial way for people to participate in the political process and show their support for a party or candidate. Parties, candidates and groups rely heavily on this grassroots support to assist with their election campaigns.²⁵⁰

- 3.120 Some inquiry participants were concerned that less people would participate in election campaigns as volunteers if voluntary labour was regulated.²⁵¹

- 3.121 The definition of voluntary labour in Canada is as follows:

Volunteer labour means any service provided free of charge by a person, outside of that person's working hours. Volunteer labour is not considered a contribution and is not subject to the eligibility rules for contributions or contribution caps. It does not include a service provided by a person who is self-employed, if the service is one that is normally sold or otherwise charged for by that person; in this case, the services provided are

²⁴⁷ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. 108.

²⁴⁸ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. 108.

²⁴⁹ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. 113.

²⁵⁰ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. 114.

²⁵¹ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 95.

considered contributions and are subject to the rules respecting contributions, including the requirement to be disclosed.²⁵²

- 3.122 Given that no inquiry participants supported restricting voluntary labour and the New South Wales Legislative Council Select Committee on Electoral and Political Party Funding recommended that there should be no restrictions placed on voluntary labour,²⁵³ the Committee agreed not to categorise voluntary labour as a political donation. However, the Committee notes that in making this finding, there should be a clear distinction between genuine voluntary labour and instances of paid staff being seconded to political campaigns.

Loans and other credit facilities

- 3.123 In the Committee's inquiry into the conduct of the 2006 Victorian state election and matters related thereto, Dr Ken Coghill and Dr Joo-Cheong Tham proposed that any loan made to a candidate or registered political party be illegal except where that loan and interest rate schedule is not any more favourable than commercially available alternatives.²⁵⁴
- 3.124 The Democratic Audit of Australia put forward that loans beyond reasonable costs should be treated as a donation.²⁵⁵
- 3.125 Emeritus Professor Colin Hughes indicated that "the position concerning a [political] party's regular bank which makes it a loan on usual terms would have to be distinguished from a donation to support the party's campaign".²⁵⁶
- 3.126 The Property Council of Australia did not support sector-specific limits or bans on loans.²⁵⁷
- 3.127 Dr Ken Coghill and Dr Joo-Cheong Tham indicated that the Canadian Parliament had considered the Accountability with Respect to Loans Bill (Canada) which aimed to "prevent lending to political parties being used to circumvent limits on contributions".²⁵⁸ The Bill proposed to amend the *Canada Elections Act* (Canada) by limiting the source and amount of loans and establishing a standard procedure for reporting loans.²⁵⁹ The Bill did not

²⁵² Elections Canada, *Backgrounders: Contributions and expenses at a federal election or by-election: Candidates and registered parties*, 2007. Retrieved 7 November 2008 from <http://www.elections.ca/content.asp?section=gen&document=ec90707&dir=bkg&lang=e&textonly=false>.

²⁵³ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. 114.

²⁵⁴ Dr Ken Coghill & Dr Joo-Cheong Tham, *Submission*, no. 16, received 12 June 2007, p. 4.

²⁵⁵ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 3.

²⁵⁶ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 2.

²⁵⁷ Property Council of Australia, *Submission*, no. 10, received 27 June 2008, p. 1.

²⁵⁸ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 43.

²⁵⁹ Government of Canada, *Accountability with Respect to Loans Bill passes House of Commons*, 18 June 2008. Retrieved 7 November 2008 from <http://www.reformedemocratique.gc.ca/index.asp?lang=eng&page=news-comm&doc=20080618>.

become law before the end of the 39th Parliament, which concluded on 7 September 2008.²⁶⁰

- 3.128 One of the findings of the New South Wales Legislative Council Select Committee on Electoral and Political Party Funding was that it is common practice for political parties to take out loans to finance an election campaign. While the aforementioned NSW parliamentary committee did not have an issue with political parties taking out bank loans, the Committee believed that informal credit facilities should be banned and bank loans should be capped and the cap should be determined by the Auditor-General.²⁶¹

Donations to own campaign

- 3.129 The Committee discussed whether candidates donating to their own campaign should be restricted. To the Committee's knowledge, there are currently no limits or restrictions placed on candidates being able to financially contribute to their election campaigns.
- 3.130 At a public hearing, Mr Craig Ingram MP, independent member for East Gippsland, explained his rationale for restrictions:
- [T]he last thing we want is Parliament being a place that you can only become a member of if you are independently wealthy. I think that would be a grave mistake, because I think everyone should have the right to run and have an equal opportunity to contest elections.²⁶²
- 3.131 Family Voice Australia stated that candidates should be free to use their own financial resources to further their political objectives.²⁶³
- 3.132 The New South Wales Legislative Council Select Committee on Electoral and Political Party Funding reported that without restrictions wealthy candidates would have an electoral advantage. The Committee recommended to "treat donations by a candidate to his or her own campaign in the same way as all other individual donations, and that be capped at \$1,000",²⁶⁴ the recommendation was not supported by the NSW Government.
- 3.133 Ms Deidre Moor, Manager of Policy and Programs with the Public Interest Advocacy Centre, when asked about the issue of candidates donating to their campaign acknowledged that this was not something her organisation had considered fully. However, she anticipated if contributions from individuals

²⁶⁰ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 11.

²⁶¹ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, pp. 114-115.

²⁶² Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 5.

²⁶³ Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 1.

²⁶⁴ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. 115.

were capped at a level similar to the Canadian model, this would also capture candidates contributing to their own campaign.²⁶⁵

- 3.134 The Committee considered the practices in other jurisdictions. The US does not prevent candidates from using their own money to fund their election campaigns in the US due to constitutional reasons.²⁶⁶ There are no such constitutional concerns in Canada. Nomination contestants, candidates and leadership contestants may contribute no more than a total of C\$1,000 of their own money to their election campaign. This amount is not indexed for inflation.²⁶⁷

²⁶⁵ Ms Deidre Moor (Manager Policy & Programs), Public Interest Advocacy Centre Limited, *Transcript of evidence*, Melbourne, 24 July 2008, p. 5.

²⁶⁶ Fred Fletcher and Peter Mares, "The best democracy money can't buy", *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 7.

²⁶⁷ Elections Canada, *Backgrounders: New rules for federal political donations*, 2007. Retrieved 7 November 2008 from <http://www.elections.ca/content.asp?section=gen&document=ec90557&dir=bkg&lang=e&textonly=false>.

Chapter 4: Disclosure of political donations

4.1 This chapter explores the issues raised as part of this inquiry in relation to disclosure. The first part of this chapter establishes the current arrangements in Victoria. The second part explores disclosure practices in Australian and international jurisdictions. The third part discusses support for political donations disclosure provisions and possible pathways to enhancing disclosure of political donations.

Current arrangements in Victoria

4.2 The only provision of political donation disclosure in the *Electoral Act 2002* (Vic) requires those political parties registered in Victoria, and which are also federally registered, to lodge a copy of their annual return with the VEC.²⁶⁸

4.3 Federally-registered political parties, under the *Commonwealth Electoral Act 1918* (Cth), are required to lodge an annual return with the AEC, which includes disclosure of political donations of more than \$10,900 received.²⁶⁹ The annual return must include the following details:

- Total receipts for the financial year (gross amount of all cash and non-cash benefits received by or on behalf of the party);
- Amounts of more than \$10,900 received in the financial year (including details of people and organisations);
- Total payments for the financial year (gross amount of payment made for or on behalf of the party including salaries, administrative expenses, electoral expenses and investments);
- Total debts for the financial year (gross amount of all loans, debts, overdrafts unpaid accounts); and
- Debts of more than \$10,900 including details of people and organisations.²⁷⁰

4.4 Under these arrangements, the following issues were noted:

²⁶⁸ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, s. 222.
²⁶⁹ *Commonwealth Electoral Act 1918* (Cth), Australia, s. 314AC.
²⁷⁰ See Political Party Annual Return.

- Registered political parties in Victoria only and independent candidates are not governed by disclosure provisions;
- Federally-registered political parties are not required to disclose the source and amounts of political donations, loans or gifts less than \$10,900; and
- Disclosure limits apply separately to state and federal party units so that a donor could contribute up to \$90,000: \$10,000 to each state or Territory party and another \$10,000 to the national party without being subject to disclosure provisions; this is known as “smurfing”.²⁷¹

Recommendation 3: The Victorian Government amend the *Electoral Act 2002 (Vic)* to ensure that the reporting and disclosure provisions that apply federally to registered political parties, also apply to independent candidates and political parties registered in Victoria.

Comparative approaches

Australia

- 4.5 There are different regulatory requirements in regards to disclosure of political donations for states, territories and federally in Australia, as outlined in Table 4.1.
- 4.6 Currently Victoria, South Australia and Tasmania do not have a donation disclosure scheme as such but political parties are required to provide a copy of the return they lodge with the AEC to their respective electoral commissions.²⁷²
- 4.7 In New South Wales, the Election Funding Amendment (Political Donations and Expenditure) Bill 2008 (NSW) amended the *Election Funding Act 1981* (NSW). Disclosure obligations were strengthened by requiring six-monthly disclosures of political donations and electoral expenditure to be lodged within eight weeks after each disclosure period (30 June and 31 December) by registered political parties, members of parliament, groups and candidates.²⁷³
- 4.8 The Commonwealth Parliament is currently debating the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth). The Bill proposes to amend the *Commonwealth Electoral Act 1918* (Cth) so as to:
- Reduce the donations disclosure threshold from \$10,000 (current rate, CPI-indexed) to \$1,000 and remove CPI indexation; and
 - Introduce a biannual disclosure framework in place of annual returns and reduce timeframes for election returns.

²⁷¹ Kenneth Mayer, *Sunlight as the best disinfectant: Campaign finance in Australia*, Democratic Audit of Australia, Australian National University, Canberra, October 2006, p. 4.

²⁷² Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, p. 86.

²⁷³ As outlined in The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 2.

- 4.9 The Bill passed the House of Representatives on 16 March 2009 and is currently before the Senate.²⁷⁴

International

- 4.10 Inquiry participants referred the Committee to disclosure schemes in Canada, Germany, the UK and the US.²⁷⁵ The Committee also gathered information on their international investigations to Canada, the UK, the US and New Zealand.
- 4.11 Table 4.2 outlines the political donation disclosure requirements for registered political parties in four of the most cited electoral funding schemes in parliamentary reports and the research literature.
- 4.12 In addition, as part of their international investigations, the Committee learnt about the disclosure requirements for candidates contesting the New York City Council elections. Candidates are required to regularly disclose details of the funds they have raised. Candidates must lodge the source and amount of contributions with the Board every six months, in January and July, during the first three years of the election cycle. In the final year, candidates must lodge details increasingly frequently: every second month, then monthly, then every two weeks and finally daily disclosure during the two weeks preceding the election. Details are published on the New York City Campaign Finance Board's website, which gives the public almost instantaneous access to the amounts candidates raise.²⁷⁶

²⁷⁴ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, pp. 1-2.

²⁷⁵ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, pp. 2, 4; Amy Loprest and Peter Mares, "The best democracy money can't buy", *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, pp. 1-9; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

²⁷⁶ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 27.

Table 4.1: Financial disclosure in Australia²⁷⁷

Financial disclosure	Commonwealth	Queensland	New South Wales	Western Australia	ACT	NT
Political parties	Yes. Registered parties and their state branches report annually on total receipts, expenditure and debts, and details of receipts and debts of \$10,900 or more.	Yes. Report every six months on total receipts, expenditure and debts, and details of receipts, expenditure and debts of \$1,000 or more. Report after every election totals of specified electoral expenditure for which election funding is sought. Report donations from any single donor which reach \$100,000 within a half-year period. Report to be made within 14 days after \$100,000 is reached. Returns published by the Queensland Electoral Commission within 10 business days.	Yes. Report every six months on the total value of 'small donations' (those valued at less than \$1,000) and the total number of people who made small donations. Report every six months on the details of 'reportable donations' (those valued at \$1,000 or more). 'Donation' includes subscription and membership fees, and entry fees to fundraising events. Mandatory reporting of loans.	Yes. Report annually on number and value of donations below \$1,800, details of donations of \$1,800 or more, and sum of income from other sources. Report after every election totals of specified electoral expenditures. Accepts copies of disclosure returns lodged with the AEC.	Yes. Report annually on total receipts, expenditure and debts, and details of receipts and debts of \$1,000 or more.	Yes. Report annually on total receipts, expenditure and debts, and details of receipts and debts of \$1,500 or more. Accepts copies of disclosure returns lodged with the AEC.

²⁷⁷ Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, pp. 86-91. Victoria, South Australia and Tasmania do not have disclosure schemes but political parties must provide a copy of the return they lodge with the AEC to their respective electoral commissions.

Financial disclosure	Commonwealth	Queensland	New South Wales	Western Australia	ACT	NT
Candidates	Yes. Report after every election on total donations, details of all donations of more than \$10,900; and sums expended on specified electoral expenditure.	Yes. Report after every election on donations and loans of \$1,000 or more and on sums of specified electoral expenditure.	Yes. Report every six months on the total value of 'small donations' (those valued at less than \$1,000) and the total number of people who made small donations. Report every six months on the details of 'reportable donations' (those valued at \$1,000 or more). 'Donation' includes subscription and membership fees, and entry fees to fundraising events.	Yes. Report after every election on number and value of donations below \$1,800, details of donations of \$1,800 or more, sums expended on specified electoral expenditure.	Yes. Report after every election on total receipts, expenditure and debt, and details of receipts and debts of \$1,000 or more. In addition to election returns, MLAs report annually on these details.	Yes. Report after every election on total number and value of donations of \$200 or more, sums expended on specified electoral expenditure.
Groups (e.g. Senate groups)	Yes. Report after every election on total donations, details of donations of more than \$10,900, and sums expended on specified electoral expenditure.	Not applicable.	Yes. Report every six months on total number and value of contributions of \$1,000 or more (inc. from fundraising events), details of contributions of \$1,000 or more (inc. from fundraising events), and sums of specified electoral expenditure, with details of advertising expenditure.	Yes. Report after every election on number and value of donations below \$1,800, details of donations of \$1,800 or more, sums expended on specified electoral expenditure.	Not applicable.	Not applicable.

Financial disclosure	Commonwealth	Queensland	New South Wales	Western Australia	ACT	NT
Associated entities	Yes. Report annually as for political parties plus details of capital contributions used to generate funds donated to a political party.	Yes. Report every six months as for political parties.	No.	Yes. Report annually as for political parties.	Yes. Report annually as for political parties except that no threshold applies – all amounts are to show individual details.	Yes. Report annually as for political parties, plus details of capital contributions used to generate funds donated to a political party.
Donors to political parties	Yes. Report annually on donations above \$10,900.	Yes. Report every six months on donations of \$1,000 or more. Report donations which reach \$100,000 within a half-year period. Report to be made within 14 days after \$100,000 is reached. Returns published by the Queensland Electoral Commission within 10 business days.	Yes. Report every six months on donations of \$1,000 or more.	No.	Yes. Report annually on donations of \$1,000 or more.	Yes. Report annually on donations of \$1,500 or more. Yes. Report on donations during the election period totally above \$200 to a candidate or \$1,000 to political parties and other organisations.
Donors to candidates	Yes. Report after every election on donations above \$10,900.	Yes. Report after every election on donations of \$1,000 or more.	Yes. Report every six months on donations of \$1,000 or more.	No.	Yes. Report after every election on donations of \$1,000 or more made to candidates and groups. Report annually on donations made to MLAs of \$1,000 or more.	Yes. Report annually on donations of \$1,500 or more. Yes. Report on donations during the election period totally above \$200 to a candidate or \$1,000 to political parties and other organisations.

Financial disclosure	Commonwealth	Queensland	New South Wales	Western Australia	ACT	NT
Third parties (people who incur expenditure)	Yes. Report annually where they have incurred political expenditure of above \$10,900. Disclose donations received.	Yes. Report after every election where they have incurred \$200 or more of specified electoral expenditure. Disclose donations received of \$1,000 or more.	Yes. Report every six months where they have incurred \$1,000 or more of specified electoral expenditure. Disclose donations received.	Yes. Report after every election on sums of specified electoral expenditure where the total is \$200 or more. Disclose donations received.	Yes. Report after every election on sums of specified electoral expenditure where the total is \$1,000 or more. Disclose donations received.	Report after every election on sums of specified electoral expenditure where the total is \$200 or more. Disclose donations received.
Publishers and broadcasters	No.	Yes. Publishers report after every election on electoral advertisements with a value of \$1,000 or more. Broadcasters report on electoral advertisements after every election.	No.	No.	Yes. Report on electoral advertisements after every election.	Yes. Report on electoral advertisements after every election.

Table 4.2: Financial disclosure of political donations – International perspective²⁷⁸

	Canada	New Zealand	United Kingdom	United States
Political parties	Yes, including registered electorate associations, similar to branches of a political party. Donations totalling above C\$200 per quarter. Quarterly reports as a condition of receiving quarterly allowances.	Yes. Report every year on donations above NZ\$10,000, donations from overseas above NZ\$1,000, and anonymous donations above NZ\$1,000. Report within 10 days of donations from the same donor totalling more than NZ\$20,000 in 12 month period.	Yes. Donations and loans to the party above £5,000 each quarter, donations and loans to a branch of the party above £1,000 each quarter. Quarterly returns required except in the election period, when disclosure is weekly.	Yes. Party campaign committees must detail all contributions from other political committees, all loans, and donations above US\$200 for an election. Disclosure reports are required 12 days before and 20 days after the election, otherwise monthly.
Candidates	Yes, candidates for pre-selection and election. Donations totalling above C\$200 for an election.	Yes. Report every year on donations above NZ\$1,000 including anonymous donations.	Yes. Donations totalling above £50 for an election.	Yes, candidates for Congress. Donations totalling above US\$50 for an election.
Third parties	No.	Yes. Registered third parties. Donations to above NZ\$5,000, donations from overseas above NZ\$1,000.	Yes. Donations totalling £5,000 for an election. In relation to 'regulated donees', such as an association of members of political parties or holders of elective office: donations and loans to an association of members of a political party totalling above £5,000 for an election, donations and loans to members of a political party of holders of elective office.	Yes. Committees, including Political Action Committees (that enable corporations and unions to campaign) – donations above US\$50.

²⁷⁸

The information in this table is drawn from material contained in Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, pp. 28-31, 93-94.

Support for disclosure provisions

- 4.13 The majority of inquiry participants supported the *Electoral Act 2002* (Vic) being amended to contain a disclosure scheme for political donations.
- 4.14 Mr Craig Ingram MP advocated for amendments to be similar to those disclosure provisions contained within the original Electoral Bill 2002 (Vic).²⁷⁹
- 4.15 A number of inquiry participants noted that a disclosure scheme is important because it:
- Enabled citizens to see who, when and how much money is given to candidates and political parties;²⁸⁰
 - Provided a safeguard against inappropriate influence on the political system and discouraged large amounts of private funding;²⁸¹
 - Contributed to citizens being able to make more informed decisions at election time;²⁸²
 - Increased the public's confidence in democracy;²⁸³ and
 - Protected the public interest.²⁸⁴
- 4.16 Professor Kenneth R Mayer, Professor of Political Science at the University of Wisconsin-Madison, when talking about the regulation of political finance in Australia and the US used the phrase “sunlight as the best disinfectant” to illustrate the benefits of openness and transparency.²⁸⁵
- 4.17 The Public Interest Advocacy Centre referred the Committee to the Commonwealth Human Rights Initiative which argued that the right to information underpins the realisation of all other rights;²⁸⁶ the right is also

²⁷⁹ Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 6.

²⁸⁰ Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 4; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 6.

²⁸¹ The Hon Kim Beazley, Parliamentary debates, House of Representatives, Parliament of Australia, Canberra, 9 May 1991, p. 3482 cited in Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 8; The Hon Kim Beazley, Parliamentary debates, House of Representatives, Parliament of Australia, Canberra, 9 May 1991, p. 3482 cited in Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 5; Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 3.

²⁸² Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 5.

²⁸³ Mr Aaron Gadiel (Chief Executive Officer), Urban Taskforce Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 3.

²⁸⁴ Property Council of Australia, *Submission*, no. 10, received 27 June 2008, p. 1.

²⁸⁵ Kenneth Mayer, *Sunlight as the best disinfectant: Campaign finance in Australia*, Democratic Audit of Australia, Australian National University, Canberra, October 2006, p. 1.

²⁸⁶ Commonwealth's Human Rights Initiative, *Open sesame: Looking for the right to information in the Commonwealth*, Commonwealth's Human Rights Initiative (Chair: Professor Margaret Reynolds), New Delhi, 2003.

recognised in the *International Covenant on Civil and Political Rights* and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).²⁸⁷

- 4.18 The Committee also gathered evidence from its international investigations which highlighted that some international jurisdictions prefer a disclosure scheme over limits on political donations.²⁸⁸
- 4.19 The Committee did not gather any evidence which opposed the introduction of a disclosure scheme. However, inquiry participants brought a number of issues to the attention of the Committee when considering the introduction of such a scheme.
- 4.20 Dr Sally Young stressed that controlling the costs of television election advertising, as discussed later in Chapter 5, is the key to reducing the costs of election campaigning and would reduce concerns about political donations and its sources.²⁸⁹
- 4.21 While News Limited did not oppose the introduction of political donations disclosure, it argued that such a disclosure scheme should not “inadvertently capture expenditure and payments made by media companies in the ordinary course of their business which are not expended or made for political purposes”.²⁹⁰
- 4.22 Another inquiry participant was mindful that disclosure should protect the privacy of donors.²⁹¹

Donation disclosure issues

Disclosure threshold

- 4.23 The Committee received substantial evidence from inquiry participants about disclosure thresholds. Some inquiry participants felt strongly that the current Commonwealth threshold level of \$10,900 diminished accountability and transparency.²⁹²
- 4.24 Some inquiry participants suggested threshold levels ranging from zero to \$5,000 (cumulatively), as set out in Table 4.3.

²⁸⁷ The Public Interest Advocacy Centre’s submission (p. 5) referred to the Office of the United Nations High Commissioner for Human Rights, *International Covenant on Civil and Political Rights*. Article 19. Retrieved 19 January 2009 from <http://www2.ohchr.org/english/law/ccpr.htm> and the *Charter of Human Rights and Responsibilities Act 2006* (Vic), Act No. 43/2006, Australia.

²⁸⁸ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 37.

²⁸⁹ Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 7.

²⁹⁰ News Limited, *Submission*, no. 12, received 27 June 2008, p. 1.

²⁹¹ Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 3.

²⁹² The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 1; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 8; Electoral Commission Queensland, *Submission*, no. 9, received 27 June 2008, p. 2.

Table 4.3: Disclosure thresholds suggested by inquiry participants

Inquiry participant	Threshold level
Democratic Audit of Australia	\$50 ²⁹³
Dr Ken Coghill and Dr Joo-Cheong Tham	\$200 (candidates) \$1,000 (groups of candidates) ²⁹⁴
Australian Greens (Victoria)	\$1,000 ²⁹⁵
Cancer Council of Victoria	\$1,000 (aggregated from same entity or organisation) ²⁹⁶
Country Alliance	\$1,500 ²⁹⁷
Mr David Kerslake	\$1,000 - \$1,500 ²⁹⁸
Family Voice Australia	\$4,000 ²⁹⁹
Citizens Electoral Council	\$5,000 cumulatively from any individual ³⁰⁰

4.25 The Committee were also informed that the Commonwealth Parliament is currently debating whether to reduce the donations disclosure threshold from \$10,000 (current rate, CPI-indexed) to \$1,000 and remove CPI indexation.³⁰¹

4.26 The disclosure thresholds set in international jurisdictions is C\$200 in Canada, US\$200 in the US, £5,000 in the UK and NZ\$10,000 in New Zealand.³⁰²

4.27 Inquiry participants identified that the principal reasons for lowering the disclosure threshold is to:

- Increase public knowledge of the source of financial supporters of political parties;³⁰³ and
- Reduce the incidence of donation splitting.³⁰⁴

²⁹³ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2.

²⁹⁴ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 74.

²⁹⁵ Australian Greens (Victoria), *Submission*, no. 11, received 27 June 2008, p. 1.

²⁹⁶ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 2.

²⁹⁷ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 3.

²⁹⁸ Mr David Kerslake, *Transcript of evidence*, Melbourne, 23 July 2008, p. 2.

²⁹⁹ Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 4.

³⁰⁰ Citizens Electoral Council of Australia, *Submission*, no. 16, received 14 July 2008, p. 4.

³⁰¹ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, pp. 1-2.

³⁰² Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, pp. 30-32.

³⁰³ Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 3; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 8.

- 4.28 Family Voice Australia identified a number of factors in favour of a higher disclosure threshold including:
- Preserving the privacy of citizens (and their businesses) who choose to make political donations, and
 - Limiting the compliance costs of political parties in reporting the sources of donations over the threshold.³⁰⁵
- 4.29 Professor Keith Ewing asked the Committee to consider the affect of requiring smaller amounts of political donations to be disclosed.³⁰⁶ This was further supported by technical experts with whom the Committee met in New Zealand. The Committee learnt that larger political parties would not find it difficult to manage a reduced disclosure threshold whereas the smaller political parties may have some difficulty.³⁰⁷ Evidence gathered through submissions also indicated that the administrative burden associated with a low disclosure threshold may disproportionately affect smaller political parties.³⁰⁸
- 4.30 Some inquiry participants believed there should be a uniform disclosure threshold for political parties, groups and candidates to eliminate unduly cumbersome administrative burdens and confusion about laws and reporting requirements.³⁰⁹ The Commonwealth Parliament's JSCEM inquiry into disclosure of donations to political parties and candidates in 2006 also advocated for uniformity noting that "financial reporting arrangements for all entities involved in the political process should be the same in the interests of transparency and consistency".³¹⁰
- 4.31 There was some support for full disclosure. Emeritus Professor Colin Hughes argued that all donations should be disclosed because a disclosure threshold only produces concealment. Furthermore, if political parties, groups and candidates were required to disclose their campaign expenditure, it would provide a check on the accuracy of donations disclosure.³¹¹
- 4.32 Family Voice Australia indicated that the initial disclosure threshold could be adjusted once the first set of returns are analysed to establish what percentage of donations are disclosed.³¹²

³⁰⁴ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, pp. 1-2; Australian Greens (Victoria), *Submission*, no. 11, received 27 June 2008, p. 1.

³⁰⁵ Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 3.

³⁰⁶ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 37.

³⁰⁷ Dr Paul Harris, *Questions on notice*, no. 3, received 5 February 2009, p. 2; Associate Professor Andrew Geddis, *Questions on notice*, no. 2, received 28 January 2009, p. 3.

³⁰⁸ Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 3.

³⁰⁹ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 1; Electoral Commission Queensland, *Submission*, no. 9, received 27 June 2008, p. 2.

³¹⁰ Electoral Commission Queensland, *Submission*, no. 9, received 27 June 2008, p. 1.

³¹¹ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, pp. 2, 4.

³¹² Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 4.

Reporting responsibilities of donors and recipients

- 4.33 Many inquiry participants argued for a disclosure scheme at the state level. The following entities and persons were identified as those who should lodge disclosure returns detailing receipts, expenditure, and debts (if applicable):
- Candidates and groups of candidates;³¹³
 - Donors to: i) candidates and groups of candidates and ii) registered political parties;³¹⁴
 - Registered political parties;³¹⁵
 - Associated entities of registered political parties;³¹⁶ and
 - Third parties.³¹⁷
- 4.34 Dr Ken Coghill and Dr Joo-Cheong Tham indicated which details should be disclosed. Donors (i.e. person/entity who is making a *contribution* to a registered political party, an associated entity or candidate on behalf of others) should be responsible for disclosing to the political party or candidate the identities of the actual contributors and the amounts contributed. Recipients (i.e. registered political party, associated entity or candidate that reasonably suspects that a person/entity is making a *contribution* on behalf of others) should be responsible for ascertaining and verifying the identities of the actual contributors and the amounts contributed.³¹⁸
- 4.35 Associate Professor Andrew Geddis, an academic specialising in electoral law with whom the Committee met in New Zealand, also supported requiring disclosure from donors who donate over a particular amount to a political party,

³¹³ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 74; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2; Mr Craig Ingram MP, *Submission*, no. 17, received 15 July 2008, p. 4; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 9.

³¹⁴ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 74.

³¹⁵ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 74; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 9.

³¹⁶ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 74; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 9.

³¹⁷ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 74; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2.

³¹⁸ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 76.

candidate or third party.³¹⁹ However, Dr Paul Harris, a former New Zealand Electoral Commissioner believed that the compliance costs associated with donor disclosure would mean it would be resisted by donors and by political parties, even if the disclosure threshold was set relatively high.³²⁰

4.36 The Committee also gathered evidence which showed that New South Wales and international jurisdictions (i.e. NZ) require a candidate, political party, group and third party to appoint and register a financial agent who is responsible for:

- Managing political donations and electoral expenditure,
- Keeping proper records of a party's political donations and electoral expenditure, and
- Lodging declarations of political donations and electoral expenditure.³²¹

Donation disclosure methods

4.37 Some inquiry participants agreed that details of sources and amounts of donations (cash and in-kind) received by political parties should be made publicly available, and in a format which is easy to access and comprehend.³²²

4.38 The Institute of Business Ethics (UK) proposed that corporations could manage their disclosure obligations by providing details of the recipients and amounts of political donations in their annual reports.³²³

4.39 A popular medium for disclosure among inquiry participants was the internet. Some inquiry participants proposed that details of donations should be available on a public website similar to that used by the New York City Campaign Finance Board.³²⁴

4.40 When the Committee met with the New York City Campaign Finance Board, the Board advised that candidates contesting New York City Council elections are supplied, cost-free, with a software program for recording political donations and expenditure. Candidates are also provided with training sessions on how to use the software and manage disclosure requirements.³²⁵

³¹⁹ Associate Professor Andrew Geddis, *Questions on notice*, no. 2, received 28 January 2009, p. 4.

³²⁰ Dr Paul Harris, *Questions on notice*, no. 3, received 5 February 2009, p. 2.

³²¹ Ms Kristina Temel (Manager of Electoral Affairs), Chief Electoral Office, Ministry of Justice, *Discussions*, Wellington, 10 February 2009, p. 6; Election Funding Authority (New South Wales), *Funding and disclosure guide: Parties and party agents*, Election Funding Authority of New South Wales, Sydney, 2008.

³²² The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 1; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 9.

³²³ David Lascelles, *The ethics of influence: Political donations and lobbying*, Institute of Business Ethics, London, 2005, p. 6.

³²⁴ Dr Ken Coghill, *Submission*, no. 14, received 7 July 2008, p. 6; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, pp. 1-2; Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 3; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5.

³²⁵ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 27.

- 4.41 Professor Brian Costar indicated that the New York City Campaign Finance Board has offered the software program to electoral commissions in Australia and the feedback he has received about the program is that it is easy to use.³²⁶ While the Committee recognises the expertise of the New York City Campaign Finance Board in this area, the Committee sees the need for further investigation of how the software could be applied to the Victorian context.
- 4.42 For the Commonwealth Parliament's JSCEM inquiry into the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 (Cth), Mr Paul Dacey, the then Acting Electoral Commissioner of the AEC, gave evidence regarding the implications of using software offered by the New York City Campaign Board:
- The AEC is aware of that system and could consider adopting it. However, the adoption of such a model is not just as simple as obtaining the software used by that board [New York City Campaign Finance Board] for use by the AEC and those with reporting obligations. What is important is the interaction with other AEC systems and secure internet gateways to enable communications to be received by the AEC. They would all require significant development and associated costs. There could also be significant costs associated with an information program for stakeholders.³²⁷
- 4.43 Mr Craig Ingram MP noted that even though he was not required to do so, he published details of all donations received on his website.³²⁸ The Public Interest Advocacy Centre also referred the Committee to a website established by the Australian Greens (New South Wales) which provides publicly available details of donations given to political parties in New South Wales.³²⁹
- 4.44 Some inquiry participants proposed that if details of donors were to be made publicly available on a website, an identifier may be required. Inquiry participants indicated an address,³³⁰ political party membership status,³³¹ or employment/occupation³³² may be useful identifiers.
- 4.45 As part of its international investigations, the Committee was informed that in Canada, the details of contributors who give more than C\$200 are published. Particulars published include their name, city, province and postcode; for privacy reasons, street addresses are not published.³³³

Reporting timeframe

- 4.46 Inquiry participants suggested frequent and timely disclosure of political donations, and identified particular timeframes, as set out in Table 4.4.

³²⁶ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 7.

³²⁷ Mr Paul Dacey (Acting Electoral Commissioner), Australian Electoral Commissioner, *Official Committee Hansard*, Canberra, 26 September 2008.

³²⁸ Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 3.

³²⁹ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 8.

³³⁰ Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 4.

³³¹ Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 4.

³³² New York City Campaign Finance Board, *Discussions*, New York City, 27 August 2008, p. 22.

³³³ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 12.

Table 4.4: Frequency and timeliness of disclosure of political donations as suggested by inquiry participants

Inquiry participant	Frequency and timeliness
Citizens Electoral Council	Annually ³³⁴
Electoral Commission Queensland	Annually and per-election basis (political parties) Annually (donors donating more than or equal to \$1,000 and associated entities) ³³⁵
Mr Craig Ingram MP	Annually (financial year) ³³⁶
Public Interest Advocacy Centre	More frequently during election period, otherwise at least annually ³³⁷
Family Voice Australia	Biannually ³³⁸
Cancer Council of Victoria	More frequently during election period, otherwise quarterly or at least biannually ³³⁹
Action on Smoking and Health	Monthly during election period, otherwise quarterly ³⁴⁰
Australian Greens (Victoria)	Quarterly, or at least biannually ³⁴¹
Dr Ken Coghill and Dr Joo-Cheong Tham	Post-election returns (donors, candidates and groups) Weekly returns during election period, otherwise quarterly (registered political parties and associated entities) ³⁴²
Democratic Audit of Australia	Prior to election day ³⁴³
Emeritus Professor Colin Hughes	Frequently during election period, otherwise biannually ³⁴⁴

4.47 The Committee was informed that the Commonwealth Parliament is currently debating whether to introduce a biannual disclosure framework in place of annual returns and reduce timeframes for election returns.³⁴⁵

334 Citizens Electoral Council of Australia, *Submission*, no. 16, received 14 July 2008, p. 4.
 335 Electoral Commission Queensland, *Submission*, no. 9, received 27 June 2008, p. 3.
 336 Mr Craig Ingram MP, *Submission*, no. 17, received 15 July 2008, p. 4.
 337 Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 9.
 338 Family Voice Australia, *Submission*, no. 3, received 17 June 2008, p. 4.
 339 The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 2.
 340 Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5.
 341 Australian Greens (Victoria), *Submission*, no. 11, received 27 June 2008, p. 1.
 342 Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 75.
 343 Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, pp. 1-2.
 344 Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 2.
 345 Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, pp. 1-2.

- 4.48 The Committee gathered evidence suggesting that frequent reporting requirements may make administration compliance difficult for smaller political parties and branches of political parties. The UK Electoral Commission noted that quarterly reporting requirements in the UK have made it difficult for local party organisations to elect a treasurer, as these organisations rely heavily on volunteers. The UK Electoral Commission also noted that quarterly reporting was not necessarily increasing public confidence in the electoral process because greater transparency meant that the media published more stories linking political donations to politicians, inferring undue influence.³⁴⁶
- 4.49 As noted earlier, the New York City Campaign Finance Board informed the Committee of disclosure arrangements for those candidates who receive matching public funding. The source of every contribution must be lodged with the New York City Campaign Finance Board every six months (January and July) in the first three years of the election cycle. In the final year of the election cycle, candidates lodge details increasingly frequently: every second month, then monthly, then every two weeks and finally daily disclosure during the final two weeks prior to election day.³⁴⁷
- 4.50 A Committee member was concerned about the implications of instantaneous disclosure. While he understood that professional fundraising organisations such as the 500 Club or Progressive Business would have the capacity for complying with instantaneous disclosure, he wondered how practical this would be for volunteers who organise local events such as sausage sizzles, lamington drives and raffles.³⁴⁸
- 4.51 Dr Ken Coghill was aware of these concerns and proposed political donations should be disclosed by the registered political party at the time of banking.³⁴⁹
- 4.52 As part of its international investigations, the Committee spoke to Professor Keith Ewing about instantaneous disclosure. Professor Ewing noted the utility of the internet but indicated that real time updating would not attract strong public interest. As an alternative the Committee discussed the issues of annual reporting, and more frequent reporting during an election period with Professor Ewing.³⁵⁰

Third parties and associated entities

- 4.53 Associated entity and third party are not defined in the *Electoral Act 2002* (Vic).
- 4.54 The *Commonwealth Electoral Act 1918* (Cth) does not define a third party. However, it does define an associated entity to mean:

³⁴⁶ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, pp. 47-48.

³⁴⁷ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 27.

³⁴⁸ Mr Michael O'Brien MP, Deputy Chair of the Committee cited in Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

³⁴⁹ Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

³⁵⁰ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 37.

- An entity that is controlled by one or more registered political parties; or
- An entity that operates wholly, or to a significant extent, for the benefit of one or more registered political parties; or
- An entity that is a financial member of a registered political party; or
- An entity on whose behalf another person is a financial member of a registered political party; or
- An entity that has voting rights in a registered political party; or
- An entity on whose behalf another person has voting rights in a registered political party.³⁵¹

4.55 Emeritus Professor Colin Hughes advised the Committee against a “straight reading” of the definition in the *Commonwealth Electoral Act 1918* (Cth) because the definition may be outdated.³⁵²

4.56 Inquiry participants believed that the definition of “associated entities” should be broadened. Dr Ken Coghill and Dr Joo-Cheong Tham proposed that the definition of “associated entity” be broadened by stipulating:

- The term ‘controlled’ be defined to *include* the right of the party to appoint a majority of directors or trustees;
- ‘To a significant extent’ to *include* the receipt by a political party of more than 50 per cent of the distributed funds, entitlements or benefits enjoyed and/or services provided by the associated entity in a financial year; and
- The term, ‘benefit’, to *include* the in/direct receipt by the party of favourable non-commercial terms.³⁵³

4.57 The Public Interest Advocacy Centre also proposed that the definition of “associated entities” should be broadened to include “activities not currently included but which qualify [for] a ‘threshold of influence’ test”,³⁵⁴ a test which was advocated by Dr Sally Young and Dr Joo-Cheong Tham to determine when reporting requirements should be imposed.³⁵⁵

4.58 Inquiry participants did not propose a definition of a “third party”. However, the Committee was referred to the *Canada Elections Act* (Canada) which defines a third party as “a person or a group, other than a candidate, registered political party or electoral district association of a registered political party”.³⁵⁶

4.59 As indicated in this chapter, some inquiry participants believed that the *Electoral Act 2002* (Vic) should be amended so that associated entities are obliged to disclose political donations; uniform provisions which would require

³⁵¹ *Commonwealth Electoral Act 1918* (Cth), Australia, s. 287.

³⁵² Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 5.

³⁵³ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 74.

³⁵⁴ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 9.

³⁵⁵ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 117.

³⁵⁶ See *Canada Elections Act*, section 349 referred to by Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 7.

disclosure at a Commonwealth level was also proposed. Inquiry participants felt that this requirement would increase transparency of these donations.³⁵⁷

- 4.60 The Electoral Commission Queensland held a view that the reporting obligations of associated entities should include the lodging of an annual disclosure return;³⁵⁸ reporting of detailed expenditure is currently required of associated entities under the *Commonwealth Electoral Act 1918* (Cth).³⁵⁹
- 4.61 Dr Ken Coghill and Dr Joo-Cheong Tham put forward that third parties should lodge annual returns if they incurred political expenditure exceeding \$10,000 with returns to detail contributions received for the purpose of political expenditure.³⁶⁰
- 4.62 The Public Interest Advocacy Centre also proposed that the *Electoral Act 2002* (Vic) could be amended to include disclosure requirements for third parties, similar to the *Canada Elections Act* (Canada).³⁶¹ For example, third parties will have to report who contributed money to the third party for election advertising purposes in the period beginning six months before the issue of the writ and ending on election day.³⁶²

Voluntary labour

- 4.63 A Committee member was concerned about the reporting of in-kind donations, in particular voluntary labour, which is very much part of political campaigning.³⁶³
- 4.64 Although Dr Ken Coghill suggested that in-kind donations which would normally be paid for would be captured by disclosure obligations, he considered letter-boxing, doorknocking and distributing pamphlets, which is often done by volunteers, a “grey area”. He said:

An argument could be made that it [mobilising volunteers for letterboxing and doorknocking] is in-kind and, because of the scale of it, it should be disclosed. It is one of those grey areas that I think requires a fair bit of consideration before deciding exactly what is in and what is out. The important thing is to establish the principle that there should be disclosure of all significant expenditure and in-kind services.³⁶⁴

³⁵⁷ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 3; Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 4; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 9.

³⁵⁸ Electoral Commission Queensland, *Submission*, no. 9, received 27 June 2008, p. 3.

³⁵⁹ *Commonwealth Electoral Act 1918* (Cth), Australia, s. 314AEA.

³⁶⁰ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 77.

³⁶¹ See Canada Elections Act c9 referred to by Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 7.

³⁶² Elections Canada, *Media release: Chief Electoral Officer announces application of Supreme Court decision on third parties*, 18 May 2004. Retrieved 14 January 2009 from <http://www.elections.ca/content.asp?section=med&document=may1804&dir=pre&lang=e&textonly=false>.

³⁶³ Mr Robin Scott MP, Committee member, cited in Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, pp. 6-7.

³⁶⁴ Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 7.

Attendance charges

- 4.65 Chapter 3 outlined the evidence received as part of the inquiry regarding whether fundraising events should be categorised as a political donation. For example, Dr Ken Coghill and Dr Joo-Cheong Tham proposed that section 206 of the *Electoral Act 2002* (Vic) maintain the broader definition of “gift” which includes payments at fundraising events.³⁶⁵
- 4.66 The Cancer Council Victoria proposed that:
- Political parties should be required to disclose the identity of all persons, entities and organisations that subscribe to political party fundraisers held in the form of dinners or other events involving access to politicians; stricter disclosure obligations should also be introduced to expose the individuals and entities behind third party donor bodies.³⁶⁶
- 4.67 As previously discussed, given that News Limited does not view payment for attendance at an event for commercial reasons as a political donation, News Limited did not support such disclosure.³⁶⁷

Intra-party financial management

- 4.68 The Public Interest Advocacy Centre placed significant importance on access to information and proposed that political parties be required to provide full disclosure of their financial status, similar to the requirements for listed companies under the *Corporations Act 2001* (Cth).³⁶⁸
- 4.69 The Committee learnt that in Canada, details of loans and of monetary transfers between political parties and candidates are published.³⁶⁹

Auditing

- 4.70 Some inquiry participants stated that political parties should be required to have their returns independently audited.³⁷⁰ Others held the view that a certificate from an independent auditor should accompany all returns by registered political parties and associated entities or those with receipts exceeding a certain amount.³⁷¹
- 4.71 The Public Interest Advocacy Centre indicated that it is international best practice for political parties with significant income to have their returns

³⁶⁵ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 76.

³⁶⁶ The Cancer Council Victoria, *Submission*, no. 15, received 14 July 2008, p. 3.

³⁶⁷ News Limited, *Submission*, no. 12, received 27 June 2008, p. 2.

³⁶⁸ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 6.

³⁶⁹ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 12.

³⁷⁰ Citizens Electoral Council of Australia, *Submission*, no. 16, received 14 July 2008, p. 4; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 9.

³⁷¹ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 75; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5.

independently audited.³⁷² The AEC has also made similar recommendations in the past to the Commonwealth Parliament's JSCEM.³⁷³

- 4.72 The Committee heard that it is the practice of the New York City Campaign Finance Board to audit every candidate's campaign.³⁷⁴
- 4.73 Mr David Kerlake advised the Committee of the auditing difficulties associated with "piggy-backing" on the Commonwealth disclosure system, in particular when the Commonwealth and Queensland disclosure threshold grew apart.³⁷⁵

³⁷² Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 8.

³⁷³ Parliament of Australia, *Funding and disclosure: inquiry into disclosure of donations to political parties and candidates*, Joint Standing Committee on Electoral Matters (Chair: Peter Lindsay MP), Canberra, 2006, p. 25.

³⁷⁴ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 27.

³⁷⁵ Mr David Kerlake, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

Chapter 5: Campaign expenditure

- 5.1 Campaign expenditure refers to the spending political parties and candidates do in the process of contesting elections.
- 5.2 This chapter will discuss the issues associated with campaign expenditure including the current definition and levels of expenditure. The second half of this chapter will consider international practice and proposals to regulate campaign expenditure, including campaign expenditure caps, free or minimum broadcasting rates and disclosure of campaign expenditure.

Current arrangements in Victoria

- 5.3 Campaign expenditure is categorised in the *Electoral Act 2002 (Vic)* as “electoral expenditure” and incorporates spending on advertising, campaign material, services and research relating to an election within 12 months of an election day.³⁷⁶
- 5.4 The *Electoral Act 2002 (Vic)* does not contain any provisions for reporting of electoral expenditure and there are no restrictions on campaign expenditure in Victoria.
- 5.5 As outlined previously, given that Victoria “piggybacks” on the *Commonwealth Electoral Act 1918 (Cth)*, federally registered political parties are required to disclose the gross amount of payments which includes campaign expenditure. The *Commonwealth Electoral Act 1918 (Cth)* does not contain any provisions which restrict campaign expenditure.

Current levels of campaign expenditure

- 5.6 It is not possible to accurately assess the current levels of campaign expenditure in Victoria. This is because electoral participants including candidates, political parties, associated entities, third parties and broadcasters/publishers are not required to lodge election returns. Although federally registered political parties in Victoria are required to lodge annual disclosure returns which state the gross amount of payments made by, or on behalf of, the party (and its branches), this amount includes salaries, administrative expenses, electoral expenses and investments.³⁷⁷

³⁷⁶ *Electoral Act 2002 (Vic)*, Australia, Act No. 23/2002, s. 206(1).

³⁷⁷ See the Australian Electoral Commission’s Political Party Disclosure Return (Annual).

- 5.7 Dr Joo-Cheong Tham explained that the gross amount disclosed by political parties does not precisely indicate the amount spent on campaign expenditure because the figures are “over-inclusive as they cover non-election spending and also under-inclusive as they do not include spending by state and territory branches”.³⁷⁸
- 5.8 Independent candidates and political parties registered only in Victoria are not required to lodge an annual return. As a consequence there is no information gathered about the gross amount of payments, including campaign expenditure, made by these electoral participants.
- 5.9 Nevertheless, using the data available Dr Joo-Cheong Tham in his submission to the Commonwealth Parliament’s JSCEM inquiry into the 2007 federal election suggested that campaign expenditure is increasing in Australia. Using the gross amount of payments disclosed by the federal branches of the ALP, Liberal Party and the National Party, Dr Tham highlighted the spending patterns of the three major parties, as outlined in Table 5.1.

Table 5.1: Total spending during financial years in which federal elections occurred³⁷⁹

Party/Total Payments	1998/1999	2001/2002	2004/2005
ALP (Federal)	\$20,294,641	\$25,401,056	\$30,142,887
Liberal Party (Federal)	\$12,255,957	\$17,113,520	\$26,976,772
National Party (Federal)	\$494,506	\$958,036	\$1,663,765
Combined total	\$33,045,104	\$43,472,612	\$58,783,424

- 5.10 As illustrated in Table 5.1, Dr Tham noted that the total gross amount of payments by political parties at federal elections showed an increase in expenditure:

In a span of six years, that is from the 1998/1999 financial year to the 2004/2005 financial year, the combined spending of these parties dramatically increased by 78%.³⁸⁰

- 5.11 Dr Tham’s submission further suggested that “similar conclusions” can be drawn by looking at expenditure in Victoria. The following table illustrates a trend that total payments of the Victorian branches of the ALP and the Liberal Party are increasing.³⁸¹

³⁷⁸ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 19-20.

³⁷⁹ AEC Annual Returns cited in Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 20.

³⁸⁰ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 20.

³⁸¹ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 20.

Table 5.2: Total spending of ALP (Victorian Branch) and Liberal Party (Victorian Division) during financial years in which state elections occurred³⁸²

Financial year	ALP (Victorian Branch)	Liberal Party (Victorian Division)
2006/2007 (state election year)	\$15,152,874	\$12,873,133
2002/2003 (state election year)	\$9,862,006	\$12,697,762
1999/2000 (state election year)	\$6,745,974	\$10,101,732

- 5.12 While these figures also included salaries, administrative expenses and electoral expenses, a number of inquiry participants were of the view that the increase in total payments by the two parties points to an “arms race” among the major political parties.³⁸³
- 5.13 The removal of the Commonwealth provision for broadcasters and publishers to disclose election advertising had restricted the Committee and others to gather current data on campaign expenditure levels.³⁸⁴
- 5.14 The Committee examined data from the 2004 Australian federal election, which was the last federal election that required broadcasters and publishers to disclose the amount spent on election advertising. The AEC’s *Funding and Disclosure Report* stated that the “total amount of media advertising reported by the 734 broadcasters and publishers was \$41,832,829.90 [approximately \$41.8 million]”; an increase of \$14.1 million since the 2001 federal election.³⁸⁵
- 5.15 This reported increase from \$27.7 million for the 2001 federal election to \$41.8 million for the 2004 federal election highlights that federal political parties are spending increasing amounts on their election campaigns. The aggregated data also indicated that political parties spent \$37.4 million on election

³⁸² AEC Annual Returns cited in Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 21.

³⁸³ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 45; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 20-21; Mr Craig Ingram MP, *Submission*, no. 17, received 15 July 2008, p. 3.

³⁸⁴ Prior to 2006, broadcasters (radio and television) and publishers (newspapers and magazines) were obliged to disclose details of the election advertisements which they ran during an election. The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) amended the *Commonwealth Electoral Act 1918* (Cth) so that broadcasters and publishers were no longer required to lodge disclosure returns on electoral advertisements broadcast or published during election periods. For more information see Australian Electoral Commission, *Electoral Newsfile 72: Electoral and Referendum Amendment Act 1998: Summary of amendments to the Commonwealth Electoral Act 1918*, Australian Electoral Commission, Canberra, 1998.

³⁸⁵ For the 2001 federal election, 820 broadcasters and publishers reported that total of \$27.7 million was spent on election advertising. See Australian Electoral Commission, *Funding and disclosure report: Election 2004*, Australian Electoral Commission, Canberra, 2005, p. 28.

advertising placed with broadcasters and publishers compared with \$4.4 million spent by unions, associations, companies and individuals.³⁸⁶

- 5.16 The Committee stated in its *Report on international investigations into political donations and disclosure and voter participation and informal voting* that campaign expenditure is increasing in international jurisdictions.³⁸⁷ In its meeting with representatives of the UK Electoral Commission, the Commission Chairman, Mr Sam Younger, explained that as campaigning has become more sophisticated:

[Political] parties have wanted to spend more and more money, [which means] there's been more and more pressure to get large contributions.³⁸⁸

- 5.17 Escalating political party campaign expenditure, it appears, is a global phenomenon.
- 5.18 The next section of this chapter outlines proposals to regulate campaign expenditure including campaign expenditure caps, free or minimum broadcasting rates and disclosure of campaign expenditure.

Campaign expenditure caps

Comparative approaches

- 5.19 While Tasmania is the only Australian jurisdiction which currently has campaign expenditure limits,³⁸⁹ there is a history of expenditure limits in Australia. Expenditure limits applied to candidates at Commonwealth elections between 1902 and 1980. In 1902 expenditure was capped at £100 for a House of Representatives candidate and £250 for a Senate candidate. By 1980 it was \$500 for a House of Representatives candidate and \$1,000 for a Senate candidate. Given that the limit applied to expenditure by candidates only and the amount was rarely increased, the limit did not regulate expenditure of political parties or third parties because that was considered “unworkable” and was not enforced.³⁹⁰

³⁸⁶ Australian Electoral Commission, *Funding and disclosure report: Election 2004*, Australian Electoral Commission, Canberra, 2005, p. 28.

³⁸⁷ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, pp. 36, 47.

³⁸⁸ Mr Sam Younger (Chairman), UK Electoral Commission, *Discussions*, London, 1 September 2008, p. 4.

³⁸⁹ The current expenditure limit for candidates contesting the Tasmanian Legislative Council is \$12,000; no political party expenditure is allowed at Legislative Council elections. The expenditure limit increases by \$500 each year (i.e. 2010 \$12,500, 2011 \$13,000). There are no limits for candidates contesting the Tasmanian House of Assembly. For more information see Tasmanian Electoral Commission, *Tasmanian Legislative Council elections: Information for candidates*, Tasmanian Electoral Commission, Hobart, 2007, pp. 15-16.

³⁹⁰ Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, p. 63; Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, pp. 25-26.

- 5.20 Expenditure limits were also abolished by Western Australia in 1979 and Victoria in 2002.³⁹¹ Prior to 2002 it was unlawful for a candidate contesting a Victorian Legislative Assembly or Legislative Council seat to spend more than \$5,000 on electoral expenses (other than personal expenses of a candidate in travelling and attending election meetings).³⁹² Candidates were required to lodge a statement of all electoral expenses and a statement of all disputed and unpaid claims to the Victorian Electoral Commissioner within three months of polling day.³⁹³ It should be noted, however, that this provision was relatively ineffective as it only applied to candidates and not political parties.
- 5.21 Many countries, including the UK, New Zealand and Canada have established caps on the amount political parties can spend on election campaigns.³⁹⁴ When the Committee met with Professor Keith Ewing, a legal expert in the UK, he informed the members that in the UK there have been spending caps on individual candidates in each constituency since 1883 and a national spending cap per party was introduced in 2000.³⁹⁵ In New Zealand, expenditure limits for candidates have been part of the electoral system since 1881³⁹⁶ and Canada introduced limits on election expenditure for candidates and political parties in 1974.³⁹⁷
- 5.22 As part of its international investigations, the Committee learnt that in New Zealand and the UK, the approach has been to have stronger regulations for campaign expenditure rather than political donations.³⁹⁸
- 5.23 As part of its international investigations, the Committee also examined expenditure caps established and enforced by the New York City Campaign Finance Board. The spending limits for mayor are approximately US\$6 million for the primary election and another US\$6 million for the general election. However, the limit only applies to those individuals who receive public funding.

³⁹¹ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 26.

³⁹² *The Constitution Act Amendment Act 1958* (Vic), Australia, Act No. 6224/1958, Sixteenth Schedule.

³⁹³ *The Constitution Act Amendment Act 1958* (Vic), Australia, Act No. 6224/1958, s. 259.

³⁹⁴ IDEA (International Institute for Democracy and Electoral Assistance), *Funding of political parties and election campaigns handbook*, 2003 cited in Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 4.

³⁹⁵ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 36.

³⁹⁶ Ms Kristina Temel (Manager Electoral Policy), Chief Electoral Office (New Zealand), Email, 18 February 2009.

³⁹⁷ Elections Canada, *The electoral system of Canada: Political financing*, 2007. Retrieved 6 March 2009 from <http://www.elections.ca/content.asp?section=gen&document=part3&dir=ces&lang=e&textonly=false>.

³⁹⁸ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 47.

For those candidates who finance their own campaigns, there are no limits on campaign expenditure.³⁹⁹

5.24 Table 5.3 provides an overview of campaign expenditure limits of Australia and other Commonwealth nations.

Support for caps

5.25 Some inquiry participants indicated that expenditure limits were just as important, or potentially more important, than limits on political donations.⁴⁰⁰

5.26 The majority of inquiry participants proposed that campaign expenditure by political parties, candidates, third parties and associated entities should be capped.⁴⁰¹ Dr Ken Coghill and Dr Joo-Cheong Tham suggested that campaign expenditure limits be supported in principle and caps established in overseas jurisdictions should guide decision making.⁴⁰²

5.27 Inquiry participants gave the following reasons for introducing limits on campaign expenditure:

- Create[s] a level of financial equality between candidates at an election;⁴⁰³
- Reduce[s] the level of election finance needed, meaning that more candidates (including less wealthy candidates) may compete at elections;⁴⁰⁴
- Help[s] to contain overall election costs which, in turn, reduces reliance on donations and the associated problem of private donors using donations to influence candidates or parties' policies;⁴⁰⁵

³⁹⁹ Amy Loprest and Peter Mares, "The best democracy money can't buy", *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 4.

⁴⁰⁰ Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008, p. 2; Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

⁴⁰¹ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 78; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 45; Mr Craig Ingram MP, *Submission*, no. 17, received 15 July 2008, p. 4; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 21; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5; Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 2.

⁴⁰² Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 52; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 45.

⁴⁰³ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 93.

⁴⁰⁴ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 93.

⁴⁰⁵ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 93.

Table 5.3: Campaign expenditure limits of various countries⁴⁰⁶

Categories of participants	Canada	New Zealand	United Kingdom
Political Party	<u>Limit:</u> C\$0.70 multiplied by the number of electors in the electorates in which party is running candidates multiplied by an inflation adjustment factor. ⁴⁰⁷ <u>Regulated period:</u> Election period.	<u>Limit:</u> NZ\$1 million plus NZ\$20,000 for each electorate candidate nominated by the party. <u>Regulated period:</u> 3 months immediately preceding polling day.	<u>Limit:</u> £30,000 per electorate multiplied by number of seats a party contests (party maximum £19.5 million). <u>Regulated period:</u> 12 months prior to general election (England), 4 months prior to election in Northern Ireland, Scotland and Wales.
Candidate	<u>Limit:</u> Amounts applied per the number of electors multiplied by an inflation adjustment factor, and special adjustments for matters such as low population density. ⁴⁰⁸ <u>Regulated period:</u> Election period.	<u>Limit:</u> NZ\$20,000 per candidate (general election); NZ\$40,000 per candidate (by-election). <u>Regulated period:</u> 3 months immediately preceding polling day.	<u>Limit:</u> £10,000 per candidate, depending on size and number of voters. <u>Regulated period:</u> 12 months prior to general election (England), 4 months prior to election in Northern Ireland, Scotland and Wales.
Third party	<u>Limit:</u> C\$150,000 and no more than C\$3,000 can be spent in any electorate. <u>Regulated period:</u> Election period.	Not applicable	<u>Limit:</u> £10,000 in England and £5,000 in each of Scotland, Wales and Northern Ireland. If a third party wants to spend more, it must register with the Electoral Commission and then limits increase to £793,500 in England, £108,000 in Scotland, £50,000 in Wales, £27,000 in Northern Ireland. <u>Regulated period:</u> 12 months prior to general election.

⁴⁰⁶ The information in this table is drawn from material contained in Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, pp. 26-28, 32-35, 37.

⁴⁰⁷ The current cap for campaign expenditure in Canada is approximately C\$18 million per party which contests candidates in all 308 electoral districts.

⁴⁰⁸ Candidates' campaign expenditure is capped on average at approximately C\$70,000 per candidate.

- The absence of limits encourages excessive and negative television advertising, which contributes to voter disenchantment;⁴⁰⁹
- Many overseas jurisdictions place limits on campaign expenditure;⁴¹⁰
- Dampen[s] inflation in campaigning ... [and] will help ensure the long-term stability of the [registered political] parties.⁴¹¹

5.28 The Committee also met with the representatives of two major political parties in New Zealand who indicated the workability of expenditure limits. The National Party and the Labour Party did not oppose expenditure caps and indicated that one of the benefits of caps was that candidates conducted traditional approaches to electioneering such as door-knocking.⁴¹² The Chief Electoral Office in New Zealand also provided the Committee with data which indicated that 48 per cent of candidates spent less than NZ\$5,000 at the 2005 New Zealand general election, 19 per cent spent between NZ\$5,000 and NZ\$15,000 and 10 per cent spent between NZ\$15,000 and NZ\$20,000 (maximum permitted) on their campaigns.⁴¹³

5.29 During its international investigations, the Committee heard that in the UK, donation limits and disclosure provisions had on several occasions been avoided by wealthy donors providing substantial loans of money to political parties on non-commercial terms, and those loans being linked to the awarding of peerages.⁴¹⁴

Opposition to caps

5.30 The evidence from inquiry participants and secondary research noted arguments against limiting campaign expenditure including:

⁴⁰⁹ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 93.

⁴¹⁰ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 93.

⁴¹¹ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 52; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 40.

⁴¹² Ms Judy Kirk & Mr Mark Oldershaw, New Zealand National Party, *Discussions*, Wellington, 10 February 2009; Mr Mike Smith (General Secretary), New Zealand Labour Party, *Discussions*, Wellington, 11 February 2009.

⁴¹³ The Chief Electoral Office in New Zealand provided data from the 2005 New Zealand general election which suggested that out of the 592 candidates 23 per cent filed nil returns, 48 per cent spent less than \$5,000, 19 per cent spent between \$5,000 - \$15,000, and 10 per cent spent between \$15,000 - \$20,000. See Ms Kristina Temel (Manager Electoral Policy), Chief Electoral Office (New Zealand), Email, 18 February 2009, p. 1.

⁴¹⁴ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 65.

- Unenforceability or unworkability;⁴¹⁵
- Limits on party expenditure need to extend to third parties, which may cause problems;⁴¹⁶
- Political finance regulation will always face an enforcement gap;⁴¹⁷
- Expenditure limits constitute an unjustified interference with freedom of speech;⁴¹⁸
- Candidates should be free to campaign in whatever manner they see fit (so long as they comply with bribery and corruption laws);⁴¹⁹
- Modern electioneering practices mean that individual candidate spending is not as relevant as the spending incurred by centralised party organisations;⁴²⁰
- It is difficult to set realistic spending limits due to the changing costs of media access and electioneering techniques as well as inflation and the need to keep closing administrative loopholes once these are discovered;⁴²¹
- Higher campaign spending may strengthen the connection between community and candidate by allowing more material to be produced and more information to be provided to voters;⁴²² and
- Caps advantage those players [new candidates, smaller parties and independents] at the expense of the larger, well-established parties, by reducing their capacity to outspend their smaller opponents.⁴²³

5.31 Some inquiry participants were concerned that limits on campaign expenditure may be constitutionally invalid due to the implied constitutional freedom of political communication. However, other inquiry participants noted that limiting

⁴¹⁵ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 48; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 41; Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 135.

⁴¹⁶ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 95.

⁴¹⁷ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 49; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 42.

⁴¹⁸ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 50; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 43.

⁴¹⁹ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 95.

⁴²⁰ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 95.

⁴²¹ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 95.

⁴²² Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, p. 67.

⁴²³ Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, p. 67.

campaign expenditure does not unreasonably impede freedom of speech in countries such as Canada and the UK, which have expenditure limits and a *Charter of Human Rights* and a *Human Rights Act* respectively.⁴²⁴

5.32 Dr Joo-Cheong Tham also put forward that capping campaign expenditure does not contravene free speech because without regulation, political communication and democratic deliberation would be monopolised by the wealthy and the powerful.⁴²⁵

5.33 Given that campaign expenditure caps would impact on a political party's ability to campaign, Dr Anne Twomey recommended that "any such law must be very carefully balanced in order to be constitutionally valid". She suggested that:

The most contentious area is the imposition of expenditure limits on third parties. If no such limits are imposed on third parties, the effectiveness of limits imposed on political parties or candidates will be undermined by third party electoral campaigning. If limits are imposed on third parties, there is a high risk of constitutional invalidity.⁴²⁶

5.34 Emeritus Professor Colin Hughes' view was that it is impossible to control campaign expenditure.⁴²⁷

5.35 Dr Sally Young suggested campaign expenditure limits placed on political parties also overlooked the complex political landscape which included third parties, associated entities, interest groups and associations in the political landscape. She indicated her preference for strengthening disclosure and introducing minimum fee broadcasting time.⁴²⁸

Definitional issues

5.36 The Committee referred to historical and current examples, as well as categories proposed by inquiry participants, to inform their deliberations on an accepted definition of campaign expenditure.

5.37 As mentioned at the beginning of this chapter, the current definition in Victoria of electoral expenditure incorporates spending on advertising, campaign material, services and research relating to an election within 12 months of an election day.⁴²⁹ The definition does not distinguish between actual costs and in-kind expenditure and does not capture any funds spent by third parties.

5.38 Prior to the *Electoral Act 2002* (Vic), electoral expenditure, under *The Constitution Act Amendment Act 1958* (Vic), included:

⁴²⁴ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 51; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 44.

⁴²⁵ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 8.

⁴²⁶ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 2.

⁴²⁷ Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 5.

⁴²⁸ Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 16.

⁴²⁹ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, 206.

- The expenses of printing, advertising, publishing, issuing, and distributing addresses and notices and purchase of rolls;
- The expenses of stationery, messages, postage, and telegrams;
- The expenses of holding public meetings, and hiring halls for that purpose;
- The expenses of committee-rooms;
- One scrutineer at each polling-booth and no more;
- One agent for any electoral province or district;
- Contributions to campaign funds;
- Advertising on radio or television;
- Expenses of telephones;
- Provision of light refreshments etc. to helpers or persons attending a political meeting; and
- Payments to helpers or persons conducting an election campaign.⁴³⁰

5.39 The Democratic Audit of Australia advocated that spending on electronic advertising should be capped and included in the definition of campaign expenditure.⁴³¹

5.40 Associate Professor Andrew Geddis informed the Committee that campaign expenditure in New Zealand does not include expenditure on travel, opinion polling, hiring professional consultants or media advisers, which may suggest that political parties, candidates and third parties spend far more on their campaigns.⁴³²

5.41 Currently in the UK, campaign expenditure refers to the costs incurred for election purposes including:

- Party political broadcasts;
- Advertising;
- Unsolicited material addressed to electors, such as leaflets and handbills;
- Any manifesto or other document setting out the party's policies;
- Market research or canvassing 'conducted for the purpose of ascertaining polling intentions';
- The provision of any services or facilities in connection with press conferences or other dealings with the media;
- The transport of people (such as party leaders) to any place or places 'with a view to obtaining publicity in connection with an election campaign'; and

⁴³⁰ *The Constitution Act Amendment Act 1958* (Vic), Australia, Act No. 6224/1958, Sixteenth Schedule.

⁴³¹ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 3.

⁴³² Associate Professor Andrew Geddis, *Questions on notice*, no. 2, received 28 January 2009, p. 1.

- Rallies and public meetings organised to obtain publicity in connection with an election campaign.⁴³³

5.42 The UK's Ministry of Justice has noted problems with this definition and has proposed replacing the definition of campaign expenditure with a broader definition of expenditure which includes:

- Contributions to party employees' pension funds to make up for past shortfalls;
- Interest on debt and repayments of debt;
- Legal expenses;
- Costs of compliance with electoral law;
- Expenditure on trading activities and income generation;
- Accounting units' expenditure on social functions for members of the party; and
- Intra-party transfers.⁴³⁴

Determination of cap

5.43 The majority of inquiry participants did not stipulate a campaign expenditure limit in their submissions or at the public hearings. Those who were questioned by the Committee were reluctant to specify a value. The New South Wales Legislative Council Select Committee on Electoral and Political Party Funding was also cautious about specifying a value and recommended that spending caps for political parties and third parties should be set by the Auditor-General, using caps in overseas jurisdictions for guidance.⁴³⁵

5.44 Mr Craig Ingram MP suggested that each candidate's campaign expenditure should not exceed \$50,000 and expenditure should be audited by the VEC.⁴³⁶ A Committee member questioned Mr Ingram about whether campaign expenditure limits should be applied to state elections and by-elections.⁴³⁷ It was Mr Ingram's view that campaign expenditure limits should apply to both electoral events.⁴³⁸

5.45 The Committee was informed that while campaign expenditure limits are applicable to candidates contesting federal elections in Canada, campaign expenditure limits also apply to candidates in by-elections:

⁴³³ The *Political Parties, Elections and Referendums Act 2000* (UK) applies to these eight items of campaign expenditure as cited in Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, p. 65.

⁴³⁴ The UK Ministry of Justice, White Paper, *Party finance and expenditure in the UK: The Government's proposals*, London, June 2008, p. 36 cited in Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, p. 66.

⁴³⁵ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, pp. 130, 137.

⁴³⁶ Mr Craig Ingram MP, *Submission*, no. 17, received 15 July 2008, p. 4.

⁴³⁷ The Hon Christine Campbell MP cited in Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 8.

⁴³⁸ Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 8.

Candidates in by-elections remain subject to operational requirements, spending limits and reporting obligations similar to those applicable in a general election – but adjusted as necessary for by-elections. While registered parties remain subject to spending limits in a by-election, they are not required to submit specific election expenses returns, as they must for a general election. However, registered parties must still submit their annual returns, which will reflect their by-election activities.⁴³⁹

- 5.46 Associate Professor Andrew Geddis indicated that the formulae for expenditure caps could be determined by determining the costs of reasonable communication between contestants and electors. He also considered that the expenditure caps formula could take into account the geographical size of the electorate, given that in discussion with individuals and organisations in New Zealand this was frequently cited as a problem associated with the formula for the current cap there.⁴⁴⁰
- 5.47 Dr Joo-Cheong Tham suggested a two-tier expenditure limit: an overall spending limit on a state wide basis which would apply to each political party, and expenditure limits for candidates determined according to the number of electors in each electorate.⁴⁴¹
- 5.48 In response to the discussion about expenditure limits, a Committee member pointed out that political parties may well want to spend different amounts of money on campaign expenditure depending on whether the seat is a marginal or safe seat.⁴⁴²

Regulated period

- 5.49 Victoria introduced fixed election dates in 2002. Secondary evidence has indicated that expenditure caps have been more successful where election terms are fixed and precise dates can be established for the regulatory period.⁴⁴³
- 5.50 In Canada, restrictions on advertising only apply during the time between the issuing of the writ and the election day (5 weeks), which means that campaign expenditure limits are not applicable outside of this time. Professor Fred Fletcher proposed that with fixed election dates, campaign expenditure limits would be more effective if limits on campaign expenditure were applied within six months of the election date.⁴⁴⁴

⁴³⁹ Elections Canada, *Backgrounder: The calling of a federal by-election*, October 2006. Retrieved 14 April 2009 from <http://www.elections.ca/content.asp?section=gen&document=ec90700&dir=bkg&lang=e&textonly=false>.

⁴⁴⁰ Associate Professor Andrew Geddis (Researcher and Lecturer), *Discussions*, Wellington, 10 February 2009, p. 5.

⁴⁴¹ Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008, p. 6.

⁴⁴² The Hon. Christine Campbell MP, Committee member, cited in Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008, p. 6.

⁴⁴³ Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, p. 67; Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 38.

⁴⁴⁴ Fred Fletcher and Peter Mares, "The best democracy money can't buy", *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, pp. 7-8.

- 5.51 Associate Professor Andrew Geddis informed the Committee that the cap on election expenses in New Zealand only captures those expenditures associated with election advertising by political parties, candidates and third parties that occur within the regulated period. He also stated that some political parties and third parties were critical of the length of the regulated period, as defined in the *Electoral Finance Act 2007* (NZ), and these entities supported a shorter regulated period.⁴⁴⁵
- 5.52 Since the Committee met with Associate Professor Geddis, the regulated period was changed by the incoming New Zealand Government with the passing of the *Electoral Amendment Act 2009* (NZ). The regulated period is now three months immediately preceding polling day and only applies to candidates and political parties; election expenditure caps for third parties were repealed.
- 5.53 The UK Parliament has proposed to reintroduce a “trigger” at which point the limits on candidate spending would apply for a parliamentary general election. The UK White Paper on Party Finance and Expenditure noted that:
- Triggering would provide more clarity about which types of expenditure would count towards the local spending limit for candidates and which would count towards the national limit on overall expenditure by parties.⁴⁴⁶
- 5.54 The Political Parties and Elections Bill (UK), which contains a “trigger” provision is currently being considered in Committee by the House of Lords.
- 5.55 In Tasmania, the campaign expenditure period for the Legislative Council is defined as:
- In the case of a periodic election, the period beginning on 1 January in the year in which the election is to be held and ending at the close of poll; or
 - In the case of a by-election, the period beginning on the day on which the seat of a Member of the Council becomes vacant and ending at the close of poll.⁴⁴⁷
- 5.56 At the public hearings, Ms Deidre Moor, Manager of Policy and Programs, noted that the Public Interest Advocacy Centre had argued that an annual cap may be useful for those states who do not have fixed-term parliaments.⁴⁴⁸
- 5.57 In contrast to the shorter regulatory periods proposed, Dr Ken Coghill suggested that campaign expenditure should be capped for a four-year period.⁴⁴⁹

Third parties

- 5.58 A number of inquiry participants considered that, in addition to political parties and candidates, campaign expenditure limits should also apply to associated

⁴⁴⁵ Associate Professor Andrew Geddis, *Questions on notice*, no. 2, received 28 January 2009, p. 1.

⁴⁴⁶ Crown, *Party finance and expenditure in the United Kingdom: The Government's proposals*, Ministry of Justice, London, June 2008, pp. 44-45.

⁴⁴⁷ Tasmanian Electoral Commission, *Tasmanian Legislative Council elections: Information for candidates*, Tasmanian Electoral Commission, Hobart, 2007, p. 15.

⁴⁴⁸ Ms Deidre Moor (Manager Policy & Programs), Public Interest Advocacy Centre Limited, *Transcript of evidence*, Melbourne, 24 July 2008, p. 5.

⁴⁴⁹ Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 6.

entities and third parties.⁴⁵⁰ Dr Joo-Cheong Tham believed that there should be different caps for political parties/candidates and third parties:

I am a strong supporter of a democratic process based on party politics, which means that you do not start privileging, if you like, third parties that usually run on topical issues or particular issues and so forth. ... The position I put to the New South Wales inquiry was simply that those limits — and this is based on my preference for privileging party activity over third-party activity — should be lower than the limits that actually apply to the parties and candidates.⁴⁵¹

5.59 The New South Wales Legislative Council Select Committee on Electoral and Political Party Funding recommended that the NSW Premier establish campaign expenditure limits for third parties, and consider whether expenditure by associated entities should also be capped. Again, no threshold was determined by the NSW Committee. However, the NSW Committee recommended that caps established in overseas jurisdictions should guide decision-making.⁴⁵²

5.60 The Public Interest Advocacy Centre and Democratic Audit of Australia informed the Committee of the campaign expenditure restrictions and requirements of third parties in Canada.⁴⁵³ The Committee was referred to the relevant Canadian legislative provisions for consideration:

- Any third party, immediately upon incurring C\$500 in election advertising expenses after the issuance of the writ, must register with Elections Canada [s. 353];
- All third parties must identify themselves on their election advertising and state that the ad was authorised by the third party [s. 352];
- Third parties must appoint a financial agent to accept all contributions for election advertising purposes and authorise all election advertising expenses on behalf of the third party [ss. 354, 357];
- Third parties that spend C\$5,000 or more on election advertising must appoint an auditor [ss. 355, 360];
- Third parties must not use anonymous or foreign funds for their election advertising [ss. 357, 358];
- Third parties must not incur election advertising expenses of a total amount of C\$168,900 during an election period in relation to a general election, and not more than C\$3,378 of that amount may be incurred to promote or oppose one or more candidates in a given electoral district [s. 350];
- Third parties must not circumvent or attempt to circumvent the spending limits [s. 351]; and

⁴⁵⁰ Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008, p. 8; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 21; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5.

⁴⁵¹ Dr Joo-Cheong Tham, *Transcript of evidence*, Melbourne, 23 July 2008, p. 8.

⁴⁵² Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. 137.

⁴⁵³ Fred Fletcher and Peter Mares, “The best democracy money can’t buy”, *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 7; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 21.

- Third parties, political parties and candidates must not transmit election advertising to the public on election day [s. 323].⁴⁵⁴

5.61 In discussions with individuals and organisations with whom the Committee met in New Zealand, the Committee was informed that third parties who at the 2008 New Zealand general election intended to spend more than NZ\$12,000 (including GST) between 1 January 2008 and election day on advertisements encouraging or persuading electors to vote, or not to vote, for a candidate/s or parties, were required to apply to register as a third party.⁴⁵⁵

5.62 In 2007 the New Zealand government introduced the electoral finance legislation which increased the regulation of third parties' election campaign expenditure. The legislation increased the regulated period for campaign expenditure from three months to the beginning of the election year and also the definition of "election expenses". Many of the representatives the Committee met with whilst in New Zealand considered that the extension to the regulated period was too long and the definition of "election expenses" caused considerable confusion amongst electoral participants. The Committee heard that the legislation lost its legitimacy because of the way the government pushed the legislation through Parliament. This was enunciated by Mr Alex Penk, Policy and Research Manager, Maxim Institute, as follows:

One of the reasons why the Electoral Finance Act was quite controversial was because it went through fairly swiftly ...with a number of fairly wide-ranging amendments made along the way I think there was a real public feeling that there hadn't been an adequate opportunity for consultation.⁴⁵⁶

5.63 Capping of election expenditure by third parties was repealed by the incoming New Zealand Government with the passing of the *Electoral Amendment Act 2009* (NZ). Capping of election expenses on candidates and political parties remain.

5.64 The Committee further heard from Mr Alex Penk and Dr Helena Catt, Chief Executive of the New Zealand Electoral Commission, that the regulation had a "chilling effect" on election campaigning at the 2008 New Zealand general election.⁴⁵⁷ An extract from the New Zealand Electoral Commission 2007-08 annual report stated:

Similarly, parties, candidates and third parties (listed or not) have had to come to terms with the implications of the new legislation also. It is clear that having uncertainty

⁴⁵⁴ Elections Canada, *Media release: Chief Electoral Officer announces application of Supreme Court decision on third parties*, 18 May 2004. Retrieved 14 January 2009 from <http://www.elections.ca/content.asp?section=med&document=may1804&dir=pre&lang=e&textonly=false>.

⁴⁵⁵ Mr Alex Penk (Policy & Research Manager), Maxim Institute, *Discussions*, Auckland, 9 February 2009, p. 5.

⁴⁵⁶ Mr Alex Penk (Policy & Research Manager), Maxim Institute, *Discussions*, Auckland, 9 February 2009, p. 2.

⁴⁵⁷ Mr Alex Penk (Policy & Research Manager), Maxim Institute, *Discussions*, Auckland, 9 February 2009, p. 3; Dr Helena Catt (Chief Executive), Electoral Commission, *Discussions*, Wellington, 11 February 2009, p. 21.

remaining within the regulated period has had a chilling effect on the extent and type of participation in political and campaign activity.⁴⁵⁸

- 5.65 Country Alliance did not support the growing role of interest groups in the election campaign process and believed that political parties should be responsible for communicating their own message. Country Alliance indicated that third party advertising should be banned within six months of an election.⁴⁵⁹
- 5.66 On the other hand, whilst the Public Interest Advocacy Centre supported stronger financial regulation of third parties, it did not want to see the ability of third parties to engage in genuine advocacy adversely affected.⁴⁶⁰

Free or minimum fee broadcasting time

Comparative approaches

- 5.67 In Australia, the Australian Broadcasting Corporation (the ABC) provides equal, free broadcast time on ABC radio and television to the Government and official Opposition at a federal, state or territory parliamentary election. Minor parties may also qualify for free time subject to the number of seats contested and demonstrated public support.⁴⁶¹
- 5.68 Political parties have access to free broadcasting or are charged a low broadcasting fee in some overseas jurisdictions. For example, in the UK parties are given access to free broadcast time but are not allowed to buy air time for political advertisements.⁴⁶² In Canada there is a limited timeframe in the election period when political parties can broadcast commercials.⁴⁶³ In New Zealand, public funding is given to political parties to buy air time or produce commercials for TV and radio, but they are not permitted to spend more than their public funding.⁴⁶⁴ Dr Paul Harris, a former Electoral Commissioner of New Zealand, explained this practice:

The state-owned broadcasters (TVNZ and radio New Zealand) are required to provide free time to parties for 'opening' and 'closing' addresses. The Electoral Commission allocates that time to qualifying parties according to statutory criteria. Other broadcasters are also invited to provide time to parties, at normal commercial rates (which may include scheduling and quantity discounts). The only restriction is that a broadcaster

⁴⁵⁸ New Zealand Electoral Commission, *Annual report of the Electoral Commission for the year ended 30 June 2008*, New Zealand Electoral Commission, Wellington, pp. 7-8.

⁴⁵⁹ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 12.

⁴⁶⁰ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 7.

⁴⁶¹ Australian Broadcasting Corporation, *Allocation of free broadcasting time to political parties during election campaigns*, 2007. Retrieved 10 March 2009 from www.abc.net.au/corp/pubs/documents/election_campaigns.pdf.

⁴⁶² Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 20; Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, pp. 102-103.

⁴⁶³ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 21; Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, pp. 102-103.

⁴⁶⁴ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, pp. 102-103.

must offer the same terms to parties and to candidates for equivalent time. Parties must use funds allocated by the Commission to buy this time and cannot use their own funds.⁴⁶⁵

- 5.69 Dr Helena Catt, Chief Executive of the New Zealand Electoral Commission noted that the criteria for the allocation of broadcast time is subjective and based on the number of members of parliament, electoral performance, signs of support, and political equality.⁴⁶⁶
- 5.70 While US presidential candidates are not offered free broadcasting time, it is the practice of broadcasters in the US to donate free broadcast time for government advertising on the basis that broadcasters operate in the public interest.⁴⁶⁷

Issues associated with free or minimum fee broadcast time

- 5.71 Some inquiry participants proposed that commercial broadcasters should be required to provide an allocation of free broadcasting time or at the very least, charge political parties, candidates and entities the minimum fee for broadcasting time. These inquiry participants suggested that this provision could be included as a condition in the broadcast licence agreements.⁴⁶⁸
- 5.72 In their submission, the Democratic Audit of Australia recommended the following legislative change:

That the federal parliament be encouraged to amend the *Broadcasting Act 1992* (Cth) to require commercial broadcasters to allocate 'free time' to registered political parties to advertise during the electoral campaign period [For Victoria the 'campaign period' should be the four weeks prior to the fixed polling day].⁴⁶⁹

- 5.73 Despite the above recommendation, it is noted that the *Broadcasting Services Act 1992* (Cth) states:

s.4(2) The Parliament also intends that broadcasting services and datacasting services in Australia be regulated in a manner that, in the opinion of the ACMA [Australian Communication and Media Authority]: (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services and datacasting services.⁴⁷⁰

- 5.74 Dr Sally Young argued that the benefits of regulating the costs charged by commercial broadcasters include reducing the costs of election campaigns, enabling political parties and candidates to independently finance a campaign, and reducing political parties' reliance on political donations.⁴⁷¹

⁴⁶⁵ Dr Paul Harris, *Questions on notice*, no. 3, received 5 February 2009, p. 2.

⁴⁶⁶ Dr Helena Catt (Chief Executive), Electoral Commission, *Discussions*, Wellington, 11 February 2009, p. 16.

⁴⁶⁷ Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 130.

⁴⁶⁸ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2; Mr Craig Ingram MP (Member for Gippsland East), *Transcript of evidence*, Melbourne, 23 July 2008, p. 5; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 21.

⁴⁶⁹ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, pp. 3-4.

⁴⁷⁰ *Broadcasting Services Act 1992* (Cth) Australia, s. 4(2)(a).

⁴⁷¹ Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, pp. 7-8.

- 5.75 A Committee member was concerned that if free or minimum fee election broadcasting time was tied to public funding, some political parties and independent candidates may choose to opt out and independently finance their campaigns.⁴⁷²
- 5.76 Another Committee member was concerned that the proposal to introduce free or minimum fee election broadcasting time may infringe the Constitution as well as political parties and candidates implied freedom of political communication.⁴⁷³
- 5.77 In response, Dr Sally Young noted that the *Lange v Australian Broadcasting Corporation (Lange)* decision “did not say that all bans on political advertising were unreasonable” and indicated that licensing restrictions were already placed on commercial broadcasters. Furthermore, Dr Sally Young noted that this model is practised in the US which protects freedom of speech and freedom of the press in their Bill of Rights.⁴⁷⁴
- 5.78 Further to this discussion, the same Committee member queried why political parties should not be entitled to make their own decisions about campaign expenditure.⁴⁷⁵ In response, Dr Sally Young argued that as much of it is funded by public funding, the taxpayer has a right to place conditions on campaign expenditure.⁴⁷⁶
- 5.79 Dr Anne Twomey in her paper considered the legal implications of the provision of free or at-cost political advertising by broadcasters:

Although free political advertising provisions were struck down by the High Court of Australia in the *ACTV* case, this was in the context of advertising bans and provisions that overly favoured incumbents. Consideration could still be given to reducing campaign expenditure by requiring broadcasters to provide free or ‘at cost’ advertising to political parties during election campaigns. Care would need to be taken to avoid breaches of s 51(xxix) of the Constitution. Further, such a proposal could be implemented without banning paid political advertising altogether. One option could be for parties to make a choice – either to pay for their own political advertising broadcasts, without any limits, or to accept free political advertising time on the condition that they do not pay for additional electronic political advertising. Even if there is a burden on freedom of political communication, a law will still be constitutionally valid if it is reasonably appropriate and adapted to serving a legitimate end in a manner which is compatible with the maintenance of the constitutionally prescribed system of representative government.⁴⁷⁷

⁴⁷² Hon Christine Campbell MP, Committee member cited in Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 7.

⁴⁷³ Mr Michael O’Brien MP, Committee member cited in Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 8.

⁴⁷⁴ Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 8.

⁴⁷⁵ Mr Michael O’Brien MP, Committee member cited in Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 9.

⁴⁷⁶ Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 10.

⁴⁷⁷ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, pp. 54-55.

- 5.80 Further, Dr Sally Young reported that there was anecdotal evidence that commercial broadcasters charge political parties up to 50 per cent more than normal rates for broadcasting election advertisements because political parties cannot give the broadcasters sufficient notice.⁴⁷⁸
- 5.81 The Committee would be concerned if advertisers charged premium rates for advertising during election campaigns due to the concentrated time available as a consequence of fixed dates for the Victorian general election. The Commonwealth Government is requested to refer to the Australian Competition and Consumer Commission (ACCC) for inquiry into whether the costs associated with engaging in the political process is exacerbated if the media is charging premium advertising rates during elections. However, recognition should be noted of the concessions advertisers provide between short-term and long-term advertising campaigns.

Disclosure of campaign expenditure

Comparative approaches

- 5.82 The *Electoral Act 2002* (Vic) does not contain any provisions which require the disclosure of campaign expenditure via annual or election returns. However, political parties registered in Victoria are required to provide a copy of the annual return they lodge with the AEC. This is contrary to other jurisdictions that require political parties to lodge bi-annual and/or post-election returns. It should be noted that independent candidates contesting Victorian elections are not required to disclose any details relating to their campaign expenditure.
- 5.83 A comparison of campaign expenditure reporting requirements for Australian jurisdictions, outlined previously in Chapter 4, are again set out in Table 5.4.
- 5.84 The Commonwealth Government's view is that campaign expenditure for federal elections should be published biannually and returns should be required to be lodged within eight weeks of the reporting period.⁴⁷⁹ In the second reading speech of the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 (Cth), Senator Ludwig on behalf of Senator Faulkner stated:

In terms of political parties, associated entities, third parties and donors more generally, the previous [annual] returns that were required to be provided to the Australian Electoral Commission once every 12 months will now be required to be lodged once every 6 months. The existing time periods for the lodging of these [election] returns (which are presently 15 weeks for donors, 16 weeks for registered political parties and associated entities, and 20 weeks for third parties who incur political expenditure) will all be reduced to 8 weeks.⁴⁸⁰

⁴⁷⁸ Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 4.

⁴⁷⁹ Senator J. Faulkner (Special Minister of State), New advertising guidelines, 2 July 2008 cited in Democratic Audit of Australia, *Submission: Appendix B*, no. 18, received 15 July 2008, p. 2.

⁴⁸⁰ Senator Hon Joseph William Ludwig, *Parliamentary debates*, The Senate, Parliament of Australia, Canberra, 15 May 2008, pp. 1964-1965.

Table 5.4: Comparison of campaign expenditure disclosure requirements in Australian jurisdictions⁴⁸¹

Financial disclosure	Commonwealth	Queensland	New South Wales	Western Australia	ACT	NT
Political parties	Yes. Registered parties and their state branches report annually on all expenditure [campaign expenditure not specified].	Yes. Report every six months on all expenditure [campaign expenditure not specified]. Report after every election totals of specified electoral expenditure for which election funding is sought.	Report every six months on sums of specified electoral expenditure, with details of advertising expenditure.	Report after every election totals of specified electoral expenditure. Accepts copies of disclosure returns lodged with the AEC.	Yes. Report annually on all expenditure [campaign expenditure not specified].	Yes. Report annually on all expenditure [campaign expenditure not specified]. Accepts copies of disclosure returns lodged with the AEC.
Candidates	Yes. Report after every election on sums expended on specified electoral expenditure.	Yes. Report after every election on sums of specified electoral expenditure.	Report every six months on sums of specified electoral expenditure, along with details of advertising expenditure.	Yes. Report after every election on sums expended on specified electoral expenditure.	Yes. Report after every election on expenditure. In addition to election returns, MLAs report annually on these details.	Yes. Report after every election on sums expended on specified electoral expenditure.
Groups (e.g. Senate groups)	Yes. Report after every election on sums expended on specified electoral expenditure.	Not applicable.	Yes. Report every six months on sums of specified electoral expenditure, with details of advertising expenditure.	Yes. Report after every election on sums expended on specified electoral expenditure.	Not applicable.	Not applicable.

⁴⁸¹

Australian Government, *Electoral reform green paper: Donations, funding and expenditure*, Cabinet Secretary and Special Minister of State, Canberra, December 2008, pp. 86-91.

Financial disclosure	Commonwealth	Queensland	New South Wales	Western Australia	ACT	NT
Third parties (people who incur expenditure)	Yes. Report annually where they have incurred political expenditure of above \$10,900.	Yes. Report after every election where they have incurred \$200 or more of specified electoral expenditure.	Yes. Report every six months where they have incurred \$1,000 or more of specified electoral expenditure.	Yes. Report after every election on sums of specified electoral expenditure where the total is \$200 or more.	Yes. Report after every election on sums of specified electoral expenditure where the total is \$1,000 or more.	Report after every election on sums of specified electoral expenditure where the total is \$200 or more.
Publishers and broadcasters	No.	Yes. Publishers report after every election on electoral advertisements with a value of \$1,000 or more. Broadcasters report on electoral advertisements after every election.	No.	No.	Yes. Report on electoral advertisements after every election.	Yes. Report on electoral advertisements after every election.

- 5.85 Although the Bill was defeated in the Senate on 11 March 2009, these measures were included in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth) which was introduced into the House of Representatives on 12 March 2009 and was passed on 16 March 2009. The Bill is currently before the Senate.⁴⁸²
- 5.86 The Public Interest Advocacy Centre noted that reportable expenditure in Western Australia includes:
- Broadcasting an election-related advertisement (for example, a television or radio advertisement);
 - Publishing an advertisement in a journal (including newspapers or magazines);
 - Displaying an election-related advertisement at a place of entertainment (for example, the cinema);
 - The production of any advertisement which is broadcast, published or displayed as above (even if the production of that advertisement occurs outside the election period);
 - Producing any material, other than above, which requires authorisation and which is used for advertising during the election period (even if the production of that material occurs outside the election period);
 - Producing and distributing electoral matter addressed to particular persons or organisations (for example, mail-outs or letterbox drops to households);
 - Consultant's or advertising agent's fees for services provided during the election period, or the production of material for use during the election period; and
 - Carrying out an opinion poll or other research related to the election.⁴⁸³
- 5.87 The definition of reportable expenditure in New South Wales was similar to that of Western Australia but also included expenditure on holding election rallies, travel and accommodation of a candidate for an election, stationery, telephones, messages, postage and electronic transmission, and auditing of a declaration and expenditure incurred in raising funds for an election. However, expenditure on factual advertising pertaining to the administration of political parties was not defined as electoral expenditure.⁴⁸⁴
- 5.88 Table 5.5 outlines the campaign expenditure disclosure practices of the four most commonly cited international jurisdictions.

⁴⁸² Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, p. 2.

⁴⁸³ Reportable expenditure retrieved from election related disclosure returns cited in Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 19.

⁴⁸⁴ Election Funding Authority (New South Wales), *Funding and disclosure guide: Parties and party agents*, Election Funding Authority of New South Wales, Sydney, 2008, pp. 22-23.

Table 5.5: Political party disclosure requirements of various countries⁴⁸⁵

Jurisdiction	Disclosure requirements
Canada	Annual and post-election disclosure of campaign expenditure required.
New Zealand	Post-election disclosure of campaign expenditure.
United Kingdom	Post-election disclosure of campaign expenditure.
United States	Disclosure of campaign expenditure in annual returns.

Enhancing disclosure of campaign expenditure

- 5.89 The arguments for and against campaign expenditure disclosure are similar to those discussed in Chapter 4. The Committee did not receive any evidence which opposed the introduction of a disclosure scheme for campaign expenditure.
- 5.90 As discussed earlier in the chapter, it is not possible to accurately assess the current levels of campaign expenditure by political parties given that the *Electoral Act 2002* (Vic) does not contain any provision for the disclosure of campaign expenditure. Furthermore, the *Commonwealth Electoral Act 1918* (Cth) only requires federally registered political parties to provide a total amount of their annual expenditure as part of their annual return.
- 5.91 The reporting of a single amount – “total payments” – rather than itemised expenditure means that the public has “little understanding of how parties allocate their money, which seats they consider most important, and what the relationship is between what they spend and how their candidates do”.⁴⁸⁶ Moreover, given that independent candidates and political parties registered in Victoria only are not required to lodge annual returns, there is no publicly available information of their expenditure.
- 5.92 The Committee considered whether the public disclosure of campaign expenditure, including a detailed breakdown, would enhance the transparency of the Victorian electoral system. Most inquiry participants indicated that electoral participants should be required to disclose campaign expenditure in a timely manner. For example, Emeritus Professor Colin Hughes indicated a timeframe of between four to six weeks post election day.⁴⁸⁷

⁴⁸⁵ The information in this table is drawn from material contained in Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 29; Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, pp. 30-32.

⁴⁸⁶ Kenneth Mayer, *Sunlight as the best disinfectant: Campaign finance in Australia*, Democratic Audit of Australia, Australian National University, Canberra, October 2006, p. 4.

⁴⁸⁷ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 5.

- 5.93 Modelled on s. 314AEB of the *Commonwealth Electoral Act 1918* (Cth), Dr Ken Coghill and Dr Joo-Cheong Tham suggested that registered political parties, candidates, groups of candidates and associated entities should be required to lodge post-election returns which report the electoral expenditure according to definitions stipulated in s. 206 of the *Electoral Act 2002* (Vic).⁴⁸⁸ Dr Coghill and Dr Tham further suggested that third parties should also be required to lodge returns which detail political expenditure, itemised according to broad categories, within four months of the election day or at the very least, annually.⁴⁸⁹
- 5.94 Chapter 6 includes further discussion of campaign expenditure disclosure for recipients of public funding.

⁴⁸⁸ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 77.

⁴⁸⁹ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 75.

Chapter 6: Public funding

- 6.1 Public funding is direct and/or indirect support which registered political parties and independent candidates are entitled to receive to subsidise and reimburse the costs of campaigning. An example of direct public funding is funding of election expenses, while examples of indirect public funding include free access to the media and public broadcasting facilities and tax credits.⁴⁹⁰
- 6.2 This chapter begins the discussion of public funding with an overview of the current arrangements in Victoria and comparative public funding provisions in Australia and internationally. The next part of the chapter considers issues associated with direct and indirect public funding.

Current arrangements in Victoria

- 6.3 Direct public funding of elections was introduced in Victoria in 2002. The *Electoral Act 2002 (Vic)* provides for the public funding of election expenses incurred by registered political parties and independent candidates contesting Victorian state elections, subject to certain conditions.⁴⁹¹ Direct public funding is paid to eligible registered political parties and independent candidates after an election or by-election.
- 6.4 The *Electoral Act 2002 (Vic)* stipulates that direct public funding entitles candidates who received at least 4 per cent of the total number of first preference votes at the election to receive a sum of \$1.20 per vote, indexed for inflation.⁴⁹² At the 2006 Victorian state election, registered political parties and independent candidates were entitled to \$1.31607 for each first preference vote received provided they received at least 4 per cent of first preference votes.⁴⁹³ This had increased to \$1.3746 for the Kororoit District by-election in 2008.⁴⁹⁴
- 6.5 For the purposes of direct public funding, registered political parties and independent candidates are required to lodge an audited statement of

⁴⁹⁰ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 22.

⁴⁹¹ *Electoral Act 2002 (Vic)*, Australia, Act No. 23/2002, s. 211.

⁴⁹² *Electoral Act 2002 (Vic)*, Australia, Act No. 23/2002, s. 211.

⁴⁹³ Victorian Electoral Commission, *Report to Parliament on the 2006 Victorian state election*, Victorian Electoral Commission, Melbourne, 2007, p. 51.

⁴⁹⁴ Victorian Electoral Commission, *Report to Parliament on the Kororoit District by-election*, Victorian Electoral Commission, Melbourne, 2009, p. 15.

expenditure no later than 20 weeks after the election day. This statement specifies that the registered political party or independent candidate has spent or incurred costs in relation to the election which are not less than the entitlement being the amount specified in the statement.⁴⁹⁵

6.6 In regards to the statement which registered political parties and independent candidates provide to the VEC in order to receive public funding, the following two issues arose during the inquiry:

- There is no obligation for any registered political party or independent candidate to specify the amount of election expenditure unless it is less than their public funding entitlement; and
- The VEC is not required to make the audited statements available to the public.

6.7 At the 2006 Victorian state election, the total amount of direct public funding provided to registered political parties was \$7,329,435.98. The amount of public funding received by registered political parties ranged between \$1,817.49 and \$3,282,127.23.⁴⁹⁶

6.8 At the 2006 Victorian state election, the total amount of direct public funding provided to independent candidates was \$65,394.41. Independent candidates' entitlements ranged from \$105.55 to \$17,561.64. However, four independent candidates spent less than their entitlements.⁴⁹⁷

Comparative approaches

Australia

6.9 Public funding is available post-election to political parties and independent candidates in Commonwealth elections and state/territory elections in the Australian Capital Territory, New South Wales, Queensland, Western Australia, and Victoria. While New South Wales was the first jurisdiction to bring public funding into operation in 1981, the Commonwealth Parliament closely followed in 1984 and Queensland followed in 1994. Victoria introduced public funding in 2002 and Western Australia in 2006. It is worth noting that the Commonwealth, Australian Capital Territory and Victorian jurisdictions do not require political parties or candidates to disclose details of election expenditure to receive public funding whereas the other states require disclosure of expenditure details.

6.10 However, the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth), which passed the House of Representatives

⁴⁹⁵ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, s. 208.

⁴⁹⁶ Victorian Electoral Commission, *Report to Parliament on the 2006 Victorian state election*, Victorian Electoral Commission, Melbourne, 2007, p. 52.

⁴⁹⁷ Victorian Electoral Commission, *Report to Parliament on the 2006 Victorian state election*, Victorian Electoral Commission, Melbourne, 2007, p. 52.

on 16 March 2009,⁴⁹⁸ aims to amend the *Commonwealth Electoral Act 1918* (Cth) so as to:

- Introduce a claims system for electoral funding and tie funding to electoral expenditure; and
- Extend the range of electoral expenditure that can be claimed⁴⁹⁹ and prevent existing members of Parliament from claiming electoral expenditure that has been met from their parliamentary entitlements, allowances and benefits.⁵⁰⁰

6.11 Table 6.1 provides a comparative summary of public funding in Australia by states and territories. The Northern Territory, South Australia and Tasmania are not included in this table as they do not have public funding for elections.

International

6.12 The Committee met with representatives of the Electoral Assistance Division of the United Nations as part of its international investigations. The representatives informed the Committee that approximately 60 per cent of countries have some form of public funding arrangements for elections.⁵⁰¹

6.13 Table 6.2 summarises the public funding provisions for Canada, New Zealand, the UK and the US, four of the most cited electoral funding regimes in the academic literature.

6.14 There are two types of public funding in Canada: (i) direct expenditure reimbursement for candidates and political parties; and (ii) quarterly allowances for political parties. Quarterly allowances are calculated on the percentage of the vote that political party received: 2 per cent of the vote overall or 5 per cent of the vote in each riding [electorate] and entitle political parties to C\$1.75 per vote per year paid in quarterly instalments.⁵⁰²

6.15 Public funding in New Zealand and the UK, in the form of broadcasting, was discussed in Chapter 5 in the section on free or minimum fee broadcasting time.

⁴⁹⁸ The Bill is currently before the Senate.

⁴⁹⁹ The new definition would retain the substance of the current definition of "electoral expenditure" in section 308 while relocating it to subsection 287(1). The proposed five new categories of electoral expenditure are (1) the rent of any house, building or premises used for the primary purpose of conducting an election campaign (2) paying additional staff employed, or a person contracted, for the primary purpose of conducting an election campaign (3) office equipment purchases, leased or hired for the primary purpose of conducting an election campaign (4) the costs of running or maintaining that office equipment and (5) expenditure incurred on travel, or on travel and associated accommodation, to the extent that the expenditure could reasonably be expected to have been incurred for the primary purpose of conducting an election campaign.

⁵⁰⁰ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, p. 2.

⁵⁰¹ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 22.

⁵⁰² Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 12.

Table 6.1: Public funding provisions in Australia⁵⁰³

Jurisdiction	Introduced	Threshold	Public funding capped by election expenditure	Disclosure provision	Paid
Commonwealth ⁵⁰⁴	1984	4%	No	No details of expenditure required	Post-election
New South Wales	1981	4% or elected candidate	Yes	Lodge election expenditure with the Electoral Funding Authority	Post-election
Victoria	2002	4%	Yes	Audited statement of expenditure must be submitted to VEC but no details of expenditure required	Post-election
Queensland	1994	4%	Yes	Lodge election expenditure with Electoral Commission Queensland	Post-election
Australian Capital Territory	1992	4%	No	No details of expenditure required	Post-election
Western Australia	2006	4%	Yes	Lodge election expenditure with the Western Australian Electoral Commission	Post-election

⁵⁰³ The information in this table is drawn from Dr Sally Young & Dr Joo-Cheong Tham, *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, Canberra, 2006, p. 39; Victorian Electoral Commission, *Report to Parliament on the 2006 Victorian state election*, Victorian Electoral Commission, Melbourne, 2007, p. 53.

⁵⁰⁴ New legislative arrangements are currently before the Australian Parliament.

Table 6.2: International public funding provisions for national government elections⁵⁰⁵

Jurisdiction	Direct public funding	Limits of electoral expenditure	Prohibition on particular types of electoral expenditure
Canada	Yes	Yes	No
New Zealand	No – but funds for use of TV and radio broadcasts	Yes	Yes – ban on election broadcasts except for programs in allocated time and paid for with public funding allocation
United Kingdom	No – but free mailings, use of public rooms and broadcast time, plus grants for policy development	Yes	Yes – paid broadcast media advertising
United States – Presidential elections only	Yes	Yes – if the candidate accepts public funding	No

Direct public funding issues

6.16 The Commonwealth Parliament's Joint Select Committee on Electoral Reform in its first report in September 1983 reported that public funding of elections would:

- Remove the necessity or temptation to seek funds that may come with conditions imposed or implied;
- Help parties to meet the increasing cost of election campaigning;
- Help new parties or interest groups compete effectively in elections;
- Relieve parties from the "constant round of fund raising" so they could concentrate on policy problems and solutions; and
- Ensure that no participant in the political process was "hindered in its appeal to electors nor influence[d] in its [their] subsequent actions by lack of access to adequate funds".⁵⁰⁶

6.17 This section reports on the direct public funding issues considered by the Committee. This includes public funding as of right, reporting obligations and verification of expenditure, threshold for calculating public funding entitlements,

⁵⁰⁵ The information in this table is drawn from the Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, pp. 30-32.

⁵⁰⁶ Parliament of Australia, *First report*, Joint Select Committee on Electoral Reform, Canberra, 1983, pp. 153-155.

full public funding, matching public funding and regular funding for party administration and policy development.

Public funding as of right

6.18 Inquiry participants were concerned about the potential for political parties and candidates to profit from direct public funding of federal elections. Professor Brian Costar noted that profiteering was not an objective of the Commonwealth public funding system when it was introduced in 1984.⁵⁰⁷ Originally, direct public funding was intended to reimburse political parties or independent candidates for their campaign expenditure. This is evident by the fact that the original public funding rate was based on the annual primary postage rate (30c in 1983) which was to meet the cost of mailing campaign material to individual electors and households.⁵⁰⁸

6.19 However, in 1995 the *Commonwealth Electoral Act 1918* (Cth) was amended which resulted in registered political parties, groups and independent candidates who obtained 4 per cent or more of the primary vote becoming entitled to receive public funding *as of right*. Political parties, groups and candidates were no longer required to submit receipts for reimbursement of election expenditure.⁵⁰⁹ Mr David Kerslake, Electoral Commissioner of Queensland, explained that this has resulted in Commonwealth public funding being paid at a “prescribed rate per vote irrespective of how much parties or independent candidates actually spend on their campaigns”.⁵¹⁰

6.20 He further explained that the potential to “make a profit” enabled political parties and candidates to hold funds over to fund future election campaigns which can give incumbent members of parliament an electoral advantage, or the money may be used as personal expenditure.⁵¹¹ At the public hearings he said:

I do not think the public generally would support people being able to walk away from an election campaign with money in their pocket that might never be used for political purposes in future. I also question whether it is legitimate for a party to hoard the profits it makes in some election campaigns over a period of time and then spend up in a big way at some future electoral event — what I have referred to as the big bang approach. That seems to me to negate the level playing field principle that goes with public funding.⁵¹²

6.21 Several inquiry participants recommended that the Victorian direct public funding arrangements should continue to ensure that political parties and

⁵⁰⁷ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 18.

⁵⁰⁸ Electoral Commission Queensland, *Submission*, no. 9, received 27 June 2008, p. 2.

⁵⁰⁹ The *Commonwealth Electoral Amendment Act 1995* (Cth) removed the requirement for federally registered political parties to lodge receipts for public funding and permitted one party to distribute public funding to another party. The *Electoral and Referendum Amendment Act 1995* (Cth) permitted the Australian Democrats to appoint a “Principal Agent” to receive all of the party’s funding.

⁵¹⁰ Electoral Commission Queensland, *Submission*, no. 9, received 27 June 2008, p. 2.

⁵¹¹ Electoral Commission Queensland, *Submission*, no. 9, received 27 June 2008, p. 2.

⁵¹² Mr David Kerslake, *Transcript of evidence*, Melbourne, 23 July 2008, p. 3.

independent candidates do not contest an election for the purposes of financial gain.⁵¹³

Reporting obligations and verification of expenditure

- 6.22 In Victoria, political parties and independent candidates must submit to the VEC an audited statement of expenditure in relation to the election no later than 20 weeks after the election day; no details of expenditure are required.⁵¹⁴
- 6.23 In 2008 the Commonwealth Parliament's JSCEM recommended that the "entitlement to public funding is conditional on a candidate meeting the 4 per cent threshold and demonstrating that they have incurred genuine campaign expenditure (whichever is the lower amount)".⁵¹⁵ As noted earlier, the Commonwealth Parliament is currently debating whether to introduce a claims system for electoral funding and tie funding to electoral expenditure.⁵¹⁶
- 6.24 Some inquiry participants agreed that public funding should be paid on a reimbursement basis with timely disclosure of itemised expenditure after an election.⁵¹⁷ Dr Joo-Cheong Tham supported continuous disclosure by political parties and candidates of public funding.⁵¹⁸
- 6.25 The Property Council of Australia did not specify detailed reporting requirements but their submission supported a public funding system which is transparent.⁵¹⁹
- 6.26 The Public Interest Advocacy Centre proposed that "public funding be conditional on compliance with expenditure disclosure requirements and set expenditure limits".⁵²⁰ This proposal is in line with the regulatory framework of the US Presidential election candidates who can receive public funding in exchange for complying with election expenditure limits.
- 6.27 At the public hearings, a Committee member asked Professor Brian Costar about the Democratic Audit of Australia's opinion on an acquittal process. Professor Costar proposed that public funding recipients should be required to show receipts for 90 per cent of the total funds spent. Professor Costar chose this percentage because he was genuinely concerned that smaller political parties and independent candidates would not be able to account for

⁵¹³ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 18; Mr David Kerslake, *Transcript of evidence*, Melbourne, 23 July 2008, p. 3; Australian Greens (Victoria), *Submission*, no. 11, received 27 June 2008, p. 1.

⁵¹⁴ *Electoral Act 2002* (Vic), Australia, Act No. 23/2002, s. 208.

⁵¹⁵ Parliament of Australia, *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, Joint Standing Committee on Electoral Matters (Chair: Daryl Melham MP), Canberra, 2008, p. 24.

⁵¹⁶ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, p. 2.

⁵¹⁷ Australian Labor Party (Hawthorn Branch), *Submission*, no. 19, received 7 August 2008, p. 2; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 3; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 13.

⁵¹⁸ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 10.

⁵¹⁹ Property Council of Australia, *Submission*, no. 10, received 27 June 2008, p. 2.

⁵²⁰ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 21.

100 per cent of campaign expenditure. However, Professor Costar noted that if the Committee recommended a funding and disclosure model similar to that of the New York City Campaign Finance Board, smaller political parties and independent candidates should be able to fulfil that requirement.⁵²¹

- 6.28 Another inquiry participant supported public funding being used to reimburse political parties and independent candidates for the cost of employing an independent auditor to ensure the accurate disclosure of electoral, administrative and election expenditure, both after elections and annually.⁵²²

Threshold for calculating public funding entitlements

- 6.29 Some inquiry participants proposed that public funding payments should continue to be based on electoral performance. Using the Canadian model of public funding as an example of best practice, Dr Ken Coghill and Dr Joo-Cheong Tham proposed that:

[I]n place of the 4 per cent threshold for electoral funding, there should be a lower threshold and/or a threshold based on the nationwide [or statewide] electoral support secured by a party.⁵²³

- 6.30 Dr Joo-Cheong Tham argued that a public funding threshold should be established for the upper and lower house:

The threshold for eligibility for these payments should be 2 per cent of first preference votes cast in Senate elections and 4 per cent of first preference votes cast in a House of Representatives election.⁵²⁴

- 6.31 Dr Joo-Cheong Tham was the only inquiry participant who suggested a sliding scale of public funding:

The amount of payments should be subject to a tapered scheme with the payment rate per vote decreasing according to the number of first preference votes received. For instance, the first 5 per cent of first preference votes received by a party could entitle it to a payment of \$2.00 per vote, while a payment rate of \$1.50 per vote applied to the next 20 per cent of first preference votes and a payment rate of \$1.00 per vote attached to votes received beyond the 25 per cent mark.⁵²⁵

- 6.32 Table 6.3 compares the entitlements for political parties and candidates if the threshold was reduced or abolished.

521 Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 18.

522 Citizens Electoral Council of Australia, *Submission*, no. 16, received 14 July 2008, p. 3.

523 Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 33.

524 Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 49.

525 Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 49-50.

Full public funding

6.33 Some inquiry participants supported the full public funding of campaign expenditure. The Country Alliance, a registered non-parliamentary political party supported “full taxpayer funding of election campaigns”.⁵²⁶

6.34 Two inquiry participants speculated that public funding would need to be increased if political donations was restricted.⁵²⁷ This was behind the New South Wales Legislative Council Select Committee on Electoral and Political Party Funding recommendation “that the Premier consult to determine a reasonable increase in electoral and political party funding”.⁵²⁸

6.35 However, Dr Ken Coghill disagreed with the need to increase the level of public funding if limitations were placed on political donations. When asked if he expected public funding to increase, he said:

Not necessarily. The Canadians managed to put a cap on corporate donations and to introduce a level of public funding which is comparable to or perhaps lower than the current Australian level of public funding. ... I think that level would provide a very adequate amount of funds for parties to communicate effectively with the electorate.⁵²⁹

6.36 Other inquiry participants were concerned that the Australian public would not welcome increasing the amount of public money available to political parties and independent candidates for their election campaigns.⁵³⁰ Professor Brian Costar said:

I do not think the Australian public is going to buy the Canadian level of public funding. I do not think the political parties believe they will buy it and I do not think they will recommend it.⁵³¹

6.37 Dr Sally Young also outlined her concerns associated with full public funding:

My concern is that what will happen is that the status quo will just go on, the spending on political advertising and so on, but the public will just be giving more money for it.⁵³²

⁵²⁶ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 2.

⁵²⁷ Mr Aaron Gadiel (Chief Executive Officer), Urban Taskforce Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 3; Ms Deidre Moor (Manager Policy & Programs), Public Interest Advocacy Centre Limited, *Transcript of evidence*, Melbourne, 24 July 2008, pp. 4-5.

⁵²⁸ Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. 79.

⁵²⁹ Dr Ken Coghill, *Transcript of evidence*, Melbourne, 23 July 2008, p. 6.

⁵³⁰ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 18; Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 10; Mr Mike Steketee, “Good idea whose time will never come”, *The Australian*, 3 April 2008, p. 14 cited in Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 7.

⁵³¹ Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 18.

⁵³² Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 16.

Table 6.3: Public funding payable to candidates contesting 2006 Victorian state election if eligibility threshold was reduced or abolished⁵³³

Registered Political parties	4% Threshold			2% Threshold			0% Threshold		
	Entitlement	Legislative Assembly	Legislative Council	Entitlement	Legislative Assembly	Legislative Council	Entitlement	Legislative Assembly	Legislative Council
ALP	3,282,127.23	1,681,998.00	1,600,129.23	3,282,127.23	1,681,998.00	1,600,129.23	3,306,136.30	1,681,998.00	1,624,138.30
Liberals	2,684,173.46	1,345,168.31	1,339,005.15	2,684,173.46	1,345,168.31	1,339,005.15	2,698,642.33	1,345,168.31	1,353,474.03
Nationals	367,761.28	195,511.41	172,249.87	374,002.09	201,752.21	172,249.87	375,402.39	201,752.21	173,650.17
Christian Dem.							7,658.21		7,658.21
CEC	1,817.49	1,817.49		2,741.37	2,741.37		6,826.46	6,826.46	
Country All.				9,778.40		9,778.40	17,541.90		17,541.90
DLP	24,095.93		24,095.93	47,560.14		47,560.14	77,282.26		77,282.26
Family First	180,797.75	113,454.45	67,343.30	306,360.04	159,878.82	146,481.22	318,495.52	167,490.96	151,004.56
People Power				6,755.39	6,755.39		60,090.44	20,038.48	40,051.96
Socialist All.							2,937.47	1,450.31	1,487.16
Democrats							32,471.40		32,471.40
The Greens	788,662.84	388,299.87	400,362.97	792,461.02	392,098.05	400,362.97	806,458.74	392,098.05	414,360.69
Total Political Parties	7,329,435.99	3,726,249.53	3,603,186.46	7,505,959.14	3,790,392.15	3,715,566.99	7,709,943.41	3,816,822.78	3,893,120.63
Total Independents	70,029.40	65,394.41	0.00	79,197.14	79,197.14	0.00	113,990.09	89,263.76	24,726.32
Total Entitlements	7,399,465.39	3,791,643.94	3,603,186.46	7,585,156.28	3,869,589.29	3,715,566.99	7,823,933.50	3,906,086.55	3,917,846.95

⁵³³

Ms Liz Williams (Deputy Electoral Commissioner), Victorian Electoral Commission, Email, 21 October 2008.

- 6.38 Given that Dr Sally Young, in a journal article, contended that “it remains virtually impossible to isolate the effect of advertising on voting choice as distinct from other elements of influence such as family, education, media and partisanship”, providing political parties with more funds to campaign may not be the most effective use of taxpayer money.⁵³⁴

Matching public funding

- 6.39 Some inquiry participants noted that direct public funding benefited established political parties and it would be extremely difficult for new and emerging political parties to access public funding.⁵³⁵ This is confirmed in political research which recognises that new political parties find it “difficult to break into the funding system” because public funding is not a prepayment but reimbursement based on electoral performance.⁵³⁶ Nevertheless, all registered political parties and independent candidates are required to raise funds for election purposes prior to the election and are reimbursed after the election. While the Australian Greens (Victoria) support the 4 per cent threshold for public funding, they confirmed that they have also suffered from it as a smaller party.⁵³⁷
- 6.40 Some inquiry participants and others proposed that candidates should receive matching public funds based on the amount of eligible political donations received prior to election day.⁵³⁸ For example, the Democratic Audit of Australia noted:

The current public funding regime be amended to permit political parties and candidates to receive matching grants for funds raised before polling day, subject to a maximum amount. Parties and candidates receiving in excess of 4% of the vote should continue to receive funding per vote but at an adjusted rate.⁵³⁹

- 6.41 The New York City Campaign Finance Board provides matching public funds to candidates contesting the New York City Council elections. The Committee met with the New York City Campaign Finance Board as part of its international investigations.⁵⁴⁰ Ms Amy Loprest, Executive Director of the Board, explained that on average 70 per cent of candidates participated in the program.⁵⁴¹ There

⁵³⁴ Dr Sally Young, "Spot on: The role of political advertising in Australia", *Australian Journal of Political Science*, vol. 37, no. 1, 2002, p. 89.

⁵³⁵ For example Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 32.

⁵³⁶ Callinan, 2002, pp. 5-6 cited in Dean Jaensch, "Party structures and processes", in Ian Marsh (ed). *Political parties in transition*, The Federation Press, 2006, p. 31.

⁵³⁷ Australian Greens (Victoria), *Submission*, no. 11, received 27 June 2008, p. 1.

⁵³⁸ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 33; Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 3.

⁵³⁹ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 3.

⁵⁴⁰ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, pp. 24-29.

⁵⁴¹ For the most recent New York City Council mayoral elections, Mayor Bloomberg did not comply with election expenditure limits and as a result was not eligible for public funding. It is estimated that he spent US\$75 million on his 2001 campaign for Mayor.

was some variation in funding but for every US\$1 an individual New York City resident contributed, the candidate received US\$6 in matching funds up to each contribution of US\$175. Matching public funds are paid to the candidate in the election year and public funding is regularly indexed for inflation.⁵⁴²

6.42 The Committee was informed that to qualify, candidates contesting the New York City Council elections must:

- Be in compliance;⁵⁴³
- Meet a two-part threshold;⁵⁴⁴
- File a Certification form by specified date;
- Be on the ballot and be opposed by another candidate on the ballot;
- Repay any debt owed to the Campaign Finance Board from a previous election;⁵⁴⁵
- File a financial disclosure report with the New York City Conflicts of Interest Board; and
- Submit a copy of the certification receipt indicating proof of compliance from the New York City Conflicts of Interest Board.⁵⁴⁶

6.43 Professor Keith Ewing referred the Committee to the German public funding model which is based on reciprocal obligation. The German state provides public funding to political parties up to a level of 50 per cent, provided a party raised the same amount from private sources.⁵⁴⁷

6.44 The advantages of matching public funding are to assist increasing the number of candidates running for office and to support smaller and newer political parties to fund an election campaign.⁵⁴⁸ While the Committee supports the

⁵⁴² Amy Loprest and Peter Mares, “The best democracy money can’t buy”, *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission: Appendix A*, no. 18, received 15 July 2008, p. 4; Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 25.

⁵⁴³ A candidate must be in compliance with the Campaign Finance Board’s rules and requirements throughout the election cycle, including: (1) Accurately reporting all contributions and expenditures; (2) Maintaining documentation of contributions and expenditures and providing them to the Campaign Finance Board upon request; (3) Filing disclosure statements in a timely and complete manner; (4) Not being in violation of any part of the law, such as contribution and expenditure limits.

⁵⁴⁴ A candidate must meet a two-part threshold to demonstrate a minimal level of support within the community. Meeting threshold includes: (1) Raising a certain amount of money in matchable claims and (2) Collecting a minimum number of matchable contributions of \$10 or more from individuals within the area the candidate seeks to represent.

⁵⁴⁵ Candidates who have outstanding penalties or public funds repayments from the previous campaign are not eligible to receive any public funds payments until the debt is repaid.

⁵⁴⁶ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 25; New York City Campaign Finance Board, *2009 Campaign finance handbook*, New York City Campaign Finance Board, New York City, 2009, pp. 59-64.

⁵⁴⁷ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 38.

⁵⁴⁸ Amy Loprest and Peter Mares, “The best democracy money can’t buy”, *The National Interest* on ABC Radio National, 11 April 2008 cited in Democratic Audit of Australia, *Submission:*

principle of electoral participation, it is concerned that if matching public funds increases the number of candidates contesting an election, the proportion of informal votes may increase, as research has shown.⁵⁴⁹

- 6.45 Also given that Australia has predominantly a two-party system, Dr Joo-Cheong Tham contended that it is important that both parties – the ALP and Liberal Party – are equally represented so that there is “fair rivalry”. At the 2006 Victorian state election, the ALP (\$3,282,127.23) and Liberal Party (\$2,684,173.46) were the two highest recipients of public funding, which implies that both the ALP and Liberal Party have a reasonable “equality of arms” to facilitate a fair electoral competition.⁵⁵⁰
- 6.46 Some inquiry participants drew on the 2008 US Presidential elections to discuss the disadvantages of matching public funds. The main disadvantage is that candidates can choose not to comply with the election expenditure limits and forgo their public funding. For example, Senator Barack Obama chose to rely on political donations and contributions rather than receive public funding.⁵⁵¹ This is despite public funding of US\$84.1 million for other presidential candidates at the 2008 US Presidential election.⁵⁵²
- 6.47 The issue of whether funds received by a candidate or a registered political party was indicative of political support was also raised during the inquiry. The Committee is of the view that money raised through fundraising is not always a good indication of widespread electoral support.

Funding for party administration and policy development

- 6.48 In a joint submission, Dr Ken Coghill and Dr Joo-Cheong Tham argued that political parties and candidates play a representative function, agenda-setting function, participatory function and governance function. Both inquiry participants indicated that funding for political parties and candidates should be judged against these legitimate functions.⁵⁵³

Appendix A, no. 18, received 15 July 2008, p. 4; Professor Brian Costar (Chair of Victorian Parliamentary Democracy and Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 18; Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 2.

- ⁵⁴⁹ Research conducted by the Australian Electoral Commission indicated that the strongest predictor of the rise in informality between the 2001 and 2004 House of Representatives elections was an increase in the number of candidates on the ballot paper. For more information see Gina Dario, *Research report no. 7: Analysis of informality during the House of Representatives 2004 election*, Australian Electoral Commission, Canberra, 2005, p. 20.
- ⁵⁵⁰ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 7-8.
- ⁵⁵¹ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 10; Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 4.
- ⁵⁵² Ms Emily Cadei, "Q & A: Obama's public funding opt-out", *USA Today*, Retrieved 30 March 2009 from http://www.usatoday.com/news/politics/election2008/2008-06-19-opt-out-qa_N.htm.
- ⁵⁵³ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 10; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 11.

- 6.49 An AEC submission to the Commonwealth Parliamentary Joint Select Committee on Electoral Reform in 1983 identified that public funding should assist political parties in financial difficulty and stimulate political education and research, among other objectives.⁵⁵⁴
- 6.50 Some inquiry participants proposed that public funding should be provided with the expectation that a proportion of the entitlement is allocated to the legitimate functions of the political party and broader social objectives including education, community consultation, party building, policy development and campaigning.⁵⁵⁵
- 6.51 Dr Joo-Cheong Tham proposed policy development grants. These grants would be used by political parties for policy development only, as is the case in the UK, and eligibility for these grants would be the same as annual allowances.⁵⁵⁶
- 6.52 Dr Joo-Cheong Tham also proposed a Party Support Fund which would provide eligible registered political parties access to an annual allowance. These allowances would be available for those political parties and candidates who are eligible for public funding payments based on electoral performance and/or have a minimum membership of 500;⁵⁵⁷ this allowance is modelled on the Canadian quarterly allowances.⁵⁵⁸
- 6.53 The proposition that public funding could be tied to political parties having an active membership base was raised during discussions with researchers associated with the New Zealand Election Study.⁵⁵⁹ The issue of fostering participation in political parties was also raised at the meeting with representatives of Elections Canada. Mr Marc Mayrand, Chief Electoral Officer of Canada, questioned:

⁵⁵⁴ AEC submission cited in Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 12.

⁵⁵⁵ Australian Labor Party (Hawthorn Branch), *Submission*, no. 19, received 7 August 2008, p. 2; Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 33; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 50; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 13.

⁵⁵⁶ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 50.

⁵⁵⁷ Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 50.

⁵⁵⁸ Canada has instigated incentives to increase political party membership. In Canada quarterly allowances are provided to registered political parties and candidates based on previous electoral performance. To be eligible, a party must have received in the general election preceding the quarter: (1) At least 2 per cent of the valid votes cast or (2) At least 5 per cent of the valid votes cast in the electoral districts in which the party endorsed a candidate.

⁵⁵⁹ Associate Professor Raymond Miller, Associate Professor Ann Sullivan & Dr Jennifer Curtin, University of Auckland, *Discussions*, Auckland, 9 February 2009, p. 7.

At what point is public funding too much [so] that the parties are not as connected with [their members] as they should be, or do not reflect participation of members? ... It's a question I think for consideration.⁵⁶⁰

- 6.54 However, representatives of Elections Canada advised the Committee that smaller political parties do not receive quarterly allowances and this issue is currently before the Supreme Court of Canada.⁵⁶¹
- 6.55 The most recent inquiry into electoral and political party funding undertaken by the New South Wales Legislative Council Select Committee on Electoral and Political Party Funding recommended that a Party Administration Fund be established which provided annual payments to subsidise party administration costs.⁵⁶² This recommendation deviates from past views of the Commonwealth Parliament's JSCEM and the Australian Electoral Commission.⁵⁶³ However, electoral authorities in Canada and the UK allocate a proportion of public funding to the legitimate functions of the political party and broader social objectives.⁵⁶⁴
- 6.56 Dr Ken Coghill commented positively on the potential impact of hypothecated public funding on smaller political parties:
- It also gives parties some guaranteed income, enabling stable party secretariats to be established, which is, in general, a good thing for the agenda-setting and participatory functions of parties, as it allows some focus on policy development and membership development.⁵⁶⁵
- 6.57 The Australian Greens (Victoria) indicated that smaller political parties often struggle financially to fund activities that can lead to long-term growth of the party. The Australian Greens (Victoria) felt that the initiative to allocate a proportion of public funding for specific functions may be more relevant for smaller political parties which depend on public funding.⁵⁶⁶

⁵⁶⁰ Mr Marc Mayrand, Mr Mathieu Mainville, Ms Janice Vezina, Mr Marcel Vautour, Mr Mike Saunders, Mr Jeff Merrett, Mr Richard Chiasson, Ms Lyne Morin & Mr Miriam Lapp, Elections Canada, *Discussions*, Ottawa, 25 August 2008, p. 22.

⁵⁶¹ The Committee was advised by representatives of Elections Canada of a court case on the issue of the quarterly allowance. The case states that the quarterly allowance must be provided to small parties or explain why these parties should be denied. The case is in the Supreme Court of Canada, on appeal from the Court of Appeal for Ontario. Blair T. Longley, Kevin Peck, Miguel Figueroa, Jim Harris, Marijuana Party, Canadian Action Party, Communist Party of Canada, Green Party of Canada, Christian Heritage Party, and Progressive Canadian Party vs The Attorney General of Canada. For more information see www.marijuanaparty.ca/IMG/pdf/03-27-2008_3_.pdf. Retrieved 14 April 2009.

⁵⁶² Parliament of New South Wales, *Electoral and Political Party Funding in New South Wales*, Select Committee on Electoral and Political Party Funding (Chair: Revd the Hon Fred Nile MLC), Sydney, 2008, p. 67.

⁵⁶³ The Commonwealth Parliament's JSCEM (2006) and the Australian Electoral Commission (1998) were of the view that public funding was not designed to fund on-going administrative costs of political parties.

⁵⁶⁴ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, pp. 11, 12, 76.

⁵⁶⁵ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 32.

⁵⁶⁶ Australian Greens (Victoria), *Submission*, no. 11, received 27 June 2008, p. 1.

- 6.58 The Hawthorn Branch of the Australian Labor Party felt that the branches of major political parties would also benefit from hypothecated public funding. Accordingly, it proposed that a proportion of public funding be directed to branches of registered political parties with the objective of building and sustaining local political activity and democratic participation.⁵⁶⁷
- 6.59 A Committee member was wary of the efficacy of prescribing how political parties should spend their entitlement:

Funding is not hypothecated at the moment. It goes into the general funds of political parties, and they use it for their administration, they use it for their research, they use it for their consultations and, yes, they use it for their political advertising. Is it really going to be effective to say, 'You must quarantine this much money for policy development'?⁵⁶⁸

Indirect public funding issues

- 6.60 This section of the chapter discusses indirect public funding issues including parliamentary entitlements of incumbents, incumbency, tax deductibility of political donations and government advertising.

Parliamentary entitlements of incumbents

- 6.61 The Committee received one submission about parliamentary entitlements of incumbents. Members of Parliament have access to a number of entitlements which are cited by the Public Interest Advocacy Centre as being of benefit to the political parties at election time:

[E]ntitlements such as salaries, allowances for staff, postage and print are of benefit to the political parties more generally. The more members elected, the greater is this advantage.⁵⁶⁹

- 6.62 In examining allowances for electorate communication, the Committee accessed a report by the New South Wales Auditor-General that reviewed the electoral mail-out account of Members of the New South Wales Legislative Assembly. The Auditor-General reported that members spent and communicated more with their constituents "in the month immediately preceding the election than at any other time" and concluded that the timing of the communications may be construed as financing electioneering communications or political campaigning.⁵⁷⁰ The Committee is aware that this is an issue in international jurisdictions.⁵⁷¹

⁵⁶⁷ Australian Labor Party (Hawthorn Branch), *Submission*, no. 19, received 7 August 2008, p. 2.

⁵⁶⁸ Mr Michael O'Brien cited in Dr Sally Young (Member), Democratic Audit of Australia, *Transcript of evidence*, Melbourne, 23 July 2008, p. 9.

⁵⁶⁹ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 13.

⁵⁷⁰ Audit Office of New South Wales, "Audit of Members' Additional Entitlements", *Auditor General's Report to Parliament 2004 Volume 1*, Audit Office of New South Wales, 2004, p. 12 referred to in Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 13.

⁵⁷¹ Unlock Democracy observed that communication allowances for members of parliament were used to communicate with voters on key campaign issues in the lead up to the last general election. See Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 52.

6.63 Recommendations made by the New South Wales Auditor-General include:

- Parliament should consider mandatory, regular publishing of the spending of Members' additional entitlements;
- Parliament should consider the governance structures surrounding the payment of Members' additional entitlements; and
- Members should keep their records diligently to help ensure they do not overspend entitlements.⁵⁷²

6.64 It is important to note that any expenditure by a Victorian Member of Parliament from their electorate office budget or communications allowance is required to adhere to strict guidelines issued by the Presiding Officers of the Parliament and be audited by the staff of the Victorian Auditor-General's office.

6.65 The Committee notes that the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth), if passed, will prevent existing members of the Commonwealth Parliament from claiming electoral expenditure that has been met from their parliamentary entitlements, allowances and benefits.⁵⁷³

Incumbency

6.66 The Committee received one submission that raised the issue of incumbency. The Public Interest Advocacy Centre contended that governments should frame their budgetary decision making in the public interest rather than being self-or politically motivated.⁵⁷⁴

6.67 Members are required to adhere to a code of conduct, which is part of the *Members of Parliament (Register of Interests) Act 1978* (Vic). The code requires Members of Parliament prioritise their public duty before private interests, not obtain personal gain from their position as a Member of Parliament, and disclose their financial and professional interests. The Parliament of Victoria's Public Accounts and Estimates Committee (PAEC) inquiry into strengthening government and parliamentary accountability in Victoria included examining the provisions of the *Members of Parliament (Register of Interests) Act 1978* (Vic). The Committee concluded that the code of conduct for members of Parliament contained within the *Members of Parliament (Register of Interests) Act 1978* (Vic) should be updated.⁵⁷⁵

6.68 The Government response supported the PAEC's conclusion, with in-principle referral of the matter to the Privileges Committees of the Legislative Assembly

⁵⁷² Audit Office of New South Wales, "Audit of Members' Additional Entitlements", *Auditor General's Report to Parliament 2004 Volume 1*, Audit Office of New South Wales, 2004, p. 11 referred to in Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 13.

⁵⁷³ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, p. 2.

⁵⁷⁴ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 14.

⁵⁷⁵ Parliament of Victoria, *Report on strengthening government and parliamentary accountability in Victoria*, Public Accounts and Estimates Committee (Chair: Bob Stensholt MP), Melbourne, 2007, p. 43.

and the Legislative Council.⁵⁷⁶ The Victorian Parliament's Law Reform Committee has since received terms of reference to review the *Members of Parliament (Register of Interests) Act 1978* (Vic) and will table its report by 31 December 2009.⁵⁷⁷

Tax deductibility of political donations

- 6.69 The Committee received four submissions that raised the issue of tax deductibility of political donations.⁵⁷⁸ Contributions and gifts valued up to \$1,500 that are provided to political parties registered under Part XI of the *Commonwealth Electoral Act 1918* (Cth) or equivalent state or territory legislation are tax deductible, as are contributions and gifts to independent members and candidates.
- 6.70 As part of its international investigations, the Committee learned that political donations for candidates contesting the US Presidential elections are not tax deductible.⁵⁷⁹ In Canada, the individual donor providing a political donation receives a tax deduction equal to 75 per cent of the first C\$400 contributed, 50 per cent of the next C\$350 and 33^{1/3} per cent of any further amount up to C\$650.⁵⁸⁰
- 6.71 Action on Smoking and Health and the Public Interest Advocacy Centre did not believe that political donations should be tax deductible.⁵⁸¹ The Public Interest Advocacy Centre proposed that at the very least "tax and electoral laws be amended in order to permit tax deductibility on donations up to a maximum of \$100 and to remove tax deductibility for corporate donations".⁵⁸²
- 6.72 The Commonwealth Parliament's Tax Laws Amendment (Political Contributions and Gifts) Bill 2008 (Cth) proposed to remove a tax deduction to both individual and corporate tax-payers in respect of contributions or gifts made on or after 1 July 2008 to:

⁵⁷⁶ Victorian Government, *Government response to the recommendations by the Public Accounts and Estimates Committee 78th report to Parliament on strengthening government and parliamentary accountability in Victoria*, November 2008, p. 6.

⁵⁷⁷ The Parliament of Victoria's Law Reform Committee received its terms of reference on 4 December 2008. The terms of reference required the Law Reform Committee to undertake a review of the *Members of Parliament (Register of Interests) Act 1978* to consider and make recommendations on amending the Act.

⁵⁷⁸ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 15; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, p. 37; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, pp. 16-17; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5.

⁵⁷⁹ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 33.

⁵⁸⁰ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 12.

⁵⁸¹ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, pp. 16-17; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5.

⁵⁸² Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 17.

- Political parties;
- Members of parliament (state, territory and federal);
- Members of a local governing body (such as a local council); and
- Candidates (both party nominated and independent) for political office.⁵⁸³

6.73 The Bill was passed by the House of Representatives, subsequently amended by the Senate and referred back to the House of Representatives for consideration. The amendments allow individuals to claim tax deductibility of political donations – up to \$1,500 – but retains the Bill's original proposal of non-deductibility for companies.

Government advertising

6.74 The Public Interest Advocacy Centre was concerned about increasing government advertising expenditure and the lack of transparency, which has given rise to the perception that there is alleged misuse of funds at state and federal level by incumbent governments on campaign advertising in an election year.⁵⁸⁴

6.75 To mitigate these issues at a federal level, the Commonwealth Government announced new advertising campaign guidelines in July 2008. The main features include:

- [Advertising] campaigns over \$250,000 would be scrutinised by the Auditor-General;
- Coordination of procurement contracts and managing the policy and procedures for the development and implementation of Government advertising campaigns will be undertaken by the Department of Finance and Deregulation (Cth);
- [Advertising] campaign expenditures will be published biannually;
- The subject matter of material to be communicated to the public should be directly related to the Government's responsibilities;
- The material communicated must be presented in a explanatory, fair, objective and accessible manner; [and]
- Material should be presented in a manner free from partisan promotion of government policy and political argument, and in objective language.⁵⁸⁵

6.76 The Democratic Audit of Australia proposed that the Victorian Government mirror the changes to the monitoring and regulation of 'government advertising' announced by the Special Minister of State Senator John Faulkner and the Minister for Finance and Deregulation the Hon Lindsay Tanner MHR on 2 July 2008.⁵⁸⁶

⁵⁸³ Mr Leslie Neilson, "Tax Laws Amendment (Political Contributions and Gifts) Bill 2008", *Bills Digest*, vol. 2008-09, no. 11, 1 September 2008, p. 2.

⁵⁸⁴ Parliament of Australia, Government advertising and accountability, Senate Standing Committee on Finance and Public Administration, Canberra, 2005, p. xiii cited in Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 16.

⁵⁸⁵ Senator J. Faulkner (Special Minister of State), New advertising guidelines, 2 July 2008 cited in Democratic Audit of Australia, *Submission: Appendix B*, no. 18, received 15 July 2008, pp. 1-2.

⁵⁸⁶ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 3.

6.77 A number of other recommendations to regulate state government advertising in Victoria were proposed for the Committee's consideration:

- Prohibit government advertising six months prior to an election;⁵⁸⁷
- All public notices or information bulletins required by government for the benefit of informing the public, at any time, shall be carried by the Australian Broadcasting Corporation, and all government advertising on commercial television stations should be banned at all times;⁵⁸⁸
- [Establish] an independent committee to monitor all government advertising campaigns and ensure that public funds so spent are for the purposes of public education;⁵⁸⁹
- The *Better Practice: Criteria for Government-Funded Publicity Activities*, proposed by the Victorian Auditor-General, should apply to all government advertising;⁵⁹⁰
- Governments should provide annual reports outlining expenditure on advertising, public relations and public opinion research;⁵⁹¹
- The Senate Finance and Public Administration References Committee [Cth] on government advertising and transparency and accountability be given serious consideration by both the Victorian and Commonwealth Governments;⁵⁹² and
- Both the Victorian and the Commonwealth Governments reintroduce the provision of project and program funding detail in the budget papers and schedules of appropriation bills.⁵⁹³

6.78 The Committee understands the perennial issue of Oppositions of all political persuasions identifying with the distinction between government advertising for political gain and a requirement to inform the public.

⁵⁸⁷ Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 8.

⁵⁸⁸ Citizens Electoral Council of Australia, *Submission*, no. 16, received 14 July 2008, p. 5.

⁵⁸⁹ Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5.

⁵⁹⁰ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 16.

⁵⁹¹ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 16.

⁵⁹² Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 16.

⁵⁹³ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 16.

Chapter 7: Administration and enforcement

- 7.1 This chapter explores administrative and penalty issues associated with political donations disclosure and/or restrictions.

Administration, compliance and monitoring

- 7.2 A number of inquiry participants were concerned that any changes to the *Electoral Act 2002* (Vic), creating a system of political donations disclosure and/or restrictions to political donations, would be undermined without effective administration and enforcement of funding and disclosure provisions.⁵⁹⁴ The Public Interest Advocacy Centre stated:

Accountability is dependent not only on disclosure requirements but the capacity to have them effectively enforced, including a penalty regime that can act as a deterrent.⁵⁹⁵

- 7.3 In Australia, the AEC is responsible for Commonwealth electoral administration, which includes the review of the financial practices of Australian political parties. In Victoria, the VEC is responsible for electoral administration.
- 7.4 The International Institute for Democracy and Electoral Assistance holds the work of electoral commissions in Australia in high regard. In regards to political finance, it noted that the special tasks of the administering authority should include:
- Receiving and publishing audited or non-audited reports;
 - Initiating confidential inspection and public inquiries; and
 - Executing (mostly administrative) sanctions.⁵⁹⁶
- 7.5 The promotion of compliance would be an essential part of the application of any new rules. The International Institute for Democracy and Electoral Assistance stipulated that, at the minimum, implementation would be required

⁵⁹⁴ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, pp. 48-49; Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 8.

⁵⁹⁵ Public Interest Advocacy Centre Limited, *Submission*, no. 5, received 25 June 2008, p. 8.

⁵⁹⁶ IDEA (International Institute for Democracy and Electoral Assistance), *Funding of political parties and election campaigns handbook*, 2003. Retrieved 23 September 2008 from www.idea.int/publications/funding_parties/index.cfm

to begin with information and assistance in the form of education and training and the provision of support services.⁵⁹⁷ Similar sentiments were also expressed by Emeritus Professor Colin Hughes who suggested that the authority should provide software, instruction and resource support to political parties, groups, and candidates who are responsible for financial reporting.⁵⁹⁸

7.6 The Committee discussed the issue of compliance when it met with representatives of the New York City Campaign Finance Board. Mr Eric Friedman, Press Secretary, explained the training and support services provided by the Board:

Before campaigns really get started, we [New York City Campaign Finance Board] make them [candidates] sit through the training, the next part of that is just one on one working with them [candidates] over the phone encouraging them [candidates] to call. All campaigns that run with us have to use our software and it is called C-Smart and ... up until this election cycle [it was] strictly a compliance tool. ... In an effort to make the Agency [New York City Campaign Finance Board] a bit more friendly and to make life a little bit easier for the campaigns,... we turned it into not just a compliance tool, but put fundraising and letter writing applications into it.⁵⁹⁹

7.7 Some inquiry participants also raised the issue of the monitoring and investigating of financial reports. Some inquiry participants proposed that, if a system of political donations disclosure and/or restrictions of political donations are introduced, both the federal and state electoral commissions should be adequately funded to monitor and enforce compliance with the reporting obligations.⁶⁰⁰ A few inquiry participants also suggested that electoral commissions be given powers to investigate and report on donors and recipients, including third parties and associated entities.⁶⁰¹

7.8 Specifically, Dr Ken Coghill and Dr Joo-Cheong Tham indicated that the VEC should be given the following powers and duties in relation to disclosure obligations:

- Powers modelled upon section 316 of the *Commonwealth Electoral Act 1918* (Cth).⁶⁰²
- The power to require audits either by party or by referral to other statutory agencies;
- Make all returns public including publishing on internet; and

⁵⁹⁷ IDEA (International Institute for Democracy and Electoral Assistance), *Funding of political parties and election campaigns handbook*, 2003. Retrieved 23 September 2008 from www.idea.int/publications/funding_parties/index.cfm

⁵⁹⁸ Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 5.

⁵⁹⁹ Mr Eric Friedman (Press Secretary), New York City Campaign Finance Board, *Discussions*, New York City, 27 August 2008, p. 18.

⁶⁰⁰ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 23; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5.

⁶⁰¹ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 77; Mr Craig Ingram MP, *Submission*, no. 17, received 15 July 2008, p. 4.

⁶⁰² Section 316 of the *Commonwealth Electoral Act 1918* (Cth) refers to investigate powers.

- Review operation of funding disclosure provisions annually and report to Parliament on whether provisions are ensuring adequate transparency.⁶⁰³

- 7.9 The Commonwealth Parliament's JSCEM's *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* (Cth) recommended similar reforms including adequately funding the AEC to publish returns in a timely fashion, among other recommendations.⁶⁰⁴
- 7.10 Emeritus Professor Colin Hughes also considered the idea of establishing an organisation separate from the state electoral commission to manage the administration and enforcement of funding and disclosure provisions. However, he argued that a central body, such as the state electoral commission, may be well placed with experienced electoral staff as well as already being publicly recognised as the organisation responsible for electoral issues.⁶⁰⁵
- 7.11 Two inquiry participants suggested that if disclosure laws are harmonised in Australia, a single regulatory agency should be established to administer the disclosure scheme.⁶⁰⁶
- 7.12 The Committee supports electoral institutions being sufficiently funded to provide significant expert assistance to parties and candidates before, during and after election periods. This concept is based on the practice of the New York City Campaign Finance Board, whereby the Board provides candidates with considerable assistance to ensure they comply with electoral law, and thereby reduce the burden of compliance on political parties and candidates.
- 7.13 The Committee considers it important to ensure that there is no duplication of compliance requirements between the AEC and VEC, ensuring consistency between the two jurisdictions.

Offences and penalties

Comparative approaches

- 7.14 As illustrated in Chapter 2, there is considerable parliamentary investigation and legislative change currently occurring in Australia and internationally regarding the regulation and disclosure of political donations. Offences and penalties have also been a part of this discussion.
- 7.15 For example, in Australia the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 (Cth) has proposed to introduce new offences and increase penalties for a range of existing offences.⁶⁰⁷

⁶⁰³ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, pp. 22-23.

⁶⁰⁴ Parliament of Australia, *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, Joint Standing Committee on Electoral Matters (Chair: Daryl Melham MP), Canberra, 2008, p. xv.

⁶⁰⁵ Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 2.

⁶⁰⁶ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 1; Mr David Kerslake, *Transcript of evidence*, Melbourne, 23 July 2008, p. 3.

7.16 The UK Electoral Commission noted that there are civil and criminal penalties for electoral offences related to political finance. However, there are a number of offences, including exceeding the expenditure limit, for which beginning a criminal case is the only sanction available. The UK Electoral Commission believed this is a severe penalty, particularly when the offence may have been caused by miscalculation, misunderstanding, or an administrative error. As a result, the Committee discussed with representatives of the UK Electoral Commission that a graded civil penalty may be a more appropriate sanction.⁶⁰⁸

7.17 In the UK, the Political Parties and Elections Bill (UK) is currently progressing through the House of Commons and House of Lords. If passed the Bill will amend the *Political Parties, Elections and Referendums Act 2000* (UK) and in terms of penalties, strengthen the regulatory powers of the UK Electoral Commission to provide new powers of investigation and the option of civil sanctions.⁶⁰⁹

7.18 Ms Kristina Temel, Manager of Electoral Affairs at the Chief Electoral Office (NZ) informed the Committee that the *Electoral Finance Act 2007* (NZ) significantly increased the electoral finance offences and levels of penalties for electoral finance in New Zealand:

For example, in our regime, the most serious offence is for corrupt practice, which is an offence committed with knowledge or intent. Prior to the *Electoral Finance Act* you would be given a year in prison and about a NZ\$4,000 fine, or if you were a party secretary a NZ\$20,000 fine, and that's been beefed up to two years imprisonment and fines of up to NZ\$100,000 for a financial agent or a party signatory, and NZ\$40,000 for an individual. So when you add to that the fact that if you're a candidate and you are found guilty of a corrupt practice you lose your seat, those are quite significant strengthening of the penalties.⁶¹⁰

7.19 Ms Temel noted that the *Electoral Finance Act 2007* (NZ) also extended the period for prosecuting electoral finance offences:

In terms of the time limits of prosecution, before the *Electoral Finance Act* there was basically six months to prosecute an offence. It wasn't necessarily consistent as to whether that six months ran from the time the offence was committed or the time that the return was made disclosing that something had been left out. ... Under the current regime, the prosecution period is six months from the date on which the police have sufficient evidence to warrant the commencement of proceedings and with a maximum of three years. So throughout the electoral term you could potentially have offences being prosecuted.⁶¹¹

⁶⁰⁷ Nicholas Horne, "Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009", *Bills Digest*, vol. 2008-09, no. 115, 18 March 2009, p. 2.

⁶⁰⁸ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 48.

⁶⁰⁹ United Kingdom Parliament, *Political Parties and Elections Bill 2007-08 to 2008-09*. Retrieved 2 April 2009 from <http://services.parliament.uk/bills/2008-09/politicalpartiesandelections.html>.

⁶¹⁰ Ms Kristina Temel (Manager of Electoral Affairs), Chief Electoral Office, Ministry of Justice, *Discussions*, Wellington, 10 February 2009, p. 9.

⁶¹¹ Ms Kristina Temel (Manager of Electoral Affairs), Chief Electoral Office, Ministry of Justice, *Discussions*, Wellington, 10 February 2009, p. 10.

- 7.20 However, on 1 March 2009, the *Electoral Finance Act 2007* (NZ) was repealed by the New Zealand National Party Government and the Government has indicated it will introduce new election campaign finance reform.
- 7.21 The Committee learnt that in Canada, the Electoral Commissioner has a range of options for dealing with breaches of electoral law. For minor offences, the official would be contacted by Elections Canada and would receive a cautioning letter. In some cases an offender who admitted the offence would sign a compliance agreement which is published on Elections Canada's website. Elections Canada also outlined an adversarial option for more serious offenders where the file is referred to the Director of Public Prosecutions who decides whether to proceed to court. Fines range from C\$5 to C\$25,000 and penalties include imprisonment.⁶¹²
- 7.22 The Committee was also informed about the varying scale of penalties for infringements of the *Campaign Finance Act 1988* (NYC, US), with the maximum penalty for most violations being US\$10,000. However, the most common breaches are for late disclosure, accepting a corporate contribution or accepting a contribution in excess of the limit, all of which carry a penalty considerably lower than that.⁶¹³

Inquiry participants' views

- 7.23 A number of inquiry participants' advocated penalties for breaching a system of political donations disclosure and/or restrictions of political donations.⁶¹⁴
- 7.24 The Democratic Audit of Australia also suggested that penalties against "smurfing" be adopted.⁶¹⁵
- 7.25 Dr Ken Coghill and Dr Joo-Cheong Tham outlined a number of proposed penalties for breaching disclosure obligations:
- Offences modelled upon sections 315(1)⁶¹⁶ and 315(2)⁶¹⁷ of the *Commonwealth Electoral Act 1918* (Cth) but with higher administrative and criminal penalties;

⁶¹² Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, pp. 12-13.

⁶¹³ Parliament of Victoria, *Report on international investigations into political donations and disclosure and voter participation and informal voting*, Electoral Matters Committee (Chair: Mr Adem Somyurek MLC), Melbourne, 2008, p. 28.

⁶¹⁴ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, pp. 21-22; Citizens Electoral Council of Australia, *Submission*, no. 16, received 14 July 2008, p. 4; Action on Smoking and Health, *Submission*, no. 7, received 26 June 2008, p. 5; Emeritus Professor Colin A. Hughes, *Submission*, no. 8, received 27 June 2008, p. 5.

⁶¹⁵ Democratic Audit of Australia, *Submission*, no. 18, received 15 July 2008, p. 2. "Smurfing" is the act of packaging a large financial transaction into a number of smaller transactions which avoids scrutiny.

⁶¹⁶ Section 315(1) of the *Commonwealth Electoral Act 1918* (Cth) relates to offences and states: "Where a person fails to furnish a return that the person is required to furnish under Division 4, 5 or 5A within the time required by this Part, the person is guilty of an offence punishable, upon conviction, by a fine not exceeding: (a) in the case of a return required to be furnished by the agent of a political party or of a State branch of a political party—\$5,000; or (b) in any other

- Offences modelled upon section 315(3)⁶¹⁸ and 315(4)⁶¹⁹ of the *Commonwealth Electoral Act 1918* (Cth) but make strict liability offences, subject to a defence that the agent of the political party or person took all reasonable steps to accurately perform the party's disclosure obligations, higher criminal and administrative penalties;
- Persons and parties who fail to make or maintain such records as to enable them to comply with the disclosure provisions be subject to the same penalty provisions as apply to those who fail to retain such records;
- An arrangement entered into which has the effect of reducing or negating a disclosure obligation be deemed as if it had not been entered into;
- Failure to properly disclose a particular receipt or indebtedness should lead to forfeiture of that amount to Consolidated Revenue; and
- Party to be de-registered under Part 4 of the *Electoral Act 2002* (Vic)⁶²⁰ in the event of significant non-compliance with disclosure obligations.⁶²¹

7.26 Another inquiry participant agreed with Dr Ken Coghill and Dr Joo-Cheong Tham's proposal to de-register a registered political party for non-compliance. Emeritus Professor Colin Hughes believed that disqualification from being able to hold office would be an effective penalty when compared with imprisonment or a fine. He suggested that the offender should be disqualified from holding office in a registered political party or from standing for election at a state or local government election in the state for a period of five years.⁶²² Others were of the view that the dissolution of a political party should also be used with the "utmost restraint".⁶²³

case—\$1,000." Section 315(1A) states: "Strict liability applies to an offence against subsection (1). Note: For *strict liability*, see section 6.1 of the *Criminal Code*."

617 Section 315(2) of the *Commonwealth Electoral Act 1918* (Cth) relates to offences and states: "Where a person: (a) furnishes a return that is incomplete, being a return that the person is required to furnish under Division 4, 5 or 5A; or (b) fails to retain records in accordance with section 317; the person is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000." Section 315(2A) states: "(2A) Strict liability applies to an offence against subsection (2). Note: For *strict liability*, see section 6.1 of the *Criminal Code*."

618 Section 315(3) of the *Commonwealth Electoral Act 1918* (Cth) relates to offences and states: "Where the agent of a political party or of a State branch of a political party lodges a claim under Division 3, or furnishes a return that the agent is required to furnish under Division 4, 5 or 5A, that contains particulars that are, to the knowledge of the agent, false or misleading in a material particular, the agent is guilty of an offence punishable, upon conviction, by a fine not exceeding \$10,000."

619 Section 315(4) of the *Commonwealth Electoral Act 1918* (Cth) relates to offences and states: "Where a person (not being the agent of a political party or of a State branch of a political party) lodges a claim under Division 3, or furnishes a return that the person is required to furnish under Division 4 or 5, that contains particulars that are, to the knowledge of the person, false or misleading in a material particular, the person is guilty of an offence punishable, upon conviction, by a fine not exceeding \$5,000."

620 Part 4 of the *Electoral Act 2002* (Vic) relates to the registration of political parties.

621 Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, pp. 76-77.

622 Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 5.

623 Dr Marcin Walecki, "Challenging the norms and standards of election administration: Political finance", in International Foundation for Electoral Systems (IFES) (ed). *Challenging the norms and standards of election administration*, IFES, Washington, DC, March 2007, p. 87.

- 7.27 In the event of prosecution, Emeritus Professor Colin Hughes put forward that penalties should be “sheeted home to very senior party officials” rather than a “collection of straw men”.⁶²⁴
- 7.28 Dr Marcin Walecki, who was not an inquiry participant but who is a senior political financial advisor with the International Foundation for Electoral Systems (IFES), in the book *Challenging the norms and standards of election administration* provided a starting point for developing sanctions. He noted that the following should be considered offences:
- Hiding financial activity by use of separate accounts or surrogates;
 - Failure or late filing of reports;
 - Submission of false or incomplete reports; and
 - Failure to provide adequate documentation.⁶²⁵

Evaluation and review

- 7.29 The Committee considered the need for evaluation and review of political finance regulations.
- 7.30 In its discussions with the Committee, representatives of the New York City Campaign Finance Board informed the Committee that after each New York City Council election the Board reviews the election and prepares a report for the Mayor and the City Council. The report outlines “what happened, how the election worked and ... recommendations for changes”. The Committee heard that the evaluation and review process has enabled the regulation of campaign finance to remain contemporary as a part of the process reviews contribution limits and indexation.⁶²⁶
- 7.31 The VEC currently reviews all Victorian electoral events.⁶²⁷ In past reports, it has identified recommendations for legislative consideration and research for consideration which has enabled the Parliament to regularly consider electoral issues. The Committee is of the view that if the practice of regular evaluation and review was extended to political finance, this would contribute to maintaining the relevancy and sustainability of political finance laws in Victoria.
- 7.32 After every federal election, the Commonwealth Parliament’s JSCEM conducts an inquiry into the federal election and matters related thereto. As part of its inquiry, JSCEM in the past has examined the background to the existing arrangements for funding and disclosure, and the issues raised in connection with them during its review of the federal election.

⁶²⁴ Emeritus Professor Colin A. Hughes, *Transcript of evidence*, Melbourne, 24 July 2008, p. 3.

⁶²⁵ Dr Marcin Walecki, "Challenging the norms and standards of election administration: Political finance", in International Foundation for Electoral Systems (IFES) (ed). *Challenging the norms and standards of election administration*, IFES, Washington, DC, March 2007, p. 87.

⁶²⁶ Ms Amy Loprest (Executive Director), New York City Campaign Finance Board, *Discussions*, New York City, 27 August 2008, p. 4.

⁶²⁷ Section 8 of the *Electoral Act 2002* (Vic) stipulates that the VEC must report to each House of Parliament within 12 months of an election.

7.33 The Electoral Matters Committee is of the view that it would be well placed, and within its prescribed functions, to review funding and disclosure arrangements that relate to Victoria.

Chapter 8: Conclusion

Overview of the report

- 8.1 In this report the Committee has explored the financing of political parties and candidates in Victoria. Given the terms of reference received by the Committee,⁶²⁸ this report documents the Committee's investigation of whether to create a system of political donations disclosure and/or restrictions. In addition, the report also includes chapters on campaign expenditure, public funding and administration and enforcement.
- 8.2 Many of the issues in this report were identified by inquiry participants including political parties, independent candidates, electoral administrators, corporations, academics and interest groups and through the Committee's investigations of Commonwealth and international jurisdictions including Canada, New Zealand, the UK and the US.
- 8.3 As discussed earlier in the report, this inquiry has developed out of political and public concern about political finance. It has been suggested that recipients of political donations may become lobbyists for an individual, patron, union or industry group. It has also been alleged that political parties favour businesses that host or attend functions organised by the business arm of political parties. Political donations, it was argued, increased the risk of corruption and undue influence and could lead to decreasing the public's confidence in democratic processes.⁶²⁹

⁶²⁸ On 16 April 2008, the Electoral Matters Committee received terms of reference from the Legislative Council to inquire, consider and report no later than 30 April 2009 on (1) whether the *Electoral Act 2002* should be amended to create a system of political donations disclosure and/or restrictions on political donations; and (2) the outcome resulting from similar legislative reforms introduced in Canada, the United Kingdom and other relevant jurisdictions.

⁶²⁹ Nick McKenzie & Richard Baker, "Liberals in cash-for-visa allegations", *The Age*, p. 1-2; Nick McKenzie & Richard Baker, "Men of influence", *The Age*, p. 11; Australian Broadcasting Corporation, "Dirty, sexy money", *Four Corners*, 14 April 2008; Richard Baker & Nick McKenzie, "Vanstone defends visa decision", *The Age*, 26 September 2008, p. 3; Steve Lewis, "Opposition attack no funds, no contract", *The Advertiser*, 10 April 2008, p. 2; Royce Millar, "With strings attached?" *The Age*, 7 July 2008, p. 11; Royce Millar, "Party donations good for democracy, says Premier", *The Age*, 9 July 2008, p. 5; Royce Millar, "Access to the ALP? Priceless", *The Age*, 8 July 2008, p. 1-2; Royce Millar, "Political donations linked to developers, contractors", *The Age*, 7 July 2008, p. 1; Michael Owen, "Makris unbowed at ALP dinner", *The Advertiser*, 20 September, p. 13; Kim Wheatley, "Big business pays, just ask Labor", *The Advertiser*, 9 September 2008, p. 1-2.

- 8.4 There have also been critics of the adequacy of the disclosure provisions who have noted the following issues:
- Political parties only registered in Victoria and independent candidates are not obliged to disclose political donations received;
 - Federally-registered political parties are not required to disclose the source and amounts of political donations, loans or gifts less than \$10,900;
 - Disclosure limits apply separately to state and federal party units so that a donor could contribute up to \$90,000: \$10,000 to each state or territory party and another \$10,000 to the federal party without being subject to disclosure provisions; and
 - Lack of timely disclosure of political donations.⁶³⁰
- 8.5 Other inquiry participants were concerned about the escalating costs of campaigning. A number of inquiry participants were of the view that the increase in spending by the two major political parties pointed to an “arms race” among the major political parties.⁶³¹ Smaller political parties argued that the money major political parties received through political donations was creating an unfair playing field.⁶³²

Looking to the future: Harmonisation

- 8.6 The Committee has had the opportunity to contribute to the Commonwealth Government’s Electoral Reform process and engage in dialogue with other states, the Commonwealth and international electoral authorities about different models of political finance reform.
- 8.7 The Committee has indicated its preference for the harmonisation of electoral law between the Commonwealth and Victoria. The Committee is of the view that Victoria should work collaboratively with the Commonwealth to determine harmonised funding and disclosure obligations.
- 8.8 Dr Anne Twomey, Associate Professor of Law at the University of Sydney Law School, provided legal advice to the New South Wales Department of Premier and Cabinet which supports the Committee’s view of the need for harmonisation. According to Dr Twomey:

As long as there are national parties in Australia which through state registered branches fund candidates in both Commonwealth and state elections, then there is a significant risk that any state attempt to go it alone to regulate party funding will be either constitutionally invalid, or legally ineffective (due to an inconsistency with other Commonwealth or state laws) or simply ineffective on a practical level (due to loopholes

⁶³⁰ Kenneth Mayer, *Sunlight as the best disinfectant: Campaign finance in Australia*, Democratic Audit of Australia, Australian National University, Canberra, October 2006, p. 4.

⁶³¹ Dr Ken Coghill, *Submission: Appendix A (Joint submission to the inquiry into the conduct of the 2006 Victorian state election and matters related thereto by Dr Ken Coghill and Dr Joo-Cheong Tham)*, no. 14, received 7 July 2008, p. 45; Dr Joo-Cheong Tham, *Submission: Appendix A (Submission to Joint Standing Committee on Electoral Matters inquiry into the 2007 federal election)*, no. 1, received 7 June 2008, pp. 20-21; Mr Craig Ingram MP, *Submission*, no. 17, received 15 July 2008, p. 3.

⁶³² For example Country Alliance, *Submission*, no. 6, received 26 June 2008, p. 4.

that would be necessary to avoid unconstitutionally). A Commonwealth attempt to go it alone would also risk being held invalid if it interfered with state elections. Accordingly, it would be preferable for any substantial reforms to be undertaken nationally on a co-operative Commonwealth and state basis.⁶³³

- 8.9 This inquiry has taken place during a time of significant development at the Commonwealth level with respect to political finance reform. The Commonwealth is currently undergoing an Electoral Reform process and attempted legislative change to political finance laws in Australia, much of which is yet to be completed. The regulation of political finance therefore is in a state of transition.
- 8.10 Following the Committee's recent visit to New Zealand where it received evidence of the difficulties resulting from what was considered by some witnesses as a partisan approach to political finance reform, the Committee recognises the need for bipartisan agreement on these issues.
- 8.11 Due to the Committee's commitment to the harmonisation of electoral law, the Committee has elected not to make definitive recommendations at this time. In the interests of harmonisation, the Committee awaits the outcome of the Commonwealth Government's Electoral Reform process and the political finance legislation currently before the Commonwealth Parliament. Once the Commonwealth reforms are known, it is the Committee's intention to evaluate these reforms, as they relate to Victoria, and report to the Parliament.⁶³⁴

Committee Room
Parliament House
27 April 2009

⁶³³ Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Paper was prepared for the Department of Premier and Cabinet of New South Wales, Sydney, November 2008, p. 6.

⁶³⁴ The Electoral Matters Committee has the power to self-reference an inquiry. Section 33 of the *Parliamentary Committees Act 2003* (Vic) stipulates that: "A Joint Investigatory Committee may inquire into, consider and report to the Parliament on any annual report or other document relevant to the functions of the Committee that is laid before either House of the Parliament in accordance with an Act."

Appendix 1: List of submissions

No.	Name/Organisation	Date Received
1	Dr Joo-Cheong Tham	7 June 2008
2	Urban Taskforce Australia	17 June 2008
3	Family Voice Australia	17 June 2008
4	Victorian Electoral Commission	17 June 2008
5	Public Interest Advocacy Centre	25 June 2008
6	Country Alliance	26 June 2008
7	Action on Smoking and Health	26 June 2008
8	Emeritus Professor Colin A Hughes	27 June 2008
9	Electoral Commission Queensland	27 June 2008
10	Property Council of Australia	27 June 2008
11	Australian Greens (Victoria)	27 June 2008
12	News Limited	27 June 2008
13	Foster's Group	27 June 2008
14	Dr Ken Coghill	7 July 2008
15	Cancer Council Victoria	14 July 2008
16	Citizens Electoral Council of Australia	14 July 2008
17	Mr Craig Ingram MP	15 July 2008
18	Democratic Audit of Australia	15 July 2008
19	Australian Labor Party, Hawthorn Branch	7 August 2008
20	Mr Greg Barber MLC	10 September 2008

Appendix 2: List of witnesses

No.	Date of Meeting	Witness	Affiliation
1	23 July 2008	Dr Ken Coghill	
2	23 July 2008	Dr Joo-Cheong Tham	
3	23 July 2008	Ms Anne Jones Chief Executive	Action on Smoking and Health
4	23 July 2008	Mr Craig Ingram MP State Member for East Gippsland	
5	23 July 2008	Mr Aaron Gadiel Chief Executive Officer	Urban Taskforce Australia
6	23 July 2008	Mr Peter Stevens Victorian State Officer	Family Voice Australia
7	23 July 2008	Mr Jeremy Beck Victorian State Chairman	Citizens Electoral Council of Australia
8	23 July 2008	Mr Craig Isherwood National Secretary	Citizens Electoral Council of Australia
9	23 July 2008	Professor Brian Costar	Democratic Audit of Australia
10	23 July 2008	Dr Sally Young	Democratic Audit of Australia
11	23 July 2008	Mr David Kerslake	
12	23 July 2008	Mr Brian Walsh President	Kew Cottages Coalition
13	24 July 2008	Ms Deidre Moor Manager, Policy and Programs	Public Interest Advocacy Centre
14	24 July 2008	Emeritus Professor Colin A. Hughes	
15	24 July 2008	Mr Stephen Luntz Electoral Analyst	Australian Greens (Victoria)

Appendix 3: Responses to questions on notice

No.	Name/Organisation	Date Received
1	Family Voice Australia	21 August 2008
2	Associate Professor Andrew Geddis	28 January 2009
3	Dr Paul Harris	5 February 2009

Appendix 4: International investigations meeting schedule

No.	Date of Meeting	Representative	Affiliation
1	25 August 2008	Professor Fred Fletcher Dr Leslie Seidle	York University (Canada) Institute for Research on Public Policy (Canada)
2	25 August 2008	Mr Marc Mayrand Mr Mathieu Mainville Ms Janice Vezina Mr Marcel Vautour Mr Mike Saunders Mr Jeff Merrett Mr Richard Chiasson Ms Lyne Morin Ms Miriam Lapp	Elections Canada (Canada)
3	26 August 2008	Dr Lisa Young	University of Calgary (Canada)
4	27 August 2008	Mr Craig Jenness Mr Armando Martinez Valdes Mr Tadjoudine Ali-Diabacte Ms Sonja Bachman	United Nations Electoral Assistance Division (US)
5	27 August 2008	Ms Amy Loprest Ms Shauna Denkensohn Mr Eric Friedman Ms Elizabeth Upp Mr Christopher Oldenburg Ms Peri Horowitz Mr Erik Joerss	New York City Campaign Finance Board (US)

No.	Date of Meeting	Representative	Affiliation
6	28 August 2008	Mr Miles Rapoport Ms Tamara Draut Ms Allegra Chapman	Demos (US)
7	1 September 2008	Professor Keith Ewing	King's College London (UK)
8	1 September 2008	Mr Alex Boughton Mr Michael Raftery Ms Laura Miller Mr Alex Brazier	Hansard Society (UK)
9	1 September 2008	Mr Sam Younger Ms Caroline Evans Mr Clinton Proud Ms Lisa Klein	UK Electoral Commission (UK)
10	2 September 2008	Mr Peter Facey Ms Alexandra Runswick	Unlock Democracy (UK)
11	2 September 2008	Mr Lewis Baston Mr Havard Hughes Ms Amy Rodger	Electoral Reform Society (UK)
12	2 September 2008	Ms Oonagh Gay Mr Steve Priestly	Department of Information Services, House of Commons (UK)
13	2 September 2008	Mr David Buckingham Mr Iain Marland	Agent-General for Victoria (UK)
14	3 September 2008	Mr Peter Hawthorne	Committee on Standards in Public Life (UK)
15	3 September 2008	Ms Alda Barry	Parliamentary Commissioner for Standards, House of Commons (UK)

Appendix 5: New Zealand investigations meeting schedule

No.	Date of Meeting	Representative	Affiliation
1	9 February 2009	Associate Professor Raymond Miller Associate Professor Ann Sullivan Dr Jennifer Curtin	New Zealand Election Study, The University of Auckland
2	9 February 2009	Mr Alex Penk Mr Steve Thomas	Maxim Institute
3	10 February 2009	Mr Robert Peden Ms Melissa Thomson Ms Kristina Temel	Chief Electoral Office, Ministry of Justice
4	10 February 2009	Mr Chester Borrows (Chair) Mr Simon Bridges (Deputy Chair) Mr Kalnwaljit Banshi Mr David Parker Ms Lynne Pillay Ms Jacinda Ardern Dr Kennedy Graham Ms Kate Wilkinson Mr James Picker (Clerk of Committee) Ms Vathani Shivanandan (Committee Report Writer)	Justice and Electoral Committee, New Zealand Parliament
5	10 February 2009	Associate Professor Andrew Geddis	Faculty of Law, University of Otago
6	10 February 2009	Ms Judy Kirk Mr Mark Oldershaw	New Zealand National Party

No.	Date of Meeting	Representative	Affiliation
7	11 February 2009	Dr Helena Catt	Electoral Commission
8	11 February 2009	Mr Murray Wicks	Electoral Enrolment Centre
9	11 February 2009	Mr Mike Smith	New Zealand Labour Party
10	11 February 2009	The Hon Dr Lockwood Smith	Speaker of the New Zealand Parliament

Appendix 6: Electoral Matters Committee's submission to Commonwealth Government's Electoral Reform process

23 February 2009

Electoral Reform Secretariat
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Dear Sir/Madam,

I refer to the Commonwealth Government's Electoral Reform process and the request for submissions.

The Victorian Parliament's Electoral Matters Committee welcomes this opportunity to make submissions to the Commonwealth Government's Green Paper process. The Committee comprises seven members of parliament, four from the Labor Party and three from the Liberal Party. The Committee currently has before it two inquiries, one dealing with issues relating to Political Donations and Disclosure, the other Voter Participation and Informal Voting. The report on the first reference is due to be tabled in the Victorian Parliament by early May 2009, the second by July 2009. I have enclosed for your interest information about the members of the Committee and the two terms of reference before it.

As part of its investigations into the two inquiries, the Committee advertised widely, seeking submissions from interested individuals and organisations. Following the receipt of the submissions, the Committee held public hearings in July 2008, providing those witnesses with the opportunity to expand further on their views. The submissions and evidence received by the Committee can be viewed on the Committee's website at www.parliament.vic.gov.au/emc.

The terms of reference for the inquiry into political donations and disclosure required the Committee to investigate legislative reforms in Canada, the United Kingdom and other relevant jurisdictions. The Committee travelled to Ottawa, New York and London where the Committee met with a range of experts on the relevant issues. Following the Committee's return to Australia, the Committee tabled a report on its international investigations in December 2008. This report can also be found on the Committee's website.

In early February 2009, the Committee travelled to New Zealand to investigate its two inquiries. Evidence from the New Zealand study tour is currently being examined. The Committee met with a number of key individuals and

organisations, all of whom provided the Committee with valuable insight and relevant practical experience on matters relating to the two inquiries.

It should be noted that whilst the evidence received on both international investigations was recorded with the agreement of the witnesses, it was done so on the basis that it would not be made public, rather to assist the Committee and secretariat to develop findings and recommendations for the reports. As such, the evidence is not on the Committee's website.

As you will appreciate, the Committee's first priority is to report to the Victorian Parliament on the findings and recommendations in relation to the two inquiries. Whilst the Committee supports harmonising electoral laws throughout Australia and Senator Faulkner's concerns about an escalating arms race in election expenditure across Australia, it is too early to determine whether the Committee's recommendations will coincide with that of the Commonwealth.

To assist the Commonwealth Government's Green Paper process, the Committee has attached a summary of the Committee's international investigations to Canada, USA and the United Kingdom. The Committee has separated the information into two documents. The first document deals with political donations and disclosure and the second document, voter participation and informal voting.⁶³⁵

The Committee wishes the Green Paper process every success and looks forward to receiving a copy of reports published. I will ensure you receive a copy of the Committee's reports on political donations and disclosure and voter participation and informal voting when tabled in the Victorian Parliament in May and July 2009 respectively.

Should you wish to contact the Committee further to discuss these submissions, please do so through the Committee's executive officer, Mark Roberts who will gladly assist you. Alternatively, you may wish to contact me directly, or the Committee's Deputy Chair, Michael O'Brien MP.

Further information about the Committee, including background about the Committee's current inquiries, recent activities and Member's profiles, can be found at <http://www.parliament.vic.gov.au/emc/>.

Yours sincerely,



Adem Somyurek, MLC
Chair
Electoral Matters Committee

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The Electoral Matters Committee submission on voter participation and informal voting is not included in this report.

Report on international investigations into political donations and disclosure

As part of its international investigations into political donations and disclosure the Committee held meetings in Canada, the United States of America and the United Kingdom. The Committee met with the following individuals and organisations and discussed a range of issues relating to political and campaign regulation and reform.

Canada

Professor Fred Fletcher, Professor of Political Science at York University

Dr Leslie Seidle, Senior Research Associate, Institute for Research on Public Policy, Montreal

Professor Fred Fletcher and Dr Leslie Seidle discussed international approaches to political funding and campaign finance. Dr Seidle told the Committee about Canada's experience with political finance regulation and mentioned some of the factors which led to closer public and parliamentary scrutiny of political finance arrangements in Canada. The Committee learnt that impetus for reform to political funding arrangements was driven partly by Canada's provinces; for instance, in 1963, Quebec introduced an election financing regime that was the first of its kind in Canada. It was also suggested that the US Watergate scandal of the 1970's contributed to greater recognition in Canada of the need for stronger political finance regulations.

Regulation of donations by third parties – such as unions, corporations and interest and advocacy groups – was discussed. Professor Fletcher and Dr Seidle considered the role of third parties in Canadian politics. The Committee learnt that the Canadian parliament attempted to regulate third party donations on a number of occasions during the 1980's and 1990's.

Recent reforms in Canadian political finance were considered. The Committee learnt of the Royal Commission on Electoral Reform and Party financing, known as the Lortie Commission, established in 1989 to inquire into the Canadian electoral finance system.

Professor Fletcher, Dr Seidle and the Committee reflected on the impact of the "Adscam" sponsorship scandal in Canadian politics. "Adscam" occurred between 1993 and 2006, involving the Liberal Party of Canada.

Elections Canada (Mr Marc Mayrand, Chief Electoral Officer)

Elections Canada is an independent, non-partisan agency that reports directly to the Parliament of Canada. Amongst other duties it conducts federal elections, by-elections and referenda and administers the political financing provisions of the *Canada Elections Act*.

Political financing arrangements in Canada were outlined by Mr Mayrand. Five key features underpin Canada's legislative framework for political financing. These are:

-
- Registration of candidates and political parties;
 - Limits of expenditure and contributions;
 - Public funding;
 - Reporting on public disclosure; and
 - Compliance and enforcement.

The Committee learnt that political parties, candidates, local associations and third parties which spend more than C\$500.00 on advertising must be registered with Elections Canada. Registration carries certain benefits. Benefits include being able to issue tax receipts and appoint financial advisors to monitor expenses against set limits – these agents assume responsibility if a breach of these limits is established.

Elections Canada outlined limits in place on expenditure and campaign contributions. The average expense limit for a candidate in the 39th general election was approximately C\$80,000.00. The average expense limit for a third party, such as a trade union or a corporation, was approximately \$3,516.00 per electorate. The Committee was informed about some of the formulas used to calculate expense limits.

Current campaign contribution limits in Canada came into effect in 2004 and apply to monetary contributions and contributions in kind, but exclude voluntary labour and donated goods and services worth less than C\$200.00 and donated by someone not in the business of providing those goods or services. The following specific contribution limits apply:

- The limit for a single donor is C\$1,100.00 for donations to a political party, and C\$1,100.00 to all leadership contestants in a particular electoral contest.
- Candidates are permitted to self-fund a campaign by up to C\$1,000.00.

Only Canadian citizens or permanent residents are able to donate to a political party, candidate or political association.

The Committee was also informed about public funding arrangements for political activity. There are two types of public funding arrangements in Canada; direct expense reimbursements for candidates and political parties, and quarterly allowances for political parties. There is also indirect public funding to contributors through tax credits. The contributor receives a tax deduction equal to 75 percent of the first C\$400.00 they contribute, 50 percent of the next C\$350.00, and 33 1/3 percent of any further amount up to C\$650.00.

Further evidence was obtained about reporting requirements for public disclosure, and compliance and enforcement arrangements utilised by Elections Canada.

Dr Lisa Young, Researcher and Lecturer, Department of Political Science, University of Calgary

Dr Young informed the Committee of the impact of Canada's recent reforms to political finance regulation on political parties, including the affect of these reforms on party financial administration.

The Committee and Dr Young exchanged views about campaigning techniques. While it was suggested that some Canadian political parties had particular expertise in securing grass-roots support, Dr Young cautioned that it was difficult to generalise about this given the overall downward decline in membership rates in Canadian political parties.

United States of America

United Nations, Electoral Assistance Division (EAD), Department of Political Affairs

Representatives from the United Nations' EAD discussed UN research relating to political finance. The following facts were reported to the Committee:

- Around 60 percent of the world's nations have some form of public funding system for elections;
- Approximately half of these countries pay funds to candidates during election periods;
- The EAD provided some information about the use of tax credits as a form of public funding for electoral activity;
- Approximately 150 countries permit private contributions to electoral campaigns and political parties; and
- The role of public funding for elections in developing countries was also discussed.

New York City Campaign Finance Board (NYCCFB)

The NYCCFB was created in 1988 following a series of political finance scandals in New York City. The Board is an independent, non-partisan agency that aims to increase public confidence in the electoral process through the regulation of election campaign finance. The Board is composed of five members: two are selected by the Speaker of the New York City Council, two by the Mayor and the fifth, a chairman, is appointed to the Board by the Mayor following consultation with the Speaker.

Ms Amy Loprest, Executive Director of the NYCCFB, explained that the Board remained non-partisan by allowing only two of the four board members to be members of the same political party. Budgetary authority for the Board is also kept separate from the Mayor and City Council.

The Committee was told about the Board's Campaign Finance Program. The program is used to regulate campaign finance and issue public funding. It pertains to candidates in elections, not political parties. Over 70 percent of candidates in New York City elections participate in the program.

Public funding is generally provided to candidates at a rate of US \$6.00 for every US \$1.00 an individual New York City resident contributes, up to US \$175.00, marking a public funding commitment of US \$1,050. Funding is paid before elections and indexed for inflation. To qualify for public funding a candidate must:

- Be on the ballot;
- Have an opponent – no public funding is given where a candidate is unopposed; and
- Show that he or she is a serious candidate by attracting \$5,000.00 in donations.

Where a candidate runs against a high spending, self funded (not state funded) candidate, the Committee was informed that the Board may not place a limit on the spending of the lesser spending candidate, and that this candidate may attract more public funding.

Candidates are also restricted from spending matched public funding in the following ways:

- Paying family members;
- Pay a business the candidate owns more than 10 percent of;
- Make payments in cash;
- Pay personal rent or living expenses; or
- Buy themselves clothes.

Some groups, such as corporations, are restricted from contributing directly to a candidate's campaign. Corporations are free to form political action committees which might contribute financially to a candidate's campaign, but these financial donations were not to come from corporate funds, but from non-corporate sources. These committees are subject to a contribution limit.

Recent legislative changes in New York City have tightened restrictions on donations by companies who have a financial relationship with the City Council. A database is maintained to keep track of all firms who, for instance, bid for work with the City Council, have development agreements, and the managers of businesses applying for zoning vacancies.

NYCCFB representatives explained how disclosure requirements are managed in New York City. Candidates are regularly required to disclose details of the money they have raised and their campaign expenditure.

The Committee was informed about a unique piece of software that the NYCCFB has developed in recent years, as part of the Campaign Finance Program. The Board provides a free, web-based software program to candidates to record contributions easily and quickly and report this information to the NYCCFB. Recently the software has been further enhanced for compliance purposes.

At the meeting the NYCCB also outlined auditing, enforcement and penalties procedures.

DEMOS (Mr Miles Rapoport, President)

Mr Rapoport and the Committee considered a number of issues relating to political finance in the United States and Australia. Topics included:

- ‘Access purchasing’ was seen as a major issue by Mr Rapoport. It was suggested that the practice was common in the United States but difficult to detect.

Mr Rapoport suggested the Committee might find it useful to consider the case of *Buckley v. Valeo*, 424 US. 1 (1976). In this case, the Supreme Court of the United States ruled that spending money on election campaigns is a constitutionally protected form of free speech.

The Committee was informed that some US states, notably Connecticut, maintain a voluntary system of campaign contribution limits.

United Kingdom

Professor Keith Ewing, Professor of Public Law, King’s College, London

Professor Ewing placed Britain’s experience with political finance regulation into context. He discussed some of the contributing factors leading to calls in Britain for greater regulation of political finance, including the influence of foreign donations, the relative degree of secrecy surrounding political finance, and the general escalation in election expenses in Britain during the 1990’s.

Political advertising was discussed. Professor Ewing explained that political advertising was banned from screening on United Kingdom television networks. Considering this ban, he also noted that it was most likely the case that the recent upward trend in election expenditure in Britain was the result of political parties spending money on electronic forms of advertising, and billboard advertisements. Legislation and regulation needed to account for changes in online media technologies, such as streaming internet content.

Professor Ewing discussed the role of third parties and political influence in Britain. Various political controversies were referred to, including the 2000 ‘Cash for Honours’ affair and concerns surrounding tobacco sponsorship, the Labour Party and the CEO of Formula One Management Bernie Ecclestone in the late 1990’s.

The Committee learnt that one of the key pieces of legislation relating to political donations is the *Political Parties Elections and Referendums Act 2000*. Professor Ewing outlined some of the changes enacted by the legislation to political finance regulation in the United Kingdom, including the strengthening of the powers of the Electoral Commission.

‘Point in time’ disclosure systems were considered by the Committee during its meeting with the New York City Campaign Finance Board. Point in time systems allow users to input donations and contributions in real time, via a website or networked database. While acknowledging the benefits of such disclosure arrangements, Professor Ewing questioned whether real time disclosure enjoyed widespread support amongst political parties and electoral participants.

United Kingdom Electoral Commission (Mr Sam Younger, Chairman)

The Electoral Commission was established in 2001 following the passing of the *Political Parties Elections and Referendums Act 2000*, which was in part informed by the findings of a report by the Committee on Standards in Public Life. The Electoral Commission has several functions, including but not limited to:

- Advising on electoral law and practice;
- Setting and monitoring performance standards for the administration of elections; and
- Creating voter awareness programs directed at potentially disenfranchised voters.

Unlike Australian electoral authorities, the Electoral Commission does not have a direct operational role in the running of elections, although it has some responsibility for the administration of national referenda and decisions regarding ward boundaries with local government.

Mr Younger, Chairman, explained to the Committee that the United Kingdom had in recent years sought to control party expenditure rather than the financial contributions parties receive.

The Electoral Commission outlined some of the key features of the *Political Parties Elections and Referendums Act 2000*. The Committee was informed that the legislation aimed to achieve restrictions through strict transparency: all contributions over £5,000 to a political party centrally and over £1,000 to a local political party have to be declared with, and are then published by, the Electoral Commission.

Mr Younger mentioned the debate in the United Kingdom about the role of foreign donations in the political process.

The Electoral Commission has a range of investigatory powers and sanctions available to it. However the Committee was told that these powers were too narrowly defined, and it would be appropriate to introduce graded civil penalties for some electoral offences, given that there is little prescription in current legislation and many minor offences, which are not necessarily the result of a planned electoral offence, are punishable at present only via criminal prosecution.

House of Commons – Parliament and Constitution, House of Commons Library

The Committee met with Mr Steve Priestly, Secretary to the Speaker for the Electoral Commission Committee, and Ms Oonagh Gay, Head of the Parliament and Constitution Section, Department of Information Services.

Mr Priestly, Ms Gay and the Committee discussed general attitudes to political finance regulation in the United Kingdom.

Another issue discussed was the use of the internet for political advertising. Internet advertising is new form of political communication in the United Kingdom. There are concerns that legislation has not kept pace with developments in this field of communication. Online communication was a

feature of Boris Johnson's campaign for Mayor of London. Similarities were noted between the communication style of the Johnson campaign and political communication styles in the United States.

The Committee was interested to gain an appreciation of public attitudes to political donations in the United Kingdom. Ms Gay believed that there was a healthy scepticism amongst Britons in terms of perceptions about money in politics. Consequently, Ms Gay suggested it would be difficult for legislators to introduce public funding for elections in the United Kingdom, should the political impetus arise.

Committee on Standards in Public Life

The Committee on Standards in Public Life was established in October 1994 by the then Prime Minister, the Rt Hon Sir John Major. It was given terms of reference to examine concerns about the standards of conduct of all public office holders. The Committee's terms of reference were extended in November 1997 by the then Prime Minister, the Rt Hon Tony Blair, to include issues in relation to the funding of political parties.

Mr Peter Hawthorne, Assistant Secretary of the Committee, drew the Committee's attention to the 2006 Phillips Report. The report was overseen by Sir Hayden Phillips and examines the case for a political donations cap in the United Kingdom.

Parliamentary Commissioner for Standards – Acting Commissioner, Ms Alda Barry

The Parliamentary Commissioner for Standards' responsibilities include:

- Overseeing the maintenance and monitoring the operation of the Register of Members' Interests;
- Providing advice on a confidential basis to individual Members and to the Select Committee on Standards and Privileges about the interpretation of the Code of Conduct and Guide to the Rules relating to the Conduct of Members;
- Preparing guidance and providing training for Members on matters of conduct, propriety and ethics;
- Monitoring the operation of the Code of Conduct and Guide to the Rules and, where appropriate, proposing possible modifications of it to the Committee; and
- Receiving and investigating complaints about Members who are allegedly in breach of the Code of Conduct and Guide to the Rules, and reporting the findings to the Committee.⁶³⁶

The Office of the Parliamentary Commissioner for Standards was set up by the House of Commons in 1995 as a result of recommendations made by the Committee on Standards in Public Life.⁶³⁷

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Parliamentary Commissioner for Standards. Retrieved February 18, 2009, from http://www.parliament.uk/about_commons/pcfs.cfm

The Commissioner is appointed by Resolution of the House of Commons and is an officer of the House. The current Commissioner, Mr John Lyon CB, commenced his appointment on 1 January 2008.⁶³⁸

The Office of the Parliamentary Commissioner for Standards is wholly funded by the House of Commons.⁶³⁹

Ms Barry provided the Committee with some background information about the Register of Members' Interests. In the United Kingdom during the 1940's and 1950's, it was common for members of parliament to keep a second job outside their parliamentary duties. Employment of this nature was not restricted by the Parliament and the Register was designed to capture as much of this activity as possible. The Register is not an assets register. It is not designed to report on what a member owns.

Other topics addressed included on disclosure requirements for campaign donations, members' entitlements and potential directions for legislative change in relation to political finance in the United Kingdom.

⁶³⁷ Parliamentary Commissioner for Standards. Retrieved February 18, 2009, from http://www.parliament.uk/about_commons/pcfs.cfm

⁶³⁸ Parliamentary Commissioner for Standards. Retrieved February 18, 2009, from http://www.parliament.uk/about_commons/pcfs.cfm

⁶³⁹ Parliamentary Commissioner for Standards. Retrieved February 18, 2009, from http://www.parliament.uk/about_commons/pcfs.cfm