



QUEENSLAND



ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

REPORT

ON

INVESTIGATION OF PUBLIC REGISTRATION OF POLITICAL DONATIONS, PUBLIC FUNDING OF ELECTION CAMPAIGNS AND RELATED ISSUES

JUNE 1992

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REVIEW COMMISSION**

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PREVIOUS EARC REPORTS

1. 90/R1 Review of Guidelines for the Declaration of Registrable Interests of Elected Representatives of the Parliament of Queensland (August 1990)
2. 90/R2 The Local Authority Electoral System of Queensland (September 1990)
3. 90/R3 Queensland Joint Electoral Roll Review (October 1990)
4. 90/R4 Queensland Legislative Assembly Electoral System (November 1990)
5. 90/R5 Judicial Review of Administrative Decisions and Actions (December 1990)
6. 90/R6 Freedom of Information (December 1990)
7. 91/R1 Public Assembly Law (February 1991)
8. 91/R2 Review of the Office of Parliamentary Counsel (May 1991)
9. 91/R3 Review of Public Sector Auditing in Queensland (September 1991)
10. 91/R4 Whistleblower Protection (October 1991)
11. 91/R5 External Boundaries of Local Authorities (November 1991)
12. Determination of Legislative Assembly Electoral Districts (November 1991)⁽¹⁾
13. 91/R6 Information and Resource Needs of Non-Government Members of the Legislative Assembly (November 1991)
14. 91/R7 The Review of the Elections Act 1983-1991 and Related Matters (December 1991)
15. 92/R1 Review of Codes of Conduct for Public Officials (May 1992)

⁽¹⁾ This determination was notified in the Queensland Government Gazette of 27 November 1991 as required by the *Electoral Districts Act 1991* (Qld). It does not form part of the numbered series of EARC Reports.

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LIST OF ABBREVIATIONS

AEC	Australian Electoral Commission
ALP	Australian Labor Party
ATSI	Aborigines and Torres Strait Islanders
CE Act	<i>Commonwealth Electoral Act 1918</i>
CJC	Criminal Justice Commission
the Commission	Electoral and Administrative Review Commission
CPI	Consumer Price Index
the Draft Bill	Draft Electoral Amendment Bill 1992
Electoral Act	<i>Electoral Act 1992</i>
ECQ	Electoral Commission of Queensland
EARC	Electoral and Administrative Review Commission
ED Act	<i>Electoral Districts Act 1991</i>
EF Act	<i>Election Funding Act 1981</i> (NSW)
EF Authority	Election Funding Authority (NSW)
Fitzgerald Report	<i>The Report of the Commission of Inquiry Into Possible Illegal Activities and Associated Police Misconduct</i> conducted by Mr G E Fitzgerald QC and furnished on 3 July 1989
ICAC	Independent Commission Against Corruption, New South Wales
ICAC Report	Independent Commission Against Corruption Report on Investigation into North Coast Land Development (July 1990)

Issues Paper	Electoral and Administrative Review Commission Issues Paper No. 12 <i>Public Registration of Political Donations, Public Funding of Election Campaigns and Related Matters</i>
JSCEM	Commonwealth Joint Standing Committee on Electoral Matters
JSCER	Commonwealth Joint Select Committee on Electoral Reform
NZRCR	Report of the New Zealand Royal Commission Report on the Electoral System, <i>Towards a Better Democracy</i> , 1986
PACs	Political Action Committees
Parliamentary Committee	Parliamentary Committee for Electoral and Administrative Review
PB & PD Act	<i>Political Broadcasts and Political Disclosures Act 1991</i> (Commonwealth)
PE & E Act	<i>Parliamentary Electorates and Elections Act 1912</i> (NSW)
SSCPBPD	Senate Select Committee on Political Broadcasts and Political Disclosures

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NOTE:

1. Pecuniary penalties for electoral offences quoted in this Report have been converted in accordance with the *Penalty Units Act 1985-1988* (Qld). Currently, the value of one penalty unit is \$60.00
2. References to numbered submissions in this Report are in brackets preceded by the letter "S". For example a reference to submission no. 280 will be "(S280)". References to Public Hearing Transcript pages are similarly abbreviated, for example, a reference to page 280 of such transcript will be "(T280)".
3. References to published material are in the form of the Harvard Citation System.

EXECUTIVE SUMMARY

- 1 The Electoral and Administrative Review Commission (EARC) was required by the *Electoral and Administrative Review Act 1989-1991* to "... investigate and report in relation to ..." (s.2.10(1)) the "registration of donations to political parties and other donations of political significance" (Schedule 8). The Commission was authorised by s.2.10(1)(a) to investigate and report on "... any matters pertaining thereto [ie. to the electoral system] specified in the Report of the Commission of Inquiry ...".
- 2 The Fitzgerald Commission of Inquiry had previously proposed that EARC should carry out a broad review of the Queensland Legislative Assembly electoral system. As part of the review EARC was charged with making recommendations concerning the "establishment of a public register of donors to all political parties, or of such donations in excess of a minimal amount" (Fitzgerald Report 1989, p.371).
- 3 The terms of reference for the review in the Act and the Fitzgerald Report were very wide. The Commission divided its investigations into four stages:
 - (a) investigation of the Zonal Electoral System and voting methods;
 - (b) the electoral distribution;
 - (c) investigation of establishing a joint electoral roll with the Commonwealth; and
 - (d) an investigation of Queensland electoral laws and administration, including an investigation of political finances generally: disclosure of electoral expenditure, public funding of election campaigns, and the main form of electoral expenditure, political advertising.
- 4 This Report is concerned with the second part of Stage 4 of the Review, Political Finances, and completes the Commission's electoral review agenda.
- 5 Political finances play a major role in shaping electoral outcomes. Fitzgerald drew attention to the possibility that some contributions to campaigns may carry with them the expectation of returned favours after the election. The Fitzgerald Report, like many other recent Australian and overseas inquiries, expressed concern about this possibility.
- 6 Having examined a considerable volume of evidence in the form of reports of various inquiries, public submissions and comments, public hearing transcripts, secondary literature and data from political finance disclosure systems operating elsewhere, the Commission has concluded that:
 - (a) Donations (known as political donations) to registered political parties and candidates contesting State, Local Government and Community Council elections in Queensland should be publicly disclosed. Disclosure returns should also contain statements of other relevant income.
 - (b) Registered political parties and candidates, and also third party individuals and organisations (ie. interested persons who do not contest elections directly but engage in electoral expenditure in support of parties or candidates) should be required to publicly disclose their electoral expenditure. Interested persons should disclose details of any donations they receive if they engage in electoral expenditure, including the transfer of donations to parties or candidates.

- (c) If the current statutory ban on electronic political advertising is removed by the Commonwealth, public funding of election campaigns should be introduced for candidates (not political parties) for Legislative Assembly elections. If the ban remains there should not be public funding.
- (d) In respect of political advertising the Commission has concluded that editorials and political commentary on electoral matters should not be subject to any restrictions. However advertising of a political nature by government agencies should be banned during the election period.

7 The Commission has made a number of detailed recommendations in each of these four areas of political finances. The Commission has provided a Bill for an Act to amend the *Electoral Act 1992* in Appendix E to the Report to give effect to its recommendations.

Disclosure of Political Donations and Other Income (Chapter Two)

8 The Commission has concluded:

- (a) That political donations in cash or other forms (except volunteer labour) received by political parties or candidates should be publicly disclosed by the recipients' agents to the Electoral Commission of Queensland (ECQ) if such donations are in excess of \$1,000 (for parties) or \$200 (for candidates). Donations should be disclosed regardless of the purpose for which they were given, and disclosure not confined to donations for electoral purposes.
- (b) If a number of donations from one individual are received, they should be aggregated over the disclosure period and disclosed as an aggregate total if they collectively exceed the threshold limit. Donations below the threshold limits should be disclosed as a total amount or value, however, the number of donors who made donations of each amount less than the threshold should also be disclosed.
- (c) Political parties and candidates should not accept anonymous political donations above the threshold limits. The ECQ should be empowered to make inquiries to satisfy itself of the true identity of donors. Anonymous donations received by parties and candidates above the threshold limits should be forfeited to consolidated revenue unless they were made as an anonymous bequest. Anonymous donations below the thresholds should be aggregated and disclosed as a lump sum.
- (d) Donations made to political parties for Local Government elections should be disclosed to the ECQ. Donations received by candidates for Local Government and Community Council elections should be disclosed to the relevant council.
- (e) The disclosure periods which should apply to political parties, candidates and interested persons are shown in the tables below. The first table gives the periods which are to be covered by returns from parties, candidates and interested persons; the second table gives the deadlines for receipt of returns by the ECQ.

**TABLE I: DISCLOSURE PERIODS -
(1) POLITICAL DONATIONS AND OTHER INCOME AND
(2) ELECTORAL EXPENDITURE**

		Disclosure Period
REGISTERED POLITICAL PARTIES		<p>- each calendar year except in a year in which an election is held, and in which case two periods apply:</p> <p>A. the period between the issue of election writs and 30 days after polling-day; and</p> <p>B. the remainder of the calendar year.</p>
CANDIDATES	(1) Candidates who contested a district at the previous election	- from 31 days after the polling-day for the previous election to 30 days after the polling-day for the current election.
	(2) Candidates who did not contest a district at the previous election	- from the day the candidates announce their candidacy or the day writs are issued, whichever is the earlier, to 30 days after polling-day.
INTERESTED PERSONS		- the last full year of the term of Parliament to a date 30 days after polling-day; if a writ is issued for an election during the third year of the scheduled term of Parliament that period will be less than 12 months. If the writ is issued during the first or second years of the term then the period will run from the date of issue of writ to 30 days after the election.
PUBLISHERS (RETURNS OF EXPENDITURE BY POLITICAL PARTIES, CANDIDATES AND INTERESTED PERSONS)		The period between the issue of writs to 6.00 p.m. on polling-day.

**TABLE II: DEADLINES FOR THE LODGEMENT OF
(1) DISCLOSURES OF POLITICAL DONATIONS AND OTHER INCOME AND
(2) ELECTORAL EXPENDITURE**

		Deadline
REGISTERED POLITICAL PARTIES		<p>(a) 30th April of each year</p> <p>(b) 90 days after the end of the disclosure period (120 days after polling-day)</p>
CANDIDATES	(i) candidates who contested a district at the previous election	90 days after the end of the disclosure period (120 days after polling-day)
	(ii) candidates who did not contest a district at the previous election	90 days after the end of the disclosure period (120 days after polling-day)
INTERESTED PERSONS		90 days after the end of the disclosure period (ie. 120 days after polling-day)
PUBLISHERS		90 days after each polling-day

(f) Political Parties: Other forms of income in addition to donations which should be disclosed are:

- . interest from banks and other savings;
- . proceeds from sale of property;
- . income from rent;
- . income from shares;
- . subscriptions;
- . donations of professional services;
- . proceeds from fundraising; and
- . other income.

Details of debts should also be shown as part of this return.

A single total should be provided for all non-donation income if the total exceeds \$1,000 in the disclosure period otherwise a nil return should be supplied. Any membership subscriptions of over \$200 per annum should be individually disclosed.

(g) Candidates: The other form of income in addition to donations which should be disclosed by candidates is fundraising.

A single total of all fundraising income where the total exceeds \$200 in the disclosure period should be provided, otherwise a nil return should be supplied.

(h) The Commission has recommended that disclosure (both income and expenditure) returns from political parties, candidates and interested persons should be audited by qualified auditors. Records concerning disclosure returns should be kept by the ECQ, and by political parties, candidates and interested persons for specified periods.

Disclosure of Electoral Expenditure (Chapter Three)

9 The Commission has concluded:

- (a) That no limits should be placed on the amount of electoral expenditure which parties, candidates or interested persons may make.
- (b) Political parties, candidates and interested persons should publicly disclose to the ECQ their electoral expenditure where that expenditure exceeds the relevant threshold limit. For parties the limit should be \$1,000; for individual candidates and interested persons the limit should be \$200.
- (c) Electoral expenditure above the threshold limits incurred by political parties, candidates and interested persons in respect of Local Government and Community Council elections should be publicly disclosed to the local council.
- (d) The disclosure periods and timetables for submission of electoral expenditure returns should be the same as those for disclosure of political donations and other income.
- (e) The classes of expenditure on which spending above the limits should be disclosed are:
 - . advertisements;
 - . election rallies;
 - . distribution of election material;

- . travel and accommodation;
 - . election research;
 - . fund raising;
 - . stationery, telephones, etc.;
 - . committee rooms;
 - . gifts to other branches or candidates.
- (f) Disclosure of expenditure for classes where the aggregated expenditure in the class is above the relevant threshold should be in the form of a single lump sum for each such class.
- (g) Government departments and agencies should be required to disclose in their Annual Reports all expenditure on:
- . advertising agencies;
 - . market research organisations;
 - . polling organisations;
 - . direct mail organisations;
 - . direct postal or other direct communications to electors or householders;
 - . public relations organisations;
 - . media advertising organisations.

The threshold below which disclosure should not be required is \$1,000. For classes where expenditure exceeds the threshold the person or organisation to whom funds were paid should also be identified.

- (h) The Commission is aware of the practice of third party organisations being used to channel funds to parties or candidates so that the identity of the real donor is hidden. To prevent this happening the Commission has recommended that any person or organisation (ie. interested persons) engaging in electoral expenditure above the threshold limit should be required to disclose any donations received by them for this purpose together with their standard expenditure return.
- (i) Publishers should be required to submit returns detailing expenditure by any political party, candidate or interested person where that expenditure exceeds \$200 during the election period.

Public Funding of Election Campaigns (Chapter Four)

- 10 The Commission has examined arguments for and against the introduction of a scheme of public funding of election campaigns for political parties and/or candidates.
- 11 The Commission concluded on the evidence that a scheme of public funding for candidates at Legislative Assembly elections was warranted. It did not believe, however, that the arguments for direct funding of political parties could be sustained.
- 12 However during the course of the review the Commonwealth passed the *Political Broadcasts and Political Disclosure Act 1991* which places restrictions on political advertising in the electronic media during the election period. Since electronic advertising is the most substantial proportion of campaign costs, the Commission concluded that its proposal for funding candidates should depend upon whether the current challenge in the High Court against the validity of the Act is successful. If the Act is upheld, there should be no public funding; if the challenge succeeds and electronic advertising recommences, then funding should be introduced in line with the Commission's recommended scheme.

- 13 The Commission's proposed scheme of funding for candidates at Legislative Assembly elections and by-elections includes the following main features:
- (a) Funding should be provided in direct proportion to the number of valid first preference votes received by a candidate, at a rate of \$1.00 per vote in the first instance, indexed to the CPI thereafter.
 - (b) Candidates should not receive public funding unless they have first indicated at nomination that they wish to receive it and subsequently poll more than 4% of the valid first preference vote at the election.
 - (c) Candidates should not be able to claim public funding in excess of the amount they actually spend on their campaign (as established by their disclosure return).
- 14 The Commission has not recommended that public funding should be extended to Local Government and Community Council elections for a number of reasons. In the event that the Commonwealth restrictions on electronic advertising are removed the Commission believes it should be a matter for individual Local Authorities (with reference to the relevant Minister) to determine whether funding should be introduced.

Political Advertising (Chapter Five)

- 15 The Commission's *Report on the Review of the Elections Act 1983-1991 and Related Matters* covered a number of issues on controls and restrictions relating to political advertising. However the passage of the Commonwealth *Political Broadcast and Political Disclosure Act 1991* while that Report was being released meant that Commission needed to consider further some issues relating to political advertising. These included:
- (a) The definition of "political advertisements". The Commission has adopted a broad definition of the term as being "advertisements that relate to an election".
 - (b) The Commission has recommended specific exclusions from the definition. The regulatory controls proposed should not apply in the case of editorials and other political commentary in newspapers, journals or on the electronic media.
 - (c) The Commission has recommended a ban on political advertising by government instrumentalities during the election period. The Commission has proposed that only advertisements which satisfy the exemption criteria contained in the Commonwealth's *Political Broadcasts and Political Disclosures Act 1991* should be allowed during the election period.

Offences and Penalties (Chapter Six)

- 16 The Commission has anticipated the need for a regime of offences and penalties to ensure compliance and deter would-be offenders. Its proposals cover such matters as:
- . failure to give a return;
 - . failure to give disclosure declaration or details;

- . continuing offences;
 - . incomplete returns and declarations;
 - . failure to keep records;
 - . false or misleading returns/declarations;
 - . acceptance of anonymous political donations outside the prescribed limits.
- 17 The Commission has made recommendations for maximum penalties ranging from 200 penalty units for bodies corporate (including political parties) to 40 penalty units for individuals, with continuing offences carrying a penalty of 5 penalty units per day for bodies corporate and 1 penalty unit per day for individuals.
- 18 For certain serious offences the Commission has recommended that if a Member of the Legislative Assembly is convicted the penalty should be the loss of their seat in the Assembly. Such offenders should be ineligible to be elected to the Assembly or to sit as a Member for a period of three years following conviction.
- 19 Any person convicted of a disclosure offence should not be eligible for registration as an agent for a period of five years; if currently an agent, their registration should be revoked.
- 20 The Report also provides a penalty for anyone who discriminates against a person who has made a political donation to a political party or candidate.

Other Matters

- 21 Where appropriate the Commission has adopted the principle that the disclosure schemes which should apply in Queensland should be similar to the equivalent Commonwealth schemes to avoid confusion for the persons involved and reduce any unnecessary additional administrative burden upon them.
- 22 The Commission has recommended that all the legislation connected with its disclosure schemes and controls on political advertising be incorporated into the *Electoral Act 1992*. It has further recommended that the ECQ should be responsible for the administration of the schemes.

CHAPTER ONE

INTRODUCTION

Background

1.1 The Electoral and Administrative Review Commission ("EARC" or "the Commission") was established by the *Electoral and Administrative Review Act 1989-1991*. The Commission's object is to provide reports to the Chairman of the Parliamentary Committee for Electoral and Administrative Review (the "Parliamentary Committee"), the Speaker of the Legislative Assembly and the Premier with a view to achieving and maintaining:

"(a) *efficiency in the operation of the Parliament; and*

(b) *honesty, impartiality and efficiency in -*

(i) *elections;*

(ii) *public administration of the State;*

(iii) *Local Authority administration."* (s.2.9(1) of the *Electoral and Administrative Review Act 1989-1991*).

1.2 Section 2.10(1) of the *Electoral and Administrative Review Act 1989-1991* states that the functions of the Commission include:

"(a) *... to investigate and report from time to time in relation to -*

(i) *the whole or part of the Legislative Assembly electoral system;*

...

(b) *... to investigate and report from time to time in relation to -*

(i) *... the whole or part of the Local Authority electoral system;"*

1.3 Section 2.10(1)(a) authorises the Commission to investigate and report on:

" ... any matters pertaining thereto specified in the Report of the Commission of Inquiry ... " [ie. the Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (the "Fitzgerald Report")]

1.4 Section 2.10(2) states:

" ... the Commission may investigate and report in relation to all or any of the matters specified in the Schedule."

1.5 Item 8 in the Schedule refers to the *"Registration of donations to political parties and other donations of political significance."*

The Fitzgerald Report

1.6 The Fitzgerald Report made the following comments on the Queensland Legislative Assembly Electoral System:

"A fundamental tenet of the established system of parliamentary democracy is that public opinion is given effect by regular, free, fair elections following open debate.

A Government in our political system which achieves office by means other than free and fair elections lacks legitimate political authority over that system. This must affect the ability of Parliament to play its proper role in the way referred to in this report. The point has already been made that the institutional culture of public administration risks degeneration if, for any reason, a Government's activities ceased to be moderated by concern at the possibility of losing power.

The fairness of the electoral process in Queensland is widely questioned." (1989, p.127).

- 1.7 These recommendations were made in the context of proposals for a review of the whole electoral system. The first, and most urgent, review was to be an examination of the system under which electoral boundaries are determined.
- 1.8 The Fitzgerald Report specified that the " ... inquiry [by EARC] must be totally open with public access to the evidence and submissions received by it ... " and " ... it should report directly to Parliament." (1989, p.127).
- 1.9 The Fitzgerald Report also drew attention to the possibility that persons or organisations had made donations to a political party in return for favours granted by the Government or government instrumentalities. The Report concluded:

"While no finding of misconduct is made, there were other occasions when persons or organisations engaged in business with the Government or seeking business from it, made substantial donations to its political party. There was no disclosure of that and the attitudes and practices adopted allowed such donations to remain hidden." (1989, p.86).

- 1.10 The Report maintained further that:

"The possibility of improper favour being shown or being seen to have been shown by the Government to political donors must also be eliminated.

There is a legitimate entitlement, ordinarily, to privacy in respect of membership of or loyalty to political organisations. It may be that, however, that private right should be subservient to the public interest in proper standards in public administration.

Evidence before the Commission indicates that there is an urgent need to consider establishing a public register of political donations. Lack of such a register has given rise to community suspicion and lack of confidence in the political process.

The requirement for disclosure should extend far beyond those who because of their public positions, ought to disclose financial, political and any other relevant interests. Arguably, there should be disclosure of all donors, and the amounts they give. Alternatively all donations above a minimum sum could be disclosed." (1989, pp.137-8).

- 1.11 Two of the priority matters recommended in the Fitzgerald Report for consideration by the Commission were:

(c) *a review of the electoral system, especially the fairness of electoral boundaries, the basis of representation, the processes of registration and counting and the distribution of electoral material at polling booths;*

(m) *a report on the considerations relevant to the registration of political donations." (1989, pp.144, 145).*

1.12 The recommendations of the Fitzgerald Report which are of most relevance to this Report are:

"11. the Commission consider and, where appropriate, make recommendations for electoral and administrative reform otherwise identified in or arising out of this report, including:

...

(c) the establishment of a public register of donors to all political parties, or of such donations in excess of a minimum amount

(d) review of the *Elections Act 1983-85*." (1989, p.371).

Scope of the Review

1.13 In discharging its responsibilities under the *Electoral and Administrative Review Act 1989-1991* the Commission has carried out its Review of the Queensland Legislative Assembly electoral system in four stages:

- (a) Stage 1 was an investigation of the Zonal Electoral System and Queensland's voting system and methods. This stage established the principles and legislation for the subsequent electoral distribution and review of Queensland's electoral law and administration. The publication of the Commission's *Report on Queensland Legislative Assembly Electoral System (90/R4)*, in November 1990, which contained a Draft Bill for an Electoral Districts Act, marked the completion of Stage 1. The *Electoral Districts Act 1991* became law on 15 April 1991.
- (b) Stage 2 was the electoral distribution carried out on principles identified during Stage 1 and under the provisions of the *Electoral Districts Act 1991* ("ED Act"). The final distribution was notified in the Gazette on Wednesday 27 November 1991.
- (c) Stage 3 was an investigation of whether Queensland should adopt a common electoral roll with the Commonwealth, as other States have done, or continue to maintain its own roll. The Commission's *Report on Joint Electoral Roll Review (90/R3)* was published in October 1990. The Joint Roll Arrangement was subsequently signed by Queensland and the Commonwealth on 4 November 1991.
- (d) Stage 4 was an investigation of Queensland electoral laws generally, particularly the *Elections Act 1983-1991*. This stage focussed mainly on the conduct and administration of Queensland Legislative Assembly elections.

1.14 The Stage 4 Review has been completed in two parts:

- (a) The first part was concerned with: the nature of electoral administration; the legislative basis for future redistributions of electoral districts and the conduct of elections; political advertising; and the registration of political parties.
- (b) The second part, the subject of this Report, deals with political finances: issues relating to disclosure of political donations and other income; disclosure of electoral expenditure; public funding of election campaigns; and the main form of electoral expenditure, political advertising.

- 1.15 The first part of the Stage 4 Review was completed on 20 December 1991 when the Commission presented its *Report on the Review of the Elections Act 1983-1991 and Related Matters* (91/R7) to the Speaker of the Legislative Assembly, the Chairman of the Parliamentary Committee and the Premier. A draft Bill for an Electoral Act was included as Appendix H in the Commission's Report. The Report built particularly on the recommendations of Stages 1 and 3, Reports of the Parliamentary Committee, and Resolutions of the Parliament arising from those Reports.
- 1.16 The Commission had intended to provide a single Report covering both parts of the Stage 4 Review but the passage of the Commonwealth's *Political Broadcasts and Political Disclosures Act 1991* ("PB & PD Act") when the Report was nearing completion substantially altered the relevant circumstances and required reconsideration of the Commission's previous intentions. The PB & PD Act bans political advertising in the electronic media for Federal, State, and Local Authority elections.
- 1.17 The need to secure passage of other parts of the legislation to enable the Electoral Commissioner to commence preparations for new operational procedures and materials in adequate time for an election towards the end of 1992 outweighed any advantage of a single Report.
- 1.18 The validity of the PB & PD Act is yet to be decided following a High Court challenge by the New South Wales Government and eight television stations. The challenge sought an interim injunction to prevent the Federal Government from enforcing the ban on political advertising during election campaigns. While this injunction was refused, the Chief Justice, Sir Anthony Mason, acknowledged that the Act raised some important questions, and the matter was heard by the Full Bench of the High Court commencing 17 March 1992. At the time of publication of this Report no decision had been given.
- 1.19 Currently there is no Queensland legislation which regulates political donations or political expenditure, and there is only limited legislation which addresses political advertising. Queensland also does not have a system of public funding of State or Local Authority election campaigns. This Report addresses these issues and includes draft legislation to implement the policy recommendations made by the Commission. The Stage 4 Review, and thus the Commission's review of the Queensland Legislative Assembly electoral system, concludes with this Report.

The Conduct of the Review

PRINCIPLES GOVERNING THE REVIEW PROCESS

- 1.20 The procedures for this Review were developed to comply with the Commission's statutory responsibilities set out in s.2.23 of the *Electoral and Administrative Review Act 1989-1991*:
- (1) *The Commission is not bound by rules or the practice of any court or tribunal as to evidence or procedure in the discharge of its functions or exercise of its powers, but may inform itself on any matter and conduct its proceedings in such manner as it thinks proper.*
 - (2) *The Commission -*
 - (a) *shall act independently, impartially, fairly, and in the public interest;*

- (b) shall make available to the public all submissions, objections and suggestions made to it in the course of its discharging its functions, and otherwise act openly, if to do so would be in the public interest and fair;
- (c) shall not make available to the public, or disclose to any person, information or material in its possession, if to do so would be contrary to the public interest or unfair;
- (d) shall include in its reports -
 - (i) its recommendations with respect to the relevant subject-matter;
 - (ii) an objective summary and comment with respect to all considerations of which it is aware that support or oppose or are otherwise pertinent to its recommendations."

1.21 In complying with these requirements EARC has endeavoured to provide every opportunity for public input on the matters under review by the Commission.

ISSUES PAPER, PUBLIC HEARINGS AND RESEARCH

1.22 The Review commenced with the release for public comment of *Issues Paper No. 12 - Public Registration of Political Donations, Public Funding of Election Campaigns and Related Issues* (91/12) (the "Issues Paper").

1.23 On 27 April 1991 advertisements were placed in the *Weekend Australian*, *The Courier-Mail* and 25 regional newspapers throughout Queensland advertising the availability of the Issues Paper. A copy of the advertisement appears as Appendix A to this Report.

1.24 The advertisements:

- (a) invited public submissions on specific issues connected with the review; and
- (b) advised that copies of the Issues Paper could be obtained from the Commission.

1.25 Approximately 550 copies of the Issues Paper were distributed to libraries, court-houses, government instrumentalities, community organisations and members of the public.

1.26 The closing date for public submissions was 7 June 1991. All public submissions received by that date were bound and placed on display at the same libraries and court-houses with an invitation for comments on the submissions to be lodged with EARC by 5 July 1991.

1.27 The Issues Paper attracted 34 public submissions and comments in response. A list of persons and organisations who made submissions and/or comments in response is contained in Appendix B.

1.28 A Public Hearing was held on 21 October 1991 and a list of participants is set out in Appendix C. The Public Hearing provided useful comment and insights into matters of concern connected with election funding and disclosure.

- 1.29 Library research identified published articles, commentaries, books and reports on electoral reform and newspaper articles on the funding of election campaigns and disclosure of political donations and electoral expenditure in Australia and overseas. Federal and State electoral legislation as well as international electoral provisions were examined to assess their relevance to Queensland's needs. The recent hearings of the Senate Select Committee on Political Broadcasts and Political Disclosure (SSCPBPD) were especially helpful.

REFERENCE

- 1.30 Appendix E contains the Commission's draft Bill for an Act to amend the *Electoral Act 1992* (the "Draft Bill"), prepared as a result of its investigation. For reference purposes, an Index has been included at Appendix F listing all sections of the Draft Bill that are referred to in the text of this Report.

CHAPTER TWO

DISCLOSURE OF POLITICAL DONATIONS AND OTHER INCOME

Introduction

- 2.1 As noted in Chapter One the Commission's investigation into the disclosure of political donations and other income originated from a recommendation made by G E Fitzgerald QC in the *Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct 1989* (the "Fitzgerald Report").
- 2.2 In the *Report on the Review of the Elections Act 1983-1991 and Related Matters*, EARC used a set of principles to determine its recommendations in relation to the electoral system. Certain of the principles are also applicable to this Report, namely:
- (a) elections should be free from influence. Electors must be free to cast their votes without coercion or improper influence;
 - (b) assistance and information for voters. Electors should have access to information and assistance to aid them in selecting candidates and casting votes; and
 - (c) protection of the rights of candidates. The rights of candidates to be represented at polling and at the scrutiny, and to disseminate information promoting their candidacy must be protected.
- 2.3 In the *Report of the New Zealand Royal Commission on the Electoral System* (NZRCR), it was suggested that:
- "So that the electoral process is seen to be fair, and so that the voters may make informed judgements, it is important that the electorate is fully informed both about significant sources of political finance and about the uses to which it is put." (1986, p.183).*
- 2.4 Political parties are a recognised part of the democratic process in Australia. Their participation in the conduct of elections is important for the effective dissemination of information about the policies and records of their endorsed candidates and the parties themselves. To do this, political parties have funded their activities by securing contributions from private organisations, trade unions and individuals. Such donations have been crucial to the conduct of election campaigns, but particularly in defraying the costs of advertising in the electronic and printed media.
- 2.5 Individual candidates, whether they are members of parties or independent, also receive donations directly. These donations are made to assist candidates in their efforts to secure public office. The public, it is often argued, has a right to know the source of campaign funding so that the possibility of influence on parties and candidates can be openly examined.
- 2.6 Third parties (referred to as "interested persons" in this Report) - persons and organisations who do not stand as or nominate candidates directly themselves - also receive donations which they use to fund campaigns in support of particular parties and candidates or hand on as donations to parties or candidates.

- 2.7 Political parties are an essential part of Parliamentary democracy as they help to provide a basis for organised and stable government. Political parties enable people who do not hold elected office to participate in politics and to influence the decision makers.
- 2.8 The long-term viability of the democratic system depends on public confidence in the integrity and legitimacy of the political process. Any hint of corruption begins to undermine public confidence. It has been argued that full disclosure of donations and other income can solve the basic problem of campaign financing: where a candidate may receive too much money from one "interested" source which attempts to gain some influence thereby. Proponents of full disclosure of donations as a remedy advocate full and effective disclosure as the best way to control contributions, and preserve integrity and public confidence in the political process. It has been argued that publicity has a cleansing and policing effect far more powerful than imposing limitations on the size of political contributions.
- 2.9 The Commonwealth Parliament's Joint Standing Committee on Electoral Matters (JSCEM) in *Who Pays the Piper Calls the Tune* argued:
- "The electoral system should ensure that large financial sponsors, having paid the piper, do not also call the tune. The wider membership of political parties should not lose its influence within the respective parties."* (JSCEM 1989b, p.xi).
- 2.10 If donations can remain anonymous, there will always exist the potential for corruption. Allegations have been and continue to be made regarding the making of favourable decisions in return for large political donations. Whilst it may be difficult to ensure that corrupt practices are completely eliminated from our electoral system, it has been argued cogently that the risk of corruption would be reduced by the public disclosure of these donations.

Current Situation

- 2.11 At the present time, Queensland has no legislative or administrative arrangements at either the State or local government levels which require the disclosure of donations and other income to candidates or political parties.
- 2.12 The Commonwealth and New South Wales do have such legislation. A modified Commonwealth scheme operates in the Australian Capital Territory. No legislation currently exists in this area in other States. However, some States, like Queensland, are investigating the need for disclosure of donations and electoral expenditure. A number of Bills are currently under consideration, for example, the Victorian Election Donations Disclosure Bill and the Western Australian Electoral Amendment (Political Finance) Bill.
- 2.13 During 1991 the Commonwealth reviewed its electoral legislation in a number of areas including disclosure of donations. That review led to the PB & PD Act which requires political parties and candidates to make full disclosure of all donations and other income, including details of any debts outstanding at the end of the disclosure period.

- 2.14 After the 1991 State election in New South Wales, no party gained a majority of seats. The Liberal Party/National Party Coalition led by the Premier, the Hon. Nick Greiner MP, formed a minority government with the support of independent Members. In the *Memorandum of Understanding between the Honourable Nicholas Frank Greiner, MP, Premier, for and on behalf of the Liberal/National Party Government of New South Wales (the Government) and Mr John Hatton, MP, Ms Clover Moore, MP, and Dr Peter MacDonald, MP (the Independent Members)* dated 31 October 1991, the Government agreed to make a number of amendments to the *Election Funding Act 1981 (NSW)* ("EF Act") to provide stricter controls over the disclosure of income and donations by political parties, candidates and third party organisations.

General Issue

Should a public register of political donations be established in Queensland? What are the arguments in support of and against such a register? (Issue Paper, p.4).

- 2.15 The question which the Commission must address first is whether, in the public interest, donations to political parties, candidates and third parties (organisations and individuals) should be disclosed. Evidence obtained from submissions in respect of this general issue is set out below.

EVIDENCE AND ARGUMENTS

Submissions and Transcript Evidence in Favour of Disclosure of Donations

- 2.16 (a) *"Any person or firm must be allowed to financially support any interest - political or otherwise - they may have, but all donations of \$50 and above should be registered and these lists available to any elector of Queensland who wishes to see them. There are too many loopholes in present registration legislation. 'Four Corners' did a program on some of them and the conditions applying in Queensland whereby the National Party sought donations to the Bjelke Petersen Foundation and the Foundation made the political donations, thus keeping secret the donations made. This makes mockery of the legislation. All donations of \$50 or over to a political party or politician - for whatever reason - must be registered."* (K Bell (S1)).
- (b) *"If there is going to be public disclosure of political donors, it is my submission that this should be considered in conjunction with public funding.*

...

It is my strong contention to EARC, bearing in mind the history of Queensland politics over the last twenty years, that the smell over Queensland politics and politicians will not be removed until there is full public disclosure of all donations.

This will stop the backroom deals, the brown paper bags and the corruption that rightly or wrongly is perceived to have affected Queensland politics in recent decades.

It also removes the potential for corruption and the perception of corruption. If a company donates money to a particular political party and then at a later date receives a Government contract, it is very hard for there to be any perception of honesty unless that is done in an environment when everybody knows that that donation will be publicly declared and tabled and recorded in the Parliament for all the world to see. Unless there is full public disclosure, there will be no confidence and faith in the parliamentary processes in Queensland or anywhere else." (P Beattie MLA (S3)).

- (c) *"Donations to political parties have always attracted considerable discussion. It would please a lot of people if all such donations could be available for inspection in such a way as to correctly ascertain the true name of the donor. No matter what system is devised ways around it will always be found. The only way to solve this problem (at least in part) will be to reduce the necessity for parties to require a lot of money. Banning T.V. advertising would go a long way towards achieving this." (A Sandell (S1)).*

In a further submission (S11) Mr Sandell wrote:

"Because of what has happened in Queensland in many fields recently a register of political donations has become a political necessity, if only to protect the donor who does so from motives other than personal benefit.

Arguments that disclosure is an infringement of civil liberties may well be correct. It is rather unfortunate that it is no longer practical nor possible.

Disclosure should not prevent persons or organisations who have been in the habit of making donations from continuing to do so.

Disclosure will present new problems. A company makes a donation to a party which wins Government. Two to three years later this company wins a contract on merit. Would a connection be drawn between the two events.

Government calls tenders and usually states that the lowest of any tender is not necessarily accepted. Should a tender other than the lowest be chosen, will this start a witch hunt by some person or persons looking for hidden donations.

Where a supplier or contractor enjoys large and continuing business with a Government a friendship can develop between the principals and a Cabinet Minister. From then on any act which might take place between friends in business can, with hindsight assume all sorts of unmerited attention."

- (d) *"The Council considers that there should be a full register of political donations. However, such register should not be public or available for distribution to any member of the public. Any application for disclosure or a copy of the public register, or selection thereof, should be determined on merit only under special circumstances and by a member of the judiciary appointed for the purpose." (Rockhampton City Council (S33)).*
- (e) *"Perhaps the most important opportunity presented by the activities of EARC is the chance to establish new public confidence in the political process after a long period of distrust.*

This distrust has arisen not only from reports of gross corruption such as that revealed in the Fitzgerald Report, but also from routine fund-raising activities by parties on all sides of politics which have created an impression that financially powerful special interests can intervene between the political process and public intention.

Public perception (right or wrong) that the electoral process itself is hampered by the need for parties to kow-tow to their financial backers is even more harmful than the realisation of 'corruption' in the sense of bartering for favours by politically powerful individuals and financially powerful people, companies, groups or lobbies.

Public cynicism becomes really profound when it is realised that many financial backers make it a practice to make donations to all parties with a reasonable chance of gaining office. How is it possible to vote AGAINST particular interests in these circumstances?

The growth of pressure groups to deal with a range of public concerns, ever since the earliest environmental groups twenty years ago, is evidence of public doubt about the effectiveness of the political party system. Many pressure group members are also members or at least supporters of political parties. A Party may have their loyalty when it comes to election, but they put their trust in direct public action when it comes to an issue that seriously affects their interests.

The Party system has served our democracy quite well most of the time for the past two hundred years. The present upsurge in more specialised activist groups may mean that the Party system is about to be changed for good, or it may be a passing situation. But there is a strong link between public confidence in the parties and the political system and public concern about the influence of large financial donations on the party system.

A really healthy Party system would be one where only Party members in good standing would have the right to make donations to their Parties.

This would clearly identify the Parties with their active supporters in the community and present the voters with a clear choice at elections, without the sense that whatever their choice may be their intention is likely to be overturned by large 'background interests' whose influence is never publicly acknowledged." (F McLennan (S7)).

- (f) *"In the light of overseas and limited Australian experience there is a case for the introduction of a code of conduct to govern political donations. Such a code should, in my opinion, have its emphasis on disclosure as the main instrument of control as a preventive measure rather than solely a punitive measure. Most experts and officials involved in this issue who have spoken or written on this subject support full disclosure.*

They feel it is in the public's interest to be aware of how their politicians are being influenced and to what extent they are being supported by outside interests. Of course many politicians and parties fear that disclosure would dry up the resources available to them, but this then begs the question as to the motivation of those who gave the funds and under what conceptions or misconceptions they were operating." (Professor K Wiltshire (S8)).

- (g) *"The vast sums of money needed for election campaigns are at the root of political corruption.*

Donations to political parties are not acts of charity." (M Passmore (S9)).

- (h) *"A public register of political donations should be established in order to restore public confidence in our political system and provide a check on corruption.*

I agree entirely with the Fitzgerald Report conclusions as set out in 2.11 (Issues Paper No. 12).

I disagree with Senator Sir John Carrick (JSCER 1983 p238) 2.14 for the following reasons. The secret ballot preserves my political anonymity. If however, I decide to play an active political role in whatever capacity, I do so voluntarily and am prepared to stand up and be counted. The same principle should apply to donors, particularly with large donations, as these can have a material effect on election outcomes. Large donors who obviously hope to gain something from an election should not be allowed to hide behind anonymity." (F Short (S14)).

- (i) *"I write this brief submission in support of the creation of statutory requirements for the adoption of a system of public registration of all donations to candidates for office at local, state and federal elections.*

...

I feel it would be a moral upbringing to all levels of government if registers are established and publicly displayed clearly setting out all contributions to elections expenditure.

...

My belief has always been that individuals and corporations donate large amounts for the purpose of securing some advantage in decision making by elected member in the future.

...

I strongly believe that if we are to improve the image of governments at every level it is paramount that details of all donations to individuals and to organisations for the purpose of election expenditure be publicly displayed. A register should be available at the office of every council in the case of local government and at the office of each returning officer for state and federal governments." (A Mijo (S17)).

- (j) *"The Democrats believe that the establishment and maintenance of a public register of political donations in Queensland is essential on the grounds of accountability alone. It is indispensable if we are to even begin to address the stigma of moneyed interests buying influence with Governments or political parties. The Democrats have voluntarily disclosed donations over \$2000, and are required to do so by our own Constitution. It is not a difficult burden for a party to bear, although we acknowledge that we are less prone to receiving large donations." (Australian Democrats (S18)).*

- (k) *"Public disclosure of donations is a necessary adjunct of public funding of elections, but is also necessary for other very substantial reasons. The principle is well stated in Paragraph 2.8 of the issues paper which points out that any hint of corruption undermines public confidence in the integrity and legitimacy of the political process. The full disclosure of all donations to political parties for election purposes reduces substantially the risk of trade-offs between financial support and political favours.*

It is important to recognise that disclosure is two-edged - the risk of public damage to interests who seek favours in return for funds, and the risk of damage to parties who are willing to grant favours in return for funds.

It is submitted that devices can be adopted to limit disclosure no matter how wide-ranging is the State law. However, recent investigations such as the Fitzgerald Commission's Report, ICAC's Report on North Coast Land Development (NSW) and events in WA, demonstrate that supposedly confidential arrangements can be exposed publicly." (Australian Labor Party (ALP) (S21)).

- (l) *"A public register of political income be established, and should consist of donations, gifts-in-kind, and other income sources including the net proceeds of fund-raising activities." (Queensland Watchdog Committee (S24)).*

In their later submission:

"There must be full disclosure of significant donations to political parties and candidates, and donations to interest groups that seek to influence the political process through advertising." (S27).

- (m) *"The purpose of a public register is to place in the public realm information about persons and organisations making donations to political parties and candidates. Parties are central to the electoral processes. But it is beyond their capacity to generate the campaign and other funds they nowadays require from membership fees. They are increasingly reliant upon outside donors and thus vulnerable to manipulation. It is not axiomatic that voters have the right to know who is financing the parties. However disclosure is a safeguard against manipulation. A comprehensive register is likely to deter attempts by parties and politicians to trade preferential treatment for election funds. Where details of the party (or candidate) to whom donations are made are not recorded as proposed, the intrusion upon the privacy of donors (and any attendant problems of victimisation) which a public register entails will be minimal." (Dr I Ward (S34)).*

- (n) *"We disagree with the suggestion that donations to political parties are simply a manifestation of the donor's political beliefs. The Preamble of the Liberal Party's submission takes this position, and even equates donating with voting as an expression of political belief.*

The fact that many organisations donate to two or three parties counters this proposition. Whilst political beliefs can be a component, it is obvious that there are other factors which influence a person or an organisation's decision to donate. Without wanting to imply impropriety, it is necessary to remove the perception of the possibility of buying favours, and for this reason disclosure is essential. Again, as Professor Wiltshire stated, it is a matter of trading off various civil rights and liberties to achieve the best outcome.

As the National Party stated, if disclosure is required, it must be comprehensive, and not leave loopholes. It is for this reason that disclosure must include all income, not just donations, and it must apply to funds used for all purposes, not just electoral activity. We note that the National Party (p.2 & 7) also takes this position. The Liberal Party also supports disclosure of other income (para 7.1), although it appears to suggest that donations made for non-electoral purposes should not be disclosed (para 1.4). The ALP also seems to imply that disclosure should only apply to election related donations. We reject this suggestion as inadequate and prone to loopholes. Professor Wiltshire also recommends that disclosure not be linked solely to election campaigns (p.16), although he doesn't directly comment on disclosure of forms of income other than donations." (Australian Democrats (S29)).

- (o) *"We're finding now that election campaigns in Queensland are multi-million dollar exercises, and, therefore, no political party can run election campaigns in Queensland without considerable support from the private sector.*

That means, then, in my submission, that there needs to be very careful checks and balances put in place. The first thing that's obviously required is full public disclosure, and I've also indicated that perhaps there should be some consideration, Mr Chairman, given to limiting the amount to be spent by a political party in a campaign, although that can be balanced off with public disclosure and public funding. I've also advocated public funding, which I know will get mixed public support, but it's one of the only ways, in my view, Mr Chairman, of removing corruption from the process, and I know on my own experience on a number of occasions people came to me and made subtle suggestions about if certain things were changed, particularly at a local government level, the Brisbane City Council, then, they would be only too keen to make donations to the party.

...

There's got to be very careful checks and balances, and I think the public have got a right to know who, in fact, is funding political campaigns." (P Beattie, MLA T4-5).

- (p) *"Having just spent something like four weeks in the United States, I've had the opportunity to witness a political system which has been entirely purchased, I guess, to a large extent by money. I'm not suggesting that we, in this country, have got to that stage yet, because we clearly haven't, we still have a party system which has a degree of strength and our parties are, to a certain extent, a bulwark against the influence of special interest money. But, nevertheless, we are tending to go down that road and because we are going down that road, there does need to be extensive reform of campaign income and expenditure laws." (ALP (T35)).*

2.17 **The Independent Commission Against Corruption (ICAC) stated in its Report on Investigation into North Coast Land Development (the "ICAC Report"):**

"So long as substantial donations can be made to political parties or candidates without public disclosure, they can be used to purchase influence. The law that allows secret political donations, creates conditions conducive to corrupt conduct. If that is not a self-evident fact, it surely requires no further explanation after the matters that have been disclosed in the course of this Inquiry." (1990, p.527).

Submissions and Transcript Evidence Against Disclosure of Donations

- 2.18 (a) *"I believe that public registration of political donations should NOT be registered. My views are the same as details in Issues Paper No.12 page six sections 2.13, 2.14 and 2.15 ... " (R Sargent (S20)).*
- (b) *"National Party policy has historically opposed disclosure of donations to political parties. The National Party is not satisfied, for the reasons set out in the accompanying submission that the requirements of transparency and equity can be satisfied by disclosure regime implemented only at State level.*

The arguments for and against are adequately summarised in the Issues Paper, save that the Issues Paper fails to take into account:

- *the evidence now available which supports the connections of those who argue that public disclosure of donations will reduce the level of donations to the non-Labor Parties; and*
 - *the effect which other recommendations of the Commission, if implemented, and already implemented recommendations of the Fitzgerald Inquiry will have to prevent non-disclosure of donations having inappropriate consequences." (National Party (S23)).*
- (c) **The Liberal Party (S25) argued against disclosure of political donations but proposed that in the event that a disclosure scheme was recommended by EARC then every effort should be made to protect individual rights:**

"It has always been the belief of the Liberal Party that one of the absolute rights of any individual is to be able to keep his political beliefs and the details of the Party which he supports, entirely to himself. This is a fundamental right, and the whole thrust of electoral legislation in all democracies has been to preserve the secrecy of a ballot. If at the same time, an individual wishes to donate to any political party or parties which have his support, we believe that he should be able to do so with his privacy protected.'

Just as there is a fear in some sections of the community that government knowledge of a donation made to the party which forms the government will generate a preference for the donor, there is equally a fear that public knowledge and more importantly government knowledge of the identity of a donor to a opposition party can lead to the victimisation of that donor by the government and by certain unions.

DISCLOSURE PROVISIONS WHICH VIOLATE THE RIGHT OF INDIVIDUAL PRIVACY AND WHICH GIVE PUBLIC EXPOSURE TO THE PERSON OR POLITICAL LEANING OF INDIVIDUALS ARE OPPOSED BY THE LIBERAL PARTY.

Should the Commission determine that some form of disclosure is appropriate, then the Liberal Party would argue that that form of disclosure should be such as to protect individual donors from the dangers of public or quasi-public disclosure whilst affording the benefits that the Commission may see in disclosure.

The Liberal Party believes that the protections claimed to be offered by public disclosure can also be provided by a more limited but more effective form of disclosure to an appropriate authority.

It is for this reason that whilst opposing public disclosure we have included submissions with respect to the nature and form of a disclosure system. This should not be taken to be in derogation of our primary submission, but rather a step that accepts the reality that the Commission may choose to support a scheme of disclosure.

In dealing with this submission, the Liberal Party takes a view that should public disclosure be required then the health of the political system in Queensland demands simultaneous reform in two other significant areas. They are:-

- the establishment of a system of public funding; and,
- that the trade union movement (State and Federal) be required to be more open honest and answerable to its membership with respect to political donations or expenditure made by or on behalf of the union.

In particular we believe that no Australian worker should be forced to make a political donation to any party and furthermore that each of those workers should have the opportunity of determining:-

- (1) *whether he wants any of his monies or the union's monies to be expended for political purposes*
 - (2) *if he desires that the union expend money for political purposes then that member should be able to direct the union as to the destination of those funds." (emphasis in original).*
- (d) *"I'm not saying that's correct and indeed, I'd say strongly that it's not. But I think that perception is there, and it's a matter that concerns corporate donors when it comes to making decisions about donations when the spectre of public disclosure exists. I think, also, it's true to say that there is a concern from corporations, with respect to the making of donations, particularly where those corporations have currently work from the government. They have a fear that if it were known that they had made donations to opposition parties, that that may affect their relationship and the work they get." (Liberal Party (T54)).*
- (e) *"I suppose that I'd take the view that, firstly, it's a matter of weighing up the advantages and disadvantages of public disclosure and, having weighed those up, we feel that whatever the perceived problem may be it's not so great as it should intrude upon individual rights and create perhaps other dangers to the system by disclosure of donors." (Liberal Party (T55-6)).*
- (f) *"But certainly there will be, and we say the commission has to address this very directly, there will be an enormous advantage financially, given to the Labor Party, if you adopt a regime of disclosure, as Mr Swan has said. I mean, there's nothing controversial about that." (National Party (T71)).*

2.19 P Beattie MLA (S3) in his submission and subsequent appearance at the Public Hearing (T6), the National Party (S27) and W Swan for the ALP (T37) all expressed concern that if a disclosure regime was introduced, the quantum of funds donated may be reduced drastically. Persons may refrain from making a donation if they know that their donation will be made public.

2.20 The Commission noted that evidence to the SSCPBPD also raised the possibility of intimidation of possible donors, or reprisals against those who had made donations, as further justification for maintaining the privacy of donations. Thus Senator W Parer on behalf of the Liberal Party argued:

"Anyone who believes there is no potential for discrimination and coercion by hostile governments or third parties to donors to political parties lives in fairyland. That is why donors prefer, under current legislation, to make maintenance donations rather than election donations. Everyone is aware of that. In many cases, donors limit their donations to less than \$1,000 because they do not have to be disclosed. They are not worried about the fact that they are supporting a particular party, one or the other. They are concerned that, if it becomes known, somehow they get singled out for some sort of discrimination." (SSCPBPD 1991a, p.25).

2.21 A J Robb, also giving evidence for the Liberal Party to the Select Committee, expressed similar concerns on 11 October 1991:

"I have had it put to me by a number of people that they had a fear of intimidation.

...

They would say, I am in a business. It relies on involvement with government in all sorts of shapes and forms. I am just concerned that either through union activity or the effect on decisions governments take that their view might be flavoured by the fact that my company has given a donation to the other side of politics." (SSCPBPD 1991a, p.246).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.22 The majority of submissions received on this topic favoured the introduction of a scheme of disclosure of donations made to political parties and candidates. The main rationale for this position was the need to minimise the risk of corruption of the type that had been revealed by various Commissions of Inquiry in Australia.
- 2.23 Submissions opposed to the disclosure of donations highlighted the need to protect the privacy and civil liberties of those persons making donations; the danger of intimidation of donors if they became known; and the likely reduction in the level of donations if disclosure requirements were introduced.
- 2.24 The Liberal Party (S25) argued against the disclosure of donations because of privacy considerations. Critics of disclosure of political donations regimes argue that an individual's right of privacy may be compromised by the public disclosure of a political donation.
- 2.25 Whilst the Commission is sympathetic to concerns in relation to donors' rights to privacy, it considers that these rights are not as important or fundamental as the need for the community to have full knowledge of the political donations received by political parties and candidates.
- 2.26 With regard to the submission by Mr Beattie MLA and that of the National Party contending that there may be a reduction in donations resulting from the introduction of a disclosure scheme, the Commission noted that no direct evidence relating to Queensland is available. It is the Commission's view that the making of donations is a voluntary act - if persons choose not to donate because their names may go on a public register then that is their choice, it is not a justification for not having public disclosure.
- 2.27 Table 2.1 shows aggregates of donations, public funding and expenditure for the major political parties for the last three federal elections. It may be difficult to draw many valid conclusions from the data because donations for non-electoral expenditure have until recently been exempt from disclosure. On the other hand it might be argued that because of the exemptions, donors wishing to remain anonymous would simply have to declare their gifts as being for non-electoral expenses. The result would be that the level of disclosed donations decreases, but the total level of donations coming to the parties remains unaltered.
- 2.28 The data show that the overall level of disclosed donations from 1987 to 1990 at the federal level has declined only marginally, but that donations for individual parties have varied considerably. This suggests that variations in donations to parties are influenced by factors other than disclosure.

**TABLE 2.1
SUMMARY OF POLITICAL FINANCE -
FEDERAL ELECTIONS**

PARTY	1984	1987	1990
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DONATIONS

ALP	\$927,140	\$5,066,224	\$3,937,963
LIBERAL	\$1,494,175	\$4,029,000	\$4,372,633
NATIONAL	\$1,120,627	\$1,720,166	\$2,038,774
DEMOCRATS	\$171,673	\$116,300	\$83,100
TOTALS	\$3,713,615	\$10,931,690	\$10,432,470

% INCREASE OVER

PREVIOUS ELECTION

194.4%

-4.6%

PUBLIC FUNDING

ALP	\$3,669,262	\$4,759,413	\$5,300,868
LIBERAL	\$2,597,135	\$3,495,955	\$4,612,260
NATIONAL	\$839,292	\$1,197,637	\$1,140,452
DEMOCRATS	\$464,625	\$710,009	\$1,494,575
TOTALS	\$7,570,314	\$10,163,014	\$12,548,155

% INCREASE OVER

PREVIOUS ELECTION

34.2%

23.5%

TOTAL DONATIONS + PUBLIC FUNDING =

\$11,283,929

\$21,094,704

\$22,980,625

EXPENDITURE

ALP	\$4,186,132	\$10,463,948	\$14,754,789
LIBERAL	\$4,772,636	\$6,098,314	\$12,116,390
NATIONAL	\$2,491,654	\$4,063,395	\$3,205,774
DEMOCRATS	\$442,398	\$556,073	\$1,161,313
TOTALS	\$11,892,820	\$21,181,730	\$31,238,266

% INCREASE OVER

PREVIOUS ELECTION

78.1%

47.5%

DONATIONS + PUBLIC FUNDING - EXPENDITURE =

-\$608,891

-\$87,026

-\$8,257,641

Sources: 1984 AEC microfiche records
 1987 JSCEM Report No.4 -
Who pays the piper calls the tune
 1990 AEC Election Funding and Finance Report

- 2.29 At a conference on electoral campaign reform held at Toronto in 1990, a panel discussed election financing. Evidence presented by the panel addressed the question of the relationship between public exposure of campaign contributions and the level of donations. The evidence suggested that there was no link:

"A second fear expressed at the time the changes were introduced was that parties might not be able to attract sufficient donations to finance their operations. In fact, however, the provincial parties have been able to raise as much as the federal parties on a per capita basis." (Hamel et al. 1990, p.6).

- 2.30 Moreover the argument is two-edged. Those who choose not to make a donation to a party, whether in office or in opposition, are just as vulnerable to intimidation and reprisal. The best safeguard against abuses may well be to "let the sunshine in" and have all the facts known to the public - which could then more accurately evaluate accusations of malpractice, whether corruption or influence, intimidation or reprisal, alike. Giving evidence to the Senate Select Committee on 23 October 1991, Mr Philip Adams raised the possibility of reprisals against even a party's advertising agency:

"Richard Nixon, for instance became very interventionist against Doyle Dane Bernbach, which was handling the Democrats for some years. He would ring the chief executives and the chair people of DDB's client company, suggesting that DDB be sacked. It did not get quite that hair-raising in Australia, but very often any agency identified with the Labor Party would be threatened with those sorts of recriminations. I only know about that side of the equation; it may have happened on the other side as well." (SSCPBPD 1991a, pp.334-5).

- 2.31 The Commission is concerned about the motives of persons who would choose not to make a donation because their identity would be known as a supporter of a particular political group. If these motives arise from a fear that attempts at electoral influence would thereby be exposed, the Commission argues that this is in fact the main purpose of a disclosure system. There may, however, be a need to provide sanctions against intimidation and this is considered in Chapter Six, Offences and Penalties.

- 2.32 On a related issue Mr Beattie MLA and others suggested that a scheme of public funding of election campaigns should be introduced to augment campaign funds in anticipation of a likely reduction in donations if disclosure was introduced. This matter is further discussed in Chapter Four of this Report.

- 2.33 On the conflict between rights Mr I Temby QC, Commissioner, ICAC, wrote in the ICAC Report:

"Those who speak against compulsory disclosure of political donations, argue that donors have a right to confidentiality, and that other people have no greater right to know which party or parties they support financially, than they have to know how they cast their secret ballot.

I have commented earlier (see p.447) that like all rights, that right to confidentiality, or privacy, in people's affairs, cannot be absolute. There is a competing public right to know what influences might be being brought to bear on public officials.

Quite apart from that, there is a difference between the principle of the secret ballot, and the 'secret' donation as it is known in practice. With the secret ballot, not even the favoured party or candidate knows how it has been cast. On the other hand, with the secret donation, the donor always wants the party or candidate to know, but not the general public. What satisfactory answer can he give if he is asked why?" (1990, pp.536-7).

- 2.34 Given recent events in Queensland (the Fitzgerald Inquiry and the court cases which followed), the recent Criminal Justice Commission (CJC) *Report on a Public Inquiry into Payments made by Land Developers to Aldermen and Candidates for Election to the Council of the City of the Gold Coast 1991*, the events elsewhere in Australia and overseas, and the level of support in submissions received on the topic, the Commission has concluded that the weight of evidence and argument is considerably in favour of the disclosure of political donations.
- 2.35 The Commission has noted the operations of similar schemes in other jurisdictions and is aware of their shortcomings. It has come to the conclusion that for such a scheme to be effective, it must cover donations made to political parties at the central and branch level, donations made directly to individual candidates whether endorsed by a party or independent, and donations made to third party persons and organisations for use in direct campaigning on behalf of a party or candidate with or without the approval of that party or candidate.
- 2.36 The Commission has considered the matter in relation to all levels of government in Queensland and has arrived at the conclusion that schemes of disclosure of political donations and other income should be introduced to cover State, Local Government and Community Council elections. The Commission proposes that the schemes should extend to require disclosure of donations and other income to all political parties and candidates contesting State, Local Government and Community Council elections.

RECOMMENDATION

- 2.37 **The Commission recommends that candidates and political parties contesting State, Local Government and Community Council elections should be required to disclose political donations they have received.**
- 2.38 Division 2 of the Draft Electoral Amendment Bill 1992 ("the Draft Bill") (Appendix E) contains the provisions for the proposed political donations disclosure scheme for the Legislative Assembly. A recommendation concerning Local Government and Community Councils appears at para.2.271.

Administration of the Register of Political Donations

Issue 1 If a public register of political donations is established in Queensland, who should be responsible for its administration? Should the responsible authority be part of the Electoral Commission or should it be constituted as a separate authority? Should the agency charged with the responsibility of maintaining a public register be required to report to the Parliament on a regular basis? How often should the responsible authority report to Parliament? Should the legislative provisions establishing a disclosure scheme be contained in a separate Act or in an Elections Act? (Issues Paper, p.21).

INTRODUCTION

- 2.39 In its *Report on the Review of the Elections Act 1983-1991 and Related Matters* (91/R7, December 1991) the Commission recommended that a Queensland Electoral Commission should have responsibility for the administration of disclosure schemes (para.3.70, p.23).

- 2.40 The Parliamentary Committee in its subsequent Report on the Commission's Report tabled on 18 March 1992 recommended that EARC's recommendations on this matter be accepted but that the name of the proposed Commission should be changed to the Electoral Commission of Queensland (ECQ). This matter was resolved with the enactment of the *Electoral Act 1992*.
- 2.41 Although the Commission has already made a recommendation on this issue in the previous Report, the further evidence and arguments from this Review are presented and discussed below.

CURRENT SITUATION

- 2.42 In NSW the Election Funding Authority ("EF Authority") is a separate authority from the Electoral Commission. The legislation establishing the EF Authority is the *Election Funding Act 1981 (NSW)* ("EF Act"), an Act separate from the *Parliamentary Electorates and Elections Act 1912 (NSW)* ("PE & E Act"). The EF Authority consists of a committee of three: the Electoral Commissioner and nominees of the Government (the Premier and the Leader of the Opposition). The EF Authority draws on the Electoral Commission for administrative support.
- 2.43 The Australian Electoral Commission (AEC) is responsible for administering the Commonwealth disclosure legislation. The AEC comprises three members: the Chairman, who is a judge of the Federal Court; the Electoral Commissioner; and one other non-judicial member who must be a Permanent Head or hold a position of equivalent status. A Funding and Disclosure Section has been established in the Central Office of the Commission to assist in the administration of Parts XI (Registration of Political Parties) and XX (Election Funding and Financial Disclosure) of the CE Act.
- 2.44 The EF Authority is required to report to Parliament on an annual basis for each year ending 30 June (EF Act s.107). The AEC is required to furnish to the Minister for tabling in Parliament a report on the operation of Part XX of the CE Act in relation to each general election or Senate election (CE Act s.17(2), (4)).

EVIDENCE AND ARGUMENTS

- 2.45 (a) Professor K Wiltshire (S8) commented that the register of public donations should be administered by an independent electoral commission.

- (b) *"This submission would prefer a separate authority under the umbrella of the State Electoral Commission. However should it become an actual function of the Electoral Commission that would be equally acceptable.*

It is sufficiently important to warrant its own Act and not become an amendment to existing Election Acts.

There does not seem to be any justification for the Authority to report to Parliament in any manner different from any other Government Department. Consequently the Authority should submit an annual report to Parliament. Parliament must be responsible for what it requires in this report.

One aspect has not been mentioned. It would appear that information is expected to flow to the Authority from its own investigations. This submission recommends that the Authority must accept complaints from whatever source they may emanate. This could be from members of the public disgruntled candidates etc.

This is the one area where anonymity must be accepted. I understand the C.J.C. already operates under similar conditions." (A Sandell (S11)).

- (c) *"Electoral Commission; Report annually to government." (A Conway-Jones (S13)).*
- (d) *"It would seem appropriate for the State Electoral Commission to administer the scheme rather than have a separate authority." (Australian Democrats (S18)).*

- (e) *"The administration of this scheme should be by the proposed Queensland electoral commission." (Queensland Watchdog Committee (S24)).*

- (f) However, in their later submission the Committee (S27) commented:

"We recommend the establishment of an independent 'Political Funds Authority' responsible for receiving donations on behalf of political parties and candidates."

- (g) *"The scheme should be administered by the proposed Electoral Commission, which would report regularly to Parliament." (ALP (S21)).*

- (h) *"If a register of political donations is established in Queensland then we believe the responsible authority should report to Parliament on an annual basis.*

If such a body is to exist then we reiterate that it should be a separate division of the Electoral Commission." (Liberal Party (S25)).

- (i) The National Party (S23) proposed that the ECQ should be responsible for the public register of political donations. It also stated that the Commission should report to Parliament on an annual basis.

- (j) Dr I Ward (S34) recommended the establishment of a collection agency:

"(a) establishing a public agency to collect, to register the payment - but not destination - of, and to anonymously forward, all donations to political parties (and candidates); and

(b) by otherwise proscribing the direct or indirect payment of funds to parties (and candidates), as well as the receiving of donations by parties (and candidates)

...

This means for giving, registering, and receiving all donations of funds to political parties has a number of advantages. Chief amongst these is that no party (or candidate) will have certain knowledge of the source of donations made to it. This is likely to inhibit the giving - and receiving - of funds for which there are implied or stated considerations. A public collection agency would also insulate parties and politicians from undue influence but nonetheless allow them to solicit and receive donations. The proscribing of donations to parties other than via the public collection agency would have the further advantage of clearly marking out as illegitimate attempts to buy influence where there is presently a grey area. It would expressly stamp donations via intermediaries or third parties as illegitimate (but also at least partly alleviate the temptation to use such devices). Furthermore the registration of donations received by the public collection agency - but not of the party for whom they are intended - will allow donations to be made without exposing the political sympathies of donors. And at the end of the day the public will have a record of both the total funds donated to all parties and candidates as well as of groups and individuals making payments."

...

The public collection agency should be independent of the Electoral Commission and report directly and regularly to parliament."

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.46 There are two main options for administration of the disclosure scheme:
- (a) Establishment of a separate disclosure authority which would administer all aspects of disclosure: donations, other income and electoral expenditure. This body could be either a corporation sole or under the control of a Board; or
 - (b) The ECQ could administer the disclosure provisions.
- 2.47 Two different models now operate in Australia. The Commonwealth has set up its disclosure administration as a division of the AEC whilst policy remains with the Commission itself. The NSW EF Authority is a separate body from the Electoral Commission but it draws on the resources of that Commission to support its functions. EARC has also noted the arguments in the submissions, most of which were in favour of the ECQ having responsibility for the disclosure scheme.
- 2.48 The Commission considers that the administrative work associated with the disclosure scheme will not be sufficient to warrant a separate body. Moreover this work will be concentrated into relatively short periods when disclosure returns are due. The Commission believes that this workload could be managed within the ECQ. It should be left to the ECQ to determine the level of resources required and how they should be allocated within the organisation.
- 2.49 The Commission believes that the ECQ's responsibilities should include registration of donations made to political parties and candidates only for Legislative Assembly elections. Donations made to political parties for Local Government elections should also be registered with the ECQ. Donations made to candidates for Local Government and Community Council elections should be registered separately and at the local level as described in the final section of this chapter. Unlike the Legislative Assembly elections, which are further considered in the next paragraph, the Commission sees no need for a centralised reporting system for local government.
- 2.50 The Commission considers that the ECQ should report annually to the Parliament on its operations in respect of disclosure of political donations and other income. The report should be contained in a separate section within the Commission's Annual Report. In its *Report on the Review of the Elections Act 1983-1991 and Related Matters* EARC recommended that the Queensland Electoral Commission report annually to Parliament, and also report after each election.
- 2.51 The Commission also considers that the legislative provisions relating to the disclosure of donations and other income scheme be contained in the same Act as other electoral legislation, the *Electoral Act 1992*.

RECOMMENDATION

- 2.52 **The Commission recommends:**
- (a) **The Electoral Commission of Queensland should be responsible for the administration of the scheme for the public disclosure of political donations made to political parties for all elections, and to candidates for Legislative Assembly elections.**

- (b) **The Electoral Commission of Queensland should be required to report to the Parliament on its operations in connection with the donations disclosure scheme on an annual basis as part of its normal annual reporting on other matters.**
- (c) **Provisions governing the disclosure scheme should be contained in the same Act as other Queensland electoral legislation.**

2.53 These recommendations are reflected in a number of the clauses of the Draft Bill in Appendix E.

The Proposed Scheme for Disclosure of Political Donations

2.54 The Commission has concluded on the evidence that the introduction of a scheme for disclosure of political donations in Queensland is warranted. The Commission will now turn to the details of the scheme which, it believes, is appropriate for the Queensland electoral system. The nature of the scheme proposed for Local Government and Community Councils is discussed at the end of this chapter.

MATTERS FOR CONSIDERATION

- 2.55 If a scheme of disclosure of political donations is established, the other important matters which require investigation are:
- (a) What should be the definition of political donations for disclosure purposes?
 - (b) Should there be any exemptions from disclosure?
 - (c) Should candidates be required to disclose their own contribution to the funding of their election campaign?
 - (d) How should donations made to parties, candidates and third parties for other than electoral purposes be dealt with by the disclosure scheme?
 - (e) Should there be a minimum amount below which donations do not need to be disclosed?
 - (f) Should multiple donations from one source be aggregated?
 - (g) Should donations above a certain limit be banned?
 - (h) How should donations to third parties be dealt with if these donations are passed on and used for electoral purposes?
 - (i) Should anonymous donations be permitted?
 - (j) What periods should be covered by disclosure requirements?
 - (k) Should forms of income other than donations also be disclosed?
 - (l) Should agents be appointed to assist with disclosure returns?
 - (m) Should separate returns be lodged by parties and candidates?
 - (n) When should disclosure returns be provided to the ECQ?

- (o) What auditing requirements should be imposed on disclosure returns?
- (p) What information should be made publicly available?
- (q) What offences and penalties should apply?
- (r) Should invalidation of election and disqualification of candidates apply if disclosure returns are not supplied or if they are falsified?
- (s) What enforcement provisions should apply?

Definition of Political Donations

Issue 2 *For the purposes of registration, what should be the definition of a donation or gift? Should the definition relate only to cash donations or should "non-cash" donations (gifts-in-kind) be included?* (Issues Paper, p.9).

EVIDENCE AND ARGUMENTS

- 2.56
- (a) *"The definition of donations needs to be very tight to obviate the numerous ways which candidates and parties have discovered to avoid the guidelines." (Professor K Wiltshire (S8)).*
 - (b) *"The term 'donation' should include gifts in kind. Queensland should adopt the Commonwealth definition (2.27)." (F Short (S14)).*
 - (c) *"First define 'Donation.' This is most important particularly in relation to recent legal proceedings concerning same.*
Is a large discount given by a Resort to a political 'convention' or similar use of a Resort, a Donation to a political party?
Is the loan of equipment to a neighbour who is also a Politician, a neighbourly gesture or a donation to a politician?
When is a donation a potential bribe to a politician or political party?" (J Russell (S10)).
 - (d) *"Should a tradesman offer to donate labour to a party in his trade capacity he supplies both know how and tools. These could be carpenters, electricians, plumbers etc. The singer performing at a concert is in an exact similar position, donating voluntary labour and using her tool - to wit one voice. There is certainly no disposition of property. The artist also in paragraph 2.27 may use the same argument, although her case may be weaker.*
When discussing gifts-in-kind and their commercial value who determines the value.
One stipulation would have to be that for every donation a receipt would need to be issued. If it is a gift the details and the agreed value would be shown. Also the purpose for which it is offered - administration, maintenance or election.
E.A.R.C. may consider drawing up a suggested form for a receipt and have it included in the Regulation.
The ideal form of revenue would be members subscriptions. Unfortunately this would not provide enough finance for administration and elections." (A Sandell (S11)).

- (e) A Conway-Jones (S13) was of the opinion that the definition of donation or gift should be the same as that in the *Commonwealth Electoral Act 1918* ("CE Act") and that gifts-in-kind should be included as part of the definition.
 - (f) *"The definition of donations should include non-cash donations."* (Australian Democrats (S18)).
 - (g) *"The definition of donations should include donations made for party administration and maintenance, and donations for non electoral purposes."* (Queensland Watchdog Committee (S24)).
 - (h) *" ... a 'gift' to include all dispositions (except in a will) for no payment or inadequate payment (includes gifts-in-kind)."* (ALP (S21)).
 - (i) *"The Liberal Party believes that a definition of donation or gift should include both cash and 'gifts in kind'. Such 'gifts' should include the support services that may be provided including staff used for research, organisation, campaigning or other purposes which are paid for or subsidised by any outside organisation or body and also the provision of printing services, defraying of administrative services, provision of premises or other physical support services given or subsidised by any outside organisation or body."*
- It is clear that if there is to be disclosure then gifts in kind must be disclosed as they provide an opportunity for very substantial donations which have the capacity to negate the effect of any disclosure system."* (Liberal Party (S25)).
- (j) *"All donations (including gifts in kind) should be subject to disclosure. The definition of 'gift' in the Commonwealth Electoral Act is defective and should be reviewed."* (National Party (S23)).
 - (k) *"Disclosure of all campaign contributions should be mandatory as a necessary protection against corruption. However, it needs to be recognised that this provision can be easily avoided by cash or in kind contributions. Disclosure needs to be combined with a number of other provisions in order to secure the integrity of the electoral process."* (P Jardine (S26)).
 - (l) *"Council considers that all cash and 'gifts in kind' or anything that is donated to assist in a campaign for election to Local, State or Federal Government, should be defined as a donation or gift."* (Rockhampton City Council (S33)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

2.57 The Commission is of the view that to police and administer a disclosure scheme effectively it is essential to define the types of donations/gifts made to political parties and candidates which must be disclosed.

2.58 The definition of "gift" in both the CE Act and the New South Wales EF Act are broadly similar. The CE Act (s.287 (1)) defines "gift" as:

"... any disposition of property made by a person (in this definition referred to as the 'donor') to another person (in this definition referred to as the 'donee'), otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include -

- (a) a payment under Division 3 [public funding of election campaigns]; or

(b) *an annual subscription paid to a political party, to a State branch of a political party or to a division of a State branch of a political party by a person in respect of the person's membership of the party, branch or division;*"

- 2.59 The New South Wales definition does not include the exemptions in the CE Act, however the Act does provide for some specific exemptions. These are discussed in the next section of the Report.
- 2.60 The Commonwealth definition unambiguously includes "gifts-in-kind": the provision of goods and services for less than the normal commercial rate or for no charge (except for volunteer labour). The examples shown in the Issues Paper were of a singer who performs free of charge at a fund raising event and the donation of an oil painting by an artist for use as a raffle prize. The proposed West Australian and Victorian Bills also make provision for "gifts-in-kind".
- 2.61 The Commission believes that definitions must be incorporated in the disclosure legislation so as to leave no ambiguities in determining the items for disclosure. This should also go some way to closing the various loopholes that are perceived as existing in other Australian disclosure legislation.

RECOMMENDATION

- 2.62 **The Commission recommends that the following definition be included in the new legislation. The term "political donation" means a gift made to a political party, candidate or an interested person in the form of:**
- (i) **a disposition of property including money paid without consideration or with inadequate consideration; or**
 - (ii) **the provision of a service (other than volunteer labour) for no consideration or inadequate consideration.**

Bequests made to political parties or candidates anonymously do not fall within the definition of "political donation".

- 2.63 Provisions to implement this recommendation have been included in the definitions section of the Draft Bill (Appendix E). For example: the definition of "gift" (4G); anonymous bequests are exempted from disclosure by clause 126T(10) of the Draft Bill.

Exemptions From Disclosure

Issue 3 What exemptions from disclosure, if any, should be allowed? (Issues Paper, p.10).

EVIDENCE AND ARGUMENTS

- 2.64 (a) *"If the whole system of disclosure is to work properly all income should be disclosed. This should include public funding. There does not seem convincing reasons why it should not be included.*

Gifts given to a candidate as a birthday present, while not the subject of disclosure, may need to be recorded in some way if only for the protection of the candidate.

Similarly, donations to a party or a candidate for purposes other than an election should be disclosed but marked accordingly. It may be necessary for parties and candidates to keep two separate sets of accounts, one for elections and one for all other purposes. Both sets would be subject to audit." (A Sandell (S11)).

- (b) A Conway-Jones (S13) submitted that the following should be exempted:

"Volunteer labour and party subscriptions. The party would be responsible for expenditure on elections and therefore accountable."

- (c) *"The term 'gift' should exclude regular membership fees, voluntary labour and small individual donation up to say \$100. With proper auditing (refer below) the abuse of 'small donations' should be prevented." (F Short (S14)).*

- (d) *"The only gifts not requiring disclosure to be volunteer labour, public funding payments, official entitlements, and party membership subscriptions not exceeding \$200 p.a. (CPI adjusted), and gifts specifically directed towards assisting with the normal administrative costs of a party." (ALP (S21)).*

- (e) The National Party (S23) recommended the following exemptions:

"(a) Volunteer labour;

(b) Individual membership subscriptions to a political party in accordance with its registered constitution;

(c) Personal gifts to candidates not used in any political campaign; and

(d) No other."

- (f) *"The Liberal Party would adopt the provisions as set out in the Commonwealth legislation." (Liberal Party (S25)).*

- (g) *"Membership fees paid by individuals to parties need not be made via the public collection agency nor registered. Nor need volunteer labour for party work be reported (unless volunteers are in receipt of payment by an employer). Membership fees paid by affiliated organisations (eg unions in the case of the ALP) should be made via the public collection agency to eliminate any prospect of circumventing disclosure by this route. Traditionally parties have raised monies by raffles and functions. Monies paid directly to parties in this way need not be disclosed where they do not exceed a modest amount - say \$50. ... Monies paid to parties such as rental on property, dividends, interest payments and the like should be made via the public collection agency rather than directly. So should funds transferred from inter-state branches or divisions of political parties to their Queensland counterparts." (Dr I Ward (S34)).*

- (h) *"It is considered that there should be no exemptions from disclosure." (Rockhampton City Council (S33)).*

ANALYSIS OF EVIDENCE AND ARGUMENTS

2.65 After considering the evidence the Commission has concluded that the options are:

- (a) to require full disclosure of all gifts and donations; or
- (b) to require full disclosure of all gifts and donations subject to a list of exemptions.

- 2.66 Both disclosure of donations schemes operating in Australia provide a list of items exempt from disclosure. Such items include:
- (a) volunteer labour;
 - (b) public funding payments;
 - (c) party membership subscriptions; and
 - (d) small donations.
- 2.67 The proposed legislation in Victoria and Western Australia contain similar exemptions.
- 2.68 Most submissions received on this subject were of the opinion that some exemptions should apply to items that require disclosure.
- 2.69 The Commission believes that little purpose would be achieved by requiring full itemized disclosure of such items as:
- (a) volunteer labour;
 - (b) any public funding payments (these are not really "donations" and would be accounted for by the electoral administration which provides them);
 - (c) normal party membership subscriptions (unless identified as a single lump sum as in the NSW legislation); and
 - (d) very small donations (except as a lump sum as in the NSW legislation).
- 2.70 The definition of "gift" in the CE Act (s.287(1)) excludes volunteer labour, public funding payments and annual membership subscriptions paid to a political party. The NSW EF Act (s.87(7)) excludes public funding payments, annual membership subscriptions of not more than \$200 paid to a party, and a donation to a group or candidate if it was not given for the purpose of the current election.
- 2.71 Donations to parties and candidates at fund raising activities are not expressly included in the two definitions. New South Wales deals with the proceeds of fund raising in other provisions in their Act.
- 2.72 However there are potential problems whenever exemptions are allowed. They open up the scheme to possible abuse and potential "laundering" of income. For example, s.87(7) of the EF Act provides:
- "(7) For the purposes of this Act -
- (a) a payment under this Act; [public funding of election campaigns]
 - (b) an annual subscription of not more than \$200 paid to a party by a member of the party; and
 - (c) a payment made under the condition that the money not be used for electoral expenditure in relation to an election,
- are not political contributions."*

- 2.73 Of particular concern are the exemptions allowed under s.87(7)(c) above. The legislation must be careful to anticipate problems and close as many loopholes as possible.
- 2.74 In relation to party membership subscriptions, only New South Wales stipulates a maximum (ie. subscriptions not exceeding \$200). The Commonwealth Act, and the proposed legislation in both Victoria and Western Australia do not impose such a limit. At present \$50 is believed to be the maximum required for membership by any political party in Queensland.
- 2.75 Creation of categories of special membership with unusually high annual rates would be a ready means to conceal regular donors. Adoption of the NSW provision should prevent such a development.
- 2.76 The broad net which the Commission proposes to cast would catch donations given to Queensland branches of federal political parties for the express purpose of Commonwealth elections (or referendums). It might be asked whether the State has a constitutional capacity to impose such a requirement. The Commission believes that it would be undesirable to see a Moore v Doyle (1969) 15 F.L.R. 59 development overtake Australian political parties whereby separate Federal and State structures were created to avoid disclosure provisions in either jurisdiction or both. If judicial decisions were to establish that the State's powers in this regard are limited, thus opening a loophole for concealment, then the appropriate course would be complementary legislation negotiated between the Commonwealth and those of the States as wished to protect the integrity of their political process generally, and elections in particular, by effective disclosure provisions.

RECOMMENDATIONS

- 2.77 **The Commission recommends the following items be exempt from disclosure by political parties and candidates to the extent indicated:**
- (a) Party membership subscriptions of less than \$200 should be aggregated and disclosed as a single total sum for each disclosure period. Subscriptions of \$200 or over should be individually disclosed.
 - (b) Contributions by candidates to parties' campaigns and vice versa should not be exempt.
 - (c) Volunteer labour should be exempt.
 - (d) Small donations (ie. below the threshold stipulated in a later recommendation) should be disclosed as a single lump sum for each disclosure period.
- 2.78 The Draft Bill (Appendix E) contains provisions for this recommendation in Division 2 at 126Q, 126M and 126P, and in the definition of the meaning of "gift" (4G).

Disclosure of Candidate's Own Contribution

Issue 4 Should a candidate's contribution to his/her own campaign be disclosed?
(Issues Paper, p.10).

EVIDENCE AND ARGUMENTS

- 2.79 (a) *"The position of an independent candidate may pose a problem, or at least a weakness in the Commonwealth system. A very popular cricketer or footballer who is also quite well off would be able to spend a sum much larger than a candidate of lesser means, or even a party candidate. The combination of ample money plus the general popularity would undoubtedly bring success.*
- This problem may be solved if EARC finally recommends maximum expenditure.*
- In the meantime this submission recommends that independent candidates be not granted exemption but be treated similarly to other candidates and make full disclosure.*
- It also recommends that contributions by endorsed candidates be treated as in paragraph 2.31 of the Issues Paper." (A Sandell (S11)).*
- (b) *"Yes, this question leaves a loophole to equalising money spent on campaigns. I am reminded of an American Senator who spent 9 million of his own money, to get elected. He was. The power of money swayed the issue and was not fair." (A Conway-Jones (S13)).*
- (c) *"Council also considers that a candidate's contribution to his or her own campaign should be fully disclosed." (Rockhampton City Council (S33)).*
- (d) *"A candidates own contribution to his/her campaign should be included. If not the opportunities for abuse are manifold." (F Short (S14)).*
- (e) *"It is suggested that a candidate's own contribution need not be disclosed. If expenditure and donations are disclosed, the candidate's own contribution can be inferred." (ALP (S21)).*
- (f) The National Party (S23) was of the opinion that candidates' contributions to their own campaigns should be disclosed.

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.80 In the Commonwealth scheme, a contribution by an independent candidate (ie. a candidate not endorsed by a political party) to funding their own campaign is not required to be disclosed as a donation to the candidate. A contribution by an endorsed candidate to their own campaign is not required to be disclosed as a donation to the candidate but is required to be disclosed as a donation to the party which endorsed the candidate.
- 2.81 Of the six submissions received on this topic, five were of the opinion that a candidate's contribution to their own election campaign should be disclosed by that candidate.
- 2.82 The ALP (S21) were not in favour of direct disclosure of this contribution but suggested instead that it could be inferred from donations and expenditure disclosure returns.

- 2.83 Whilst the Commission does not envisage restricting the amount a candidate can contribute to their own campaign, it does consider that this information should be disclosed by candidates as a significant piece of information within a particular electoral district.

RECOMMENDATIONS

- 2.84 **The Commission recommends:**
- (a) **A candidate's contribution to their own election campaign should be disclosed.**
 - (b) **Such information should be contained in the candidate's disclosure of donations return to the Electoral Commission of Queensland.**
- 2.85 The Draft Bill (Appendix E) contains provisions in Division 2 at 126M to implement this recommendation.

Disclosure of Donations Made Other than for Election Purposes

Issue 5 Should donations made to political parties for other than election purposes, such as party administration and maintenance, be required to be disclosed? Should donations made expressly for non-electoral purposes be excluded from disclosure? (Issues Paper, p.10).

EVIDENCE AND ARGUMENTS

- 2.86 (a) *"The Federal legislation at the current time is inadequate in that it doesn't cover donations to administrative accounts of political parties and because there is not uniform legislation across Australia at a Federal and State level. This means that political parties can circumvent the current legislation by operating through State branches or branches in other States.*
- Those problems can only be resolved by uniform legislation at a Commonwealth and State level across Australia." (P Beattie MLA (S3)).*
- (b) *"The issue being considered is political donations and not donations for one purpose but exempting all other purposes. So all donations must be included. This does not constitute a reflection on any party.*
- The purpose for which each donation is intended must be clearly indicated and shown on the receipt. It has already been suggested E.A.R.C. may consider designing a suitable receipt form.*
- The whole accounting system of all parties and independents may need to be examined and complete uniformity introduced. It would be safe to assume that parties already have their books audited at least once per year. This audit should be taken over by the Auditor General. The control (which will be examined in detail later) will in some way be connected with the State Electoral Office which may make the audit by the Auditor General mandatory.*
- If this issue is adopted and legislation introduced, it will, of necessity have to be very severe. As far as possible all loopholes will need to be closed. The legislation will be extremely unpopular in many areas of the public arena.*
- This particular aspect may well become one of the main planks of the proposal." (A Sandell (S11)).*
- (d) *"Donations made to political parties for other than election purposes should be required to be fully disclosed and listed on the register." (Rockhampton City Council (S33)).*

- (e) *"Donations to any political party should be disclosed for any purpose. 'Publicising the party' could very well be part of an election campaign.*

Donations for non-electoral purposes should be disclosed, for instance wages of administrative staff could be paid and allow what they would have been paid to fill the coffers." (A Conway-Jones (S13)).

- (f) *"Nothing could be more true than the ICAC Report (ICAC 1990 p.494) 2.37. The entire operation will break down if donations for alleged non-electoral purposes are exempted. Money given to any purpose whatsoever automatically releases an equal sum for some other purpose and in any the donor is likely to be remembered." (F Short (S14)).*

- (g) *"We suggest that the provisions for registering donations be the same as currently applies Federally, with the important exception that gifts designated by the donor as being for purposes other than electoral expenditure must also be declared. This exemption is a gaping loophole which has been clearly exposed by the WA Inc Royal Commission, just to name the most recent example. There is no logic in requiring parties to detail only donations which are spent in a certain way. The key issue is not how it is spent, but where it comes from and how much it is." (Australian Democrats (S18)).*

- (h) *"It is suggested that the only donations which need not be disclosed be those which are specifically intended for administrative, and not for election, purposes. Where a donor is non-specific as to the use of funds, disclosure would still be required." (ALP (S21)).*

- (i) The National Party (S23) was of the opinion that donations made to political parties for other than electoral purposes should be required to be declared and added:

"In addition to political parties and candidates any person who incurs electoral expenditure should be subject to disclosure requirements.

...

On the other hand, the flow of what are in fact compulsorily acquired union funds to the Labor Party will continue unhindered. None of the considerations in relation to disclosure which will limit the willingness of corporate donors to make donations if a regime of disclosure is established will apply in relation to this flow of funds. It is not voluntary.

It is in no practical sense accountable. And it will continue to the very great advantage of the Labor Party in the absence of countervailing measures."

- (j) On the other hand the Liberal Party (S25) stated:

"Political parties have very carefully separated their administration and maintenance fundraising from general campaign funding.

It is the Liberal Party's view that donations made to political parties for other than election purposes should not be disclosed.

We however accept that should disclosure be accepted as a general principle then the enforcing authority will require a capacity to check all donations.

On this basis we reiterate that such donations should not be public but should be open to scrutiny by the enforcing authority which we would propose should be the Electoral Commission."

- (k) In commenting on other submissions, the Australian Democrats (S29) stated:

"As the National Party stated, if disclosure is required, it must be comprehensive, and not leave loopholes. It is for this reason that disclosure must include all income, not just donations, and it must apply to funds used for all purposes, not just electoral activity. We note that the National Party (p.2 & 7) also takes this position. The Liberal Party also supports disclosure of other income (para 7.1), although it appears to suggest that donations made for non-electoral purposes should not be disclosed (para 1.4). The ALP also seems to imply that disclosure should only apply to election related donations. We reject this suggestion as inadequate and prone to loopholes. Professor Wiltshire also recommends that disclosure not be linked solely to election campaigns (p.16), although he doesn't directly comment on disclosure of forms of income other than donations."

- 2.87 The Commission also noted evidence on this issue given to the Senate Select Committee relating to the Commonwealth's disclosure provisions by R D Hogg on behalf of the ALP:

"Obviously, the transfers between branches and so on is one loophole. In other words, you encourage your donors to donate for administration purposes. They do and it is disbursed for administration purposes. The State branches can then vary what they pick up in terms of the election costs and pay it out of other income, which is not disclosable under current legislation, and do transfers of that kind between the State and Federal branches." (SSCPBD 1991a, p.9).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.88 Until the passage of the PB & PD Act, the Commonwealth disclosure scheme exempted the disclosure of donations to political parties designated by the donor for a purpose other than a Commonwealth election. These exemptions included donations for a State election or for party administration.
- 2.89 It is considered that the exemption as it existed created a serious loophole in the Commonwealth scheme especially since the AEC lacked the necessary investigatory powers in respect of disclosure returns.
- 2.90 The NSW legislation provides a similar exemption, that is, "*... a payment made under the condition that the money not be used for electoral expenditure in relation to an election.*" (s.87(7)(c) EF Act).
- 2.91 Loopholes thus exist within disclosure legislation by which donations can be "hidden" if the donor assigns their gift or donation for use other than for election purposes, for example, administration costs, thereby releasing money that otherwise would have to be spent for that purpose.
- 2.92 The proposed West Australian and Victorian legislation have sought to close this loophole by denying such exemptions for "administrative" donations.
- 2.93 The Commonwealth JSCEM in their Report "*Who Pays the Piper Calls the Tune*" concluded that:

"... there is an alarming lack of information on sources of election funding for parties in federal elections ..." (JSCEM 1989b, p.76).

They went on to recommend:

"... that all political parties should be required to disclose all donations, whether they are for Federal, State or local campaigns or for other non-campaign purposes." (JSCEM 1989b, p.96).

2.94 In New South Wales the ICAC addressed the issue in some detail. It concluded that it was difficult to differentiate between funds provided for administrative purposes and funds provided for electoral purposes and proposed that this exemption be removed. The Report stated:

"Legislation requiring the disclosure of donations to political parties and candidates, should be directed towards preventing secret donations that might influence policy or other decisions, especially by the party in power. I fail to see how that can be achieved, or even seriously attempted, by a law which exempts from disclosure, donations for parties' administrative, rather than electoral, purposes. The distinction is illusory. In any event, substantial donations to political parties are as likely to influence, whatever label they be given, and whatever purpose they may have." (ICAC 1990, p.494).

2.95 Submissions received on this matter were, in the main, supportive of a scheme whereby all donations regardless of their intended usage be disclosed by political parties and candidates.

2.96 The opponents to such schemes were:

(a) The ALP, which suggested that the only donations not to be disclosed be those specifically intended for administration and not for election purposes.

(b) The Liberal Party, which saw no need for this practice as political parties have carefully separated their administration and maintenance fund raising from general campaign funds.

2.97 The Commission considers that the arguments requiring the disclosure of donations made for other than electoral purposes were more persuasive than those against. It also notes the focus of a political party's activities is the election of its candidates - thus donations made expressly to support administrative functions indirectly support campaigning.

2.98 It is evident from the recommendations in the JSCEM and ICAC Reports and the proposed legislation of Victoria and Western Australia, that the exemption of these donations is perceived to have been a loophole in existing disclosure schemes. Queensland should avoid committing the same mistake.

RECOMMENDATION

2.99 **The Commission recommends that all donations received by political parties and candidates should be disclosed regardless of the intended purpose of such donations.**

2.100 The definition of "political donations" in the definitions section of the Draft Bill (Appendix E) includes all types of contributions except volunteer labour and anonymous bequests.

Minimum Amount of Donations and Multiple Donations

Issue 6 Should all donations be required to be disclosed or only those exceeding a specified minimum threshold? If so, what should this minimum amount be? Should the threshold amount be different for parties and individual candidates? (Issues Paper, p.11).

Issue 7 How should "multiple" donations from the same source be treated? If, for example, an individual donated \$50 each quarter to a political party should there be a disclosure requirement? Should these donations be treated separately or aggregated, and if aggregated, over what period of time (eg. each financial year or the period of time between one election and the next)? (Issues Paper, p.11).

EVIDENCE AND ARGUMENTS

- 2.101 (a) *"No amount should be too small to record. All political income must be recorded." (D Harrison (S2)).*
- (b) *"The Commonwealth legislation seems to be reasonable. We are of course dealing only with public scrutiny. It is not necessary we should know the name of every pensioner who subscribes to a party." (F Short (S14)).*
- (c) *"Disclosure should be limited to amounts that exceed a specified minimum. The N.S.W. figures would seem to be most suited. So this submission recommends \$2500.00 for parties and \$500.00 for candidates become the minimum for Queensland." (A Sandell (S11)).*
- (d) (a) *Only donations exceeding \$1,000 or more to a political party should be disclosed.*
- (b) *Donations to candidates should be treated as a donation to the Party which endorsed that candidate."*
- and
- (a) *"Donations should be aggregated and disclosed each financial year.*
- (b) *Donors should be aggregated on the basis that 'associates' as defined by sub-section 26 AAB(14) of the Income Tax Assessment Act 1936 are deemed to be one person." (National Party (S23)).*
- (e) *"The full disclosure of all donations to political parties for election purposes reduces substantially the risk of trade-offs between financial support and political favours." (ALP (S21)).*
- (f) *"Parties should be required to disclose donations and gifts-in-kind of \$1000 or more, and candidates donations of \$200 or more, as at the Commonwealth level." (Queensland Watchdog Committee (S24)).*
- (g) *"If they are to be disclosed at all, the Liberal Party believes all donations should be disclosed once they exceed a specified minimum threshold which in the case of political parties should be \$10,000.00 and in the case of individual candidates \$1,000.00.*

These figures should be indexed.

We believe that the above figures are realistic and are fixed so as to minimise the disruption and cost to political parties whilst at the same time ensuring that any significant donations of a size and a capacity to influence are disclosable." (Liberal Party (S25)).

- (h) *"Council considers that all donations should be required to be disclosed in the public register, irrespective of the amount." (Rockhampton City Council (S33)).*

In relation to multiple donations:

"It is considered that multiple donations should be treated separately on each occasion a donation is made and listed in the public register accordingly."

- (i) *"If all donations are audited the scope of 'multiple' donations from the same source will be limited." (F Short (S14)).*
- (j) *"In respect of 'multiple' donations the principle of aggregation should apply. The period of aggregation should be the same period as what may finally be decided when issue 6 is being considered." (A Sandell (S11)).*
- (k) *"This issue has problems, because if a minimum amount is specified, a loophole opens to allow a business to send large amounts in small donations over a period. There should be legislation which forbids the acceptance of multiple small donations. Aggregated over the financial year." (A Conway-Jones (S13)).*
- (l) *"To avoid excessive administrative work, there should be a minimum value requiring full disclosure. This should be aggregated to cover multiple donations, and for consistency's sake should be tied to the Federal limits." (Australian Democrats (S18)).*
- (m) *"The public register should include smaller multiple donations from any source ... " (Queensland Watchdog Committee (S24)).*
- (n) *"Multiple donations should be aggregated and the aggregate disclosed if above the allowable limit." (ALP (S21)).*
- (o) *"At a minimum, parties in receipt of and donors providing gifts-in-kind above a set minimum value (say \$200) should be required to register these (and their cash value) with the collection authority.*

...

To circumvent use of multiple donations to evade disclosure and processing via the public collection agency parties (and candidates) ought be prevented from accepting more than (say) a total of \$500 (including the value of gifts-in-kind) from any individual or organisation in the course of a financial year without notifying all details to the public agency for recording." (Dr I Ward (S34)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

2.102 Legislation in other jurisdictions has prescribed a minimum threshold level below which:

- (a) disclosure is not required at all; or
- (b) all donations are aggregated and reported as a single sum. The identity of these individual donors is not required to be revealed.

2.103 Disclosure thresholds elsewhere in Australia are summarised in Table 2.2.

TABLE 2.2

MINIMUM DONATION THRESHOLDS

JURISDICTION	POLITICAL PARTIES	CANDIDATE
Commonwealth	\$1,000	\$200
New South Wales	\$2,500	\$500
Victoria (Proposed)	\$1,000	\$200
Western Australia (Proposed)	\$1,500	\$300

- 2.104 There are two main arguments in support of a threshold for full disclosure:
- (a) The privacy argument. Persons who make very small donations are not attempting to influence political decisions; they are expressing their support for the party or candidate of their choice. The existence of large numbers of persons willing to make small donations is a sign of a healthy democracy and should be encouraged. Imposition of a threshold may assist in protecting the privacy of small individual donors. This concern was raised by the Liberal Party (S25) in their submission.
 - (b) The administrative burden for both the ECQ and political parties would be significantly lessened if small donations did not have to be disclosed in full.
- 2.105 The Commission is aware that the extent of influence of a donation may depend on whether it is being made to a political party, third party organisation or to an individual candidate. Large organisations with large budgets are less likely to be influenced by small donations than are individual candidates. In response to this all jurisdictions have imposed separate limits for parties and candidates. The Commission agrees that different thresholds should apply to donations made to parties and candidates.
- 2.106 The Commission considers that Queensland should adopt threshold limits for disclosure. It is of the view that small donations should not be disclosed in full because they have limited potential for influencing political outcomes and they would create unnecessarily burdensome administration.
- 2.107 The Commission recommends that Queensland should adopt the same threshold limits as the Commonwealth and the proposed Victorian system: \$1,000 for political parties and \$200 for candidates. It believes that the New South Wales thresholds are too high.

- 2.108 Since it is possible that persons may split their donations and make a number of donations below the threshold to avoid the full disclosure requirements, a practice which in the United States became known as "smurfing", the Commission recommends that all donations made to parties and candidates below the threshold should be aggregated into a single sum together with an indication as to the number of donations of particular values they have received. This requirement should apply whether the donors have used their own names, or made anonymous donations below the threshold.
- 2.109 If returns suggest that "smurfing" has been widespread, for example, by large numbers of donations just below the disclosure limit, the exemption should then be reviewed.
- 2.110 In the event of a number of donations being made by the same donor, these should be aggregated and disclosed with details of the donor by the recipient political party/candidate if the aggregation exceeds the specified minimum limits.
- 2.111 Both the New South Wales and Commonwealth legislation provide that the period over which the aggregation of donations is to occur is the whole disclosure period. This is the model which should also be applied in Queensland. Disclosure periods are discussed in full later in this chapter (see paras.2.155-2.172).

RECOMMENDATIONS

- 2.112 **The Commission recommends that:**
- (a) **There should be a minimum threshold below which disclosure should not be required.**
 - (b) **Donations below this threshold should be aggregated and disclosed as a single sum together with the number of donations in prescribed value brackets.**
 - (c) **A separate threshold should apply for political parties and candidates. The threshold levels should be:**
 - (i) **for political parties - \$1000; and**
 - (ii) **for candidates - \$200.**
 - (d) **Multiple donations from one donor should be aggregated and disclosed with details of the donor by the recipient political party/candidate if the aggregation exceeds the relevant threshold.**
 - (e) **The period over which the aggregation of donations is to occur is the whole disclosure period, ie.:**
 - (i) **political parties - each calendar year, except in a year in which an election is held, in which case two aggregation periods should apply:**
 - A. **the period between the issue of election writ and 30 days after polling-day; and**
 - B. **the remainder of the calendar year.**

- (ii) Candidates who contested a district at the previous election - from 31 days after the polling-day for the previous election to 30 days after the polling-day for the current election.
- (iii) Candidates who did not contest a district at the previous election - from the day a candidate announces their candidacy or the day the writ is issued whichever is the earlier, to 30 days after polling-day.
- (iv) interested persons - the last full year of the term of Parliament to a date 30 days after polling-day; if the writ is issued for an election during the third year of the scheduled term of Parliament the period will be less than 12 months. If the writ is issued during the first or second years of the term then the period will run from the date of issue of the writ to 30 days after the election.

2.113 The provisions in the Draft Bill which give effect to these recommendations are in clauses 126S, 126P, 4A, 4B and 4C.

Maximum Amount of Donations

Issue 8 Should there be a maximum limit upon donations? What arguments can be advanced for and against a maximum ceiling? How would a maximum level be determined? Should such a ceiling be indexed or reviewed after each election by Parliament? (Issues Paper, p.12).

EVIDENCE AND ARGUMENTS

- 2.114 (a) *"There should be no maximum limit on donations."* (Professor K Wiltshire (S8)).
- (b) *"If there is registration and public disclosure it should not be necessary to put an upper limit on donations. If an organisation or firm makes an excessive donation to a political party then other parties and the voting public will soon be made aware of it and draw the obvious conclusion. The main point is that all cards should be on the table."* (F Short (S14)).
- (c) *"It is difficult to find adequate argument to support a maximum limit on donations. It is even more difficult to suggest a reasonable figure that could be accepted as a maximum.*
It is recommended that for the time being no maximum should be set for donations from individuals or corporations." (A Sandell (S11)).
- (d) *"No. There should be a maximum ceiling that each party can spend on elections.*
I am reminded of the National Party spending 3 million dollars in the last three days of Sir Joh's last campaign, which the party leader Sir Robert Sparkes said 'this money had changed voter opinion and enabled the Nationals to retain government.'" (A Conway-Jones (S13)).
- (e) *"There seems little point in putting a limit on the maximum donation allowable. However, a limit on campaign expenditure may be a productive way of addressing the issue. As para 2.51 of the Issues Paper indicates, this is not uncommon in other Western democracies."* (Australian Democrats (S18)).

- (f) *"The Liberal Party believes that there should be a maximum limit on donations which limit should be \$100,000.00 for political parties and \$10,000.00 for individual candidates.*

Such limits would ensure a broad spread of donors but at the same time restrict the opportunity for a few donors to have a disproportionate influence on the day to day activities of a party.

The magnitude of donations to the Australian Labor Party and the National Party revealed by the 'Royal Commission into W.A.Inc' establishes that the size of donations will not be restricted by mere economic pressures and that there needs to be a restriction on 'mega-donations'.

Those donations should be indexed and certainly be reviewed after the first election." (Liberal Party (S25)).

- (g) *"It is considered that there should be no maximum limit upon donations." (Rockhampton City Council (S33)).*
- (h) The National Party (S23) did not believe that there should be a maximum limit on political donations.

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.115 Under the Commonwealth and NSW schemes, no maximum limits are imposed on political donations made to political parties and candidates. This is similar for the Victorian and Western Australian Bills.
- 2.116 The setting of an upper limit for political donations has been attempted elsewhere. In the United States limits were set in the early 1970s by the *Federal Election Campaign Act*. However, the limits imposed were not indexed and soon became unrealistic.
- 2.117 Generally, it has been the practice for governments to legislate to control and restrict candidates' expenditure rather than to impose limits on contributions, and in any event upper limits encourage "smurfing" and a consequent reduction in the effectiveness of disclosure provisions.
- 2.118 As pointed out in the Issues Paper, the adoption by Queensland of maximum limits on political donations might present problems given that there are no limits under existing Commonwealth legislation or any other Australian electoral legislation.
- 2.119 As a scheme for disclosure of electoral expenditure is recommended, and in the light of experience of setting up such limits elsewhere, the Commission considers that no limit should be set on the size of donations which a party or candidate can receive. If donations are being publicly disclosed, who made those donations and their monetary value becomes a matter of public record.
- 2.120 The majority of submissions received also argued that no upper limit should be imposed.

RECOMMENDATION

- 2.121 **The Commission recommends that no maximum limit be imposed on the size of donations that a party or candidate can receive.**

Third Party Donations

Issue 9 In the case of donations through third parties can it be ensured that the original source of donation is disclosed? Should a party or candidate be required to disclose the known original source of any donation received through an intermediary? (Issues Paper, p.13).

EVIDENCE AND ARGUMENTS

- 2.122 (a) *"All 'third party' organisations must feel free to ensure Governments are elected or maintained that are sympathetic to the aims and ideals of the organisation. There does not have to be any specific anticipation, merely general support. The close association between the Trade Union movement and the Labor Party is an ideal example. However these organisations must accept the possible glare of publicity both supporting and adverse.*
- ...
- The details in Appendix B would be preferred. The wording would have to be altered slightly to eliminate all reference to the Senate and substitute Legislative Assembly for House of Representatives." (A Sandell (S11)).*
- (b) A Conway-Jones (S13) was of the opinion that all third party donations should be disclosed.
- (c) *"Donations to a political party through third-parties apart from the normal subscription should be recorded and registered accordingly." (Rockhampton City Council (S33)).*
- (d) *"As the Issues Paper suggests (para 2.56) it is a serious loophole if third-parties are not required to disclose the original source of donations. To cover problems of interstate transactions, the State Electoral Commission could be empowered to investigate donations." (Australian Democrats (S18)).*
- (e) *"Sources donating to parties disclosable amounts should also be required to disclose donations to them of disclosable amounts." (Queensland Watchdog Committee (S24)).*
- (f) *"Parties and candidates should be required to notify the original source of any donation, for election purposes, of which they have knowledge. Third parties, or intermediaries, operating in Queensland should be subject to the same disclosure rules. An investigation should be undertaken into the constitutionality of extending Queensland law to intermediaries operating interstate and making political donations to Queenslanders." (ALP (S21)).*
- (g) *"Donations to genuine third parties which have the real effect of hiding the name of the original donor from the recipient should be regarded positively.*
- However if there is to be a system of disclosure by Parties then donations provided to third parties should also be disclosed.*
- The third party should be subject to the same restriction as to a maximum limit upon donations as any other Party.*
- Third parties which do not pass on funds to candidates or parties but who spend the funds to promote another party or political idea or concept during the campaign period should face the same restrictions as any political party or candidate standing for election." (Liberal Party (S25)).*
- (h) The National Party (S23) agreed that in the case of the parties, the original source of a donation should be disclosed:

"Any person making a disclosable donation should himself be liable to comply with the disclosure legislation."

The National Party also supported the proposal that a party or candidate should be required to disclose the known original source of any donation received from an intermediary.

- (i) *"The use of third party intermediaries to conceal donations should be proscribed. However this practice is unlikely since individuals and groups will be able to make donations publicly without placing details of the recipient party on the public record." (Dr I Ward (S34)).*

2.123 The Commission notes that in a somewhat different context, the timing of disclosure in respect of a particular election, R D Hogg on behalf of the ALP told the Senate Select Committee:

"If I make a political judgement that X, Y or Z is a front organisation, I will start to say something about it. That will have a political effect. People will start to measure up the risks associated with it. So there are many ways of applying legitimate political pressure in addition to the processes of disclosure and audit. I do not think any major party would want the risk of, or would even contemplate, putting up a bogie in the knowledge that at some point, either in the campaign, before it or immediately afterwards, it would be exposed as a front organisation. It would be one hell of a risk to take." (SSCPBD 1991a, p.10).

ANALYSIS OF EVIDENCE AND ARGUMENTS

2.124 The Commission believes that the value of a disclosure scheme would be severely compromised if the identity of the true donor was not made known. There is little point in having a public register if it only contains the details of an intermediary rather than the primary source of a donation. The Commission has noted that it is in the area of donations made by these "third parties" or "interested persons" that disclosure schemes have had most trouble.

2.125 The Commonwealth legislation has three relevant provisions:

- (a) Section 304 which requires disclosure of the name and address of the person making the gift;
- (b) Section 305 which requires a "third party" to disclose a donation received if the donation was \$1000 or more and if that donation was used to make a political contribution (or to incur campaign expenditure) of \$1000 or more; and
- (c) Section 306 which makes it unlawful to receive a gift unless

"... the name and address of the person making the gift are known to the person receiving the gift or, at the time when the gift is made, the person making the gift gives to the person receiving the gift his or her name and address and the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift." (emphasis added).

2.126 Where "third parties" participate in an election campaign in New South Wales the EF Act does not require the lodgement of returns disclosing any political donations which they receive.

- 2.127 The proposed Victorian and Western Australian legislation go some way towards closing this loophole. Clause 13 of the Victorian Bill and Clause 175.2 of the Western Australian Bill provide for a third party organisation to provide a return to the Electoral Commission disclosing the source of any funds expended by the body in regard to an election.
- 2.128 All submissions received on this topic supported the need to identify the true sources of donations made to political parties and candidates. One suggestion in this context was to require "third party" organisations which make donations to parties and candidates to disclose directly the source of all donations made to the organisation, including donations made to it for non-political and non-electoral purposes. However, the situation then could arise that an organisation could donate, say, \$5,000 to a party and have to disclose \$100,000 worth of donations it received, most of which were made for other than political purposes.
- 2.129 Under such a regime there would be a real risk that donors to third parties would have their donations construed as political when they were not. This could raise serious privacy concerns and probably discourage bona fide (ie. non-political) donations to these organisations. That would be an undesirable side effect of such a scheme.
- 2.130 In order to alleviate some of these concerns, the Commission considers that "interested persons" who are registered charitable institutions under the appropriate Queensland legislation should not be required to disclose the identity of donors of gifts received by them during the disclosure period.
- 2.131 There was also a concern that "third party" organisations may not always be aware of their obligations under relatively specialist legislation such as an Electoral Act and not make the required disclosures, and thus be in breach of the law.
- 2.132 To overcome this problem the Commission proposes that political parties and candidates be required to disclose to the ECQ the names and addresses of persons and organisations who donate amounts in excess of the specified limits for disclosure. Registered parties and candidates should be asked to certify who, to their knowledge, was the primary source of each donation. It would then be the responsibility of the ECQ to write to the listed donors seeking their certification that they were in fact the true and original source of the donation; otherwise they would be required to identify the true source of the donation to them. Provision will need to be made for further investigation by the ECQ to pursue donations to their true source if necessary.
- 2.133 This will not represent a large administrative burden for the ECQ because the number of donations over the limit is relatively small.
- 2.134 This arrangement scheme would overcome the major flaws in the current Commonwealth and NSW schemes. Loopholes exist in those schemes whereby money can be laundered through "third parties" because only the direct donor to the party or candidate needs to be disclosed.

- 2.135 The problem of enforceability remains should a source located outside Queensland, especially overseas, be identified and then refuse to confirm that it was the ultimate donor or declined to name the source from which it had received the gift in question, or even refused to enter into correspondence on the matter with the ECQ. The Commission notes that the AEC's Director of Funding and Disclosure, Mrs E Gladwin, giving evidence to the Senate Select Committee on 24 September 1991, observed that there was no obvious solution to money being sent out of the jurisdiction and then returning as a means of "laundering" its origins (SSCPBPD 1991a, p.74).
- 2.136 The Commission believes that this possibility would be discouraged were the forfeiture provisions applying to anonymous donations beyond the maximum for their exemption to also apply when an ultimate donor cannot be satisfactorily established. Forfeiture provisions would be an encouragement to recipients of donations whose antecedents were dubious to do what they could to avoid such practices commencing or continuing.
- 2.137 An additional component would be required to complete this scheme. "Third party" organisations or "interested persons" should be required to disclose donations received by them if they expend money for electoral purposes (see Chapter Three). The Commission believes that if interested persons wish to get involved directly in political campaigning then the public have a right to know where the money they use comes from. If this requirement was not imposed, then it is likely that the experience of the United States, where third party organisations, Political Action Committees (PACs) spend a high proportion of campaign money, would be repeated. The Commission believes that the threshold of expenditure above which interested persons should disclose their donations should be the same as for candidates, that is, \$200.
- 2.138 The Commission considers that to require "interested persons" to disclose all income or details of their own funds that are used to engage in electoral expenditure may be too intrusive. The privacy of these organisations or individuals has been kept as intact as possible at this stage. However, should organisations such as PACs become prevalent in Australian politics, this stance may need to be reconsidered. If they proliferate, PACs have the potential to frustrate disclosure provisions imposed upon political parties and candidates.
- 2.139 The Commission's scheme has a major advantage not present in other disclosure schemes. It places responsibility for disclosure primarily on the recipients of the donations. Persons and organisations making donations do not have to provide information about their donations unless contacted by the relevant authority (see para.2.257(b)). The proposed scheme requires the party or candidate who receives the donation to state to the best of their knowledge who the primary source of the donation was - they are in the best position to do this and are much more likely to be aware of the legislative requirements. It also gives the relevant authority power to investigate further if it is concerned that a third party may actually be involved.
- 2.140 The enforcement provisions raised in this section are dealt with in the enforcement section later in this chapter. The definition of electoral expenditure used in this Report is to be found at para. 3.39.

RECOMMENDATION

- 2.141 **The Commission recommends that "third parties" ("interested persons"), other than registered charitable institutions, should be required to divulge the true source of all donations received (above the threshold of \$200) if they engage in electoral expenditure above a threshold limit of \$200.**
- 2.142 Provisions relating to this recommendation are contained in the Draft Bill in Division 2, clause 126N.

Anonymous Donations

Issue 10 Should anonymous donations be allowed? Should the acceptance by parties or candidates of anonymous donations be illegal? Should parties and candidates be required to refuse to accept anonymous donations? (Issues Paper, p.15).

EVIDENCE AND ARGUMENTS

- 2.143 (a) *"All donations should be traced to their original source and the candidate as well as the organisation (party) should bear the legal responsibility for meeting disclosure requirements."* (Professor K Wiltshire (S8)).
- (b) *"Anonymous donations should never be allowed. It should be illegal for parties or candidates to accept anonymous donations."* (F Short (S14)).
- (c) *"Anonymous donations should not be allowed. It should be illegal for parties to accept anonymous donations where the amount exceeds \$1000.00 for parties and \$200.00 for candidates."*

The system of such donations having been refused and passing to the Crown needs further examination. It would be preferable for the Government to then pass them on to charity - 1/3 each to Legacy, Red Cross and the Salvation Army. It is quite distasteful to think this money finishes up in Consolidated Revenue." (A Sandell (S11)).

- (d) *"Donations should not be anonymous and it should be a requirement for the name and address of the person, or organization, making the donation to be listed in the register."* (Rockhampton City Council (S33)).
- (e) A Conway-Jones (S13) was of the opinion that anonymous donations should not be allowed and should be illegal. His submission recommended political parties should refuse to accept anonymous donations. He also stated:
- "Problems will arise, with postal anonymous donations, these should be sent to the Electoral Commission."*
- (f) *Anonymous donations should be prohibited in line with Federal requirements. The disclosure period should cover from one election, with each period starting from the 31st day after polling day in line with current Federal requirements."* (Australian Democrats (S18)).
- (g) *"... the receipt of anonymous donations above the disclosable level to be unlawful."* (ALP (S21)).

- (h) *"The Liberal Party believes genuinely anonymous donations should be allowed to a maximum sum of \$5000.00." (Liberal Party (S25)).*
- (i) The National Party (S23) was of the opinion that anonymous donations should not be allowed.
- (j) *" ... there should be no need for anonymous donations. These should also be proscribed. It should be an offence for parties (or candidates) to accept anonymous donations." (Dr I Ward (S34)).*

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.144 The Commission believes that allowing anonymous donations would leave a serious loophole which could defeat the purpose of the proposed disclosure scheme.
- 2.145 The New South Wales and Commonwealth legislation differ in their treatment of anonymous donations. The NSW EF Act currently contains no provisions for dealing with anonymous donations. On the other hand, the CE Act (s.306) contains a provision making it unlawful for a party or Senate group to receive a gift of \$1000 or more, or for a candidate to receive a gift of \$200 or more unless the name and address of the person making the gift are known to or ascertained by the person receiving the gift. The provision does not apply to anonymous gifts received by parties on the condition that they be used for a purpose other than a Commonwealth election. If an unlawful gift is received it has to be forfeited to the Commonwealth.
- 2.146 The majority of submissions on this topic were strongly in favour of preventing anonymous donations to political parties and candidates. The Liberal Party (S23) suggested a qualification whereby anonymous donations should be allowed to a maximum of \$5000.
- 2.147 The Commission believes that such a threshold is far too large. Donations of this size may well be able to purchase influence over political decisions. The identity of such a donor should be made known or the donation forfeited.
- 2.148 The ALP (S21) considered that anonymous donations above a "disclosable level" should be unlawful but did not specify the level.
- 2.149 The Commission considers that the threshold level above which anonymous donations should not be allowed must be set at a level below which they are unlikely to have any potential for influencing decisions. Anonymous donations above the threshold should not be accepted by either candidates or the political parties. Any anonymous donations above the threshold should be forwarded to the Consolidated Revenue Fund. The ECQ should have powers to recover amounts due to the State.
- 2.150 In respect of anonymous donations below the threshold amounts the Commission proposes that political parties and candidates should be required to disclose such donations as a single sum together with information as to the frequency of donations of particular sizes. This will go towards overcoming the problem of "smurfing" whereby large donations can be disguised by breaking them down into a number of "anonymous" donations below the threshold.

- 2.151 The CE Act (s.306) imposes threshold limits for anonymous donations of \$1,000 for political parties or Senate groups and \$200 for a candidate. The Commission considers that a low threshold figure should apply. The Commission favours a single threshold limit of \$200 for both political parties and candidates.
- 2.152 The Commission believes that an exemption should apply in respect of anonymous bequests. If a person leaves money in their estate to a political party or candidate and specifies that, as a condition of the bequest, their anonymity be preserved from the recipients of the bequest, then the Commission is of the view that such donations should be acceptable - they cannot purchase political influence.

RECOMMENDATIONS

- 2.153 **The Commission recommends that:**
- (a) **Anonymous donations of \$200 or above should not be accepted by political parties or candidates.**
 - (b) **All anonymous donations of above \$200 received by a political party or candidate should be passed over to the relevant authority for forwarding to the Consolidated Revenue Fund. An anonymous bequest in excess of \$200 which has as a condition preservation of the anonymity of the donor is exempt from the forfeiture requirement.**
 - (c) **Political parties and candidates should disclose the total value of anonymous donations received below the threshold limit and the number of anonymous donations of particular values.**
 - (d) **It should be an offence for a political party or candidate to receive an anonymous donation of or above the prescribed threshold limit and not pass it on to the Electoral Commission of Queensland. The Commission should be empowered to take action to recover amounts due to the State.**
- 2.154 Provisions to effect these recommendations have been included in the Draft Bill in Division 2, particularly clauses 126T (anonymous donations) and 126P and Division 3A, clauses 175G and 177C.

Disclosure Period

Issue 11 Should parties and candidates be required to declare only donations which are received during an election period or should donations received at any time be declared? When should the disclosure period commence and when should it end? (Issues Paper, p.15).

EVIDENCE AND ARGUMENTS

- 2.155 (a) *"Disclosure should be periodic and not linked solely to election campaigns." (Professor K Wiltshire (S8)).*
- (b) *" ... that there be continuous yearly disclosure made of donations to political parties and their representatives." (F Short (S14)).*

- (c) *"It might well be the case that most parties use the normal financial period - i.e. 1 July/30 June. If not it is recommended that all parties and candidates switch to this period for normal accounting purposes. This would then make it easy to report on donations.*
- If third party disclosure is accepted they would use a different system. This submission recommends a period of 30 days subsequent to the Return of Writs." (A Sandell (S11)).*
- (d) *"Donations received at any time should be declared, not only during an election period." (Rockhampton City Council (S33)).*
- (e) *"Donations at any time should be declared. Each financial year." (A Conway-Jones (S13)).*
- (f) *"The disclosure period should cover from one election, with each period starting from the 31st day after polling day in line with current Federal requirements." (Australian Democrats (S18)).*
- (g) *"Parties and candidates should be required to declare donations received at any time, rather than only those received during an election period." (Queensland Watchdog Committee (S24)).*
- (h) *"... the disclosure period to be from the 31st day after polling day of the previous election to the 30th day after polling day of the current election." (ALP (S21)).*
- (i) *"We believe that if there is to be disclosure of political donations then it should run from election to election." (Liberal Party (S25)).*
- (j) *"Donations received at any time should be disclosed. The disclosure period should be a financial year." (National Party (S23)).*
- (k) *"Disclosure should not be limited to election periods." (Dr I Ward (S34)).*
- (l) **The Commission also noted the evidence given to the Senate Select Committee by R D Hogg:**

"I know for an absolute fact that both major parties borrowed a substantial amount of money in advance of the election. The money raised to pay off that debt was quarantined from the disclosure legislation because of the timing of the legislation sought. So the borrowing was made, the donation was made, and the money raised was used to pay off the borrowing incurred before the disclosure law came into effect. That was probably the most substantial case in the 1987 period." (SSCPBPD 1991a, p.9).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.156 Campaign fund raising is not uniformly spread across the period between elections. There is generally a peak period immediately before an election when the majority of donations are made and the greatest proportion of monies received. The period during which individual candidates are seeking financial assistance for their campaigns is more limited than for the parties. To assist with the administration of the scheme and to reduce any unnecessary burden on candidates and political parties the period to be covered in disclosure returns will have to be defined.
- 2.157 The disclosure period that may best suit the operations of a political party may be inappropriate for an individual candidate or "interested person" (in the event that the third party has spent money on an election campaign).

- 2.158 In both the CE Act (s.287(1)) and the EF Act (s.83) the disclosure period for political parties extends from election to election. For a candidate, the date of commencement of the disclosure period depends on whether the person was a candidate in the previous election (or a subsequent by-election), with disclosure from election to election for a person who was previously a candidate.
- 2.159 In the case of a candidate who is contesting an election for the first time, the disclosure period is from the date the candidate announces their candidacy or the date of nomination for the current election, whichever is earlier, to a date 30 days after polling-day.
- 2.160 The Commonwealth disclosure period for registered political parties commences on the 31st day after polling day in the previous election and ends 30 days after polling-day in the current election (CE Act s.287(1)). The rationale for extending the period beyond polling-day was to enable all gifts received for use in a particular election to be disclosed in the return furnished in relation to that election.
- 2.161 The NSW disclosure period for political parties commences on the day after polling-day in the previous election and ends on polling-day in the current election (EF Act s.83). The ICAC Report pointed out the problem of donations being received too late to be included in the appropriate election return and commented:
- "Under the present law, they [donations received after polling-day] are not required to be declared in any event until after the next election, potentially four years later. In the case of donations made to an individual candidate after polling day, they are not required to be declared at all, if the candidates does not contest the next election. That clearly tends to defeat the purpose of the legislation.*
- There seems to be no valid reason why regular returns should not be required, without reference to election dates." (ICAC 1990, p.533).*
- 2.162 Submissions received on disclosure periods referred solely to political parties with most favouring an annual disclosure of donations. However, the ALP and the Liberal Party were in favour of a disclosure period similar to that in Commonwealth legislation, that is, from election to election.
- 2.163 In Chapter Three, Disclosure of Electoral Expenditure, the Commission discusses the appropriate disclosure period in relation to electoral expenditure, and whether broadcasters and publishers should also be required to lodge returns providing details of political advertising carried by them. In that Chapter the Commission recommends that: there should be a common period for disclosure of income and expenditure by parties; that publishers should be required to furnish returns of electoral matter published by them during the election period; and broadcasters should also be required to furnish similar returns if the PB & PD Act is declared invalid or is repealed.

- 2.164 The Commission considers that the income disclosure period should be a calendar year and form the basis of party returns, with the proviso that in a year in which there is a general election, separate returns be required for the election period and the remainder of the year. This is necessary to ensure that State legislation provides consistent periods for all reporting requirements. Consistency of reporting periods in the legislation will allow compilation of accurate information and informed analysis of: the income and expenditure of political parties; and the cross-checking of expenditure returns of parties on the one hand and publishers and broadcasters on the other. Such a scheme will mean that the public will be regularly informed about donations being made to parties. It may also assist parties in the compilation of their returns as parties generally provide reports and financial statements on their operations on an annual basis.
- 2.165 Research indicates that political donations are usually made to individual candidates after a candidate announces their candidacy for a forthcoming election. It is also the case that most sitting members will re-contest the next election, and that a number of unsuccessful candidates will also be candidates at the next election. A disclosure period for all candidates from the day the writ is issued or the day a person announces their candidacy could cause some difficulties. For example, a sitting member could receive a gift between the disclosure periods and the gift would not be subject to disclosure.
- 2.166 It is the Commission's view that in order to avoid this potential problem, the disclosure period for candidates should be as per the CE Act: from the day after the end of the disclosure period for the previous election to the end of the disclosure period for the current election in the case of candidates who were also candidates at the previous election; and from the day the writ is issued or the candidate announces their nomination, whichever is the earlier, to 30 days after the election in the case of candidates who did not contest the previous election.
- 2.167 Third parties have played significant roles in recent Queensland elections and the American phenomenon of PACs may play an increasing part in future campaigns. It has already been recommended that if these "interested persons" engage in electoral expenditure they should be required to disclose any donations they may have received. The question remains as to what is the appropriate period for disclosure for these groups or individuals?
- 2.168 A number of options are available:
- (a) Election to Election. The Commission believes that this coverage is too extensive. The person/organisation would receive few or no election related donations in the first two years of the life of the Parliament.
 - (b) Annual Returns. Again, two of the three years will probably result in a "nil return", placing modest but unnecessary burdens on the organisations involved.
 - (c) Election Related. If the disclosure period was related to a fixed period before an election then, if the period was an appropriate length, the great majority of donations would be captured in the return.

- 2.169 The Commission considers that interested persons who have engaged in electoral expenditure above the threshold limit should be required to disclose donations made to them in the 12 months prior to the final date that an election can be called for the current term of Parliament. In the event that an election is called sometime in the third year prior to full term then the disclosure period will be shortened. However, in the event that the election writ is issued before the commencement of the third scheduled year of the Parliament, then the disclosure period will run from the issue of the writ until 30 days after the election.
- 2.170 It might be thought that progressive disclosure during the longer period, and especially during the election period, would be more revealing and more relevant. In his evidence to the SSCPBD, R D Hogg of the federal ALP conceded that this would be administratively possible (SSCPBD 1991a, p.10). However, the Commission believes that the opportunity to manage the timing of donations would render such a requirement futile and impose an unnecessary burden on parties and candidates for no real benefit.

RECOMMENDATIONS

- 2.171 **The Commission recommends that the disclosure periods be:**
- (i) **political parties** - each calendar year, except in a year in which an election is held, in which case two disclosure periods should apply:
 - A. the period between the issue of the election writ and 30 days after polling-day; and
 - B. the remainder of the calendar year.
 - (ii) **Candidates who contested a district at the previous election** - from 31 days after the polling-day for the previous election to 30 days after the polling-day for the current election.
 - (iii) **Candidates who did not contest a district at the previous election** - from the day the candidate announces their candidacy or the day the writ is issued, whichever is the earlier, to 30 days after polling-day.
 - (iv) **interested persons** - the last full year of the term of Parliament to a date 30 days after polling-day but if the writ is issued for an election during the third year of the scheduled term of Parliament the period will be less than 12 months. If the writ is issued during the first or second years of the term then the period will run from the date of issue of the writ to 30 days after the election.
- 2.172 Provisions to implement these recommendations have been included in the Draft Bill (Appendix E) in clauses 4A, 4B and 4C.

Disclosure of Other Income

Issue 12 Should registration/disclosure be extended to cover all income received by political parties and not just funds acquired from donations? (Issues Paper, p.16).

EVIDENCE AND ARGUMENTS

- 2.173 (a) *"All candidates should lodge detailed income and expenditure forms, not just those that might qualify for public funding where it exists." (Professor K Wiltshire (S8)).*
- (b) *"The EF Act (s.2.73) seems to be sufficient to cover most cases. Political parties are not like private organisations or business firms and do not have the same right to privacy. Where finance is concerned they have the capacity for so much corruption that their finances should be an open book." (F Short (S14)).*
- (c) *"It is considered that all sources of income received should be divulged and listed in the register." (Rockhampton City Council (S33)).*
- (d) *"All through this submission it is strongly recommended that all income be disclosed. This would include members annual subscriptions, donations, fund raising activities. Names of members need not be disclosed.*

It may be that two sets of figures be submitted, one covering elections, the other covering everything else.

Should public funding ever be adopted either in whole or in part full disclosure will be mandatory.

As already mentioned a full audit would then be required, preferably under the auspices of the Auditor General.

One effect of the proposed legislation would be that all fund raising activities would have to very clearly indicate for what purpose the profit would be used. Would it be acceptable to split the profit between electioneering and administration. This may well have some effect on the success or otherwise of the function.

The proposition contained in 2.76 is rather weak and is rejected." (A Sandell (S11)).

- (e) *"Yes, all income at any time should be disclosed (Buying political influence should be discouraged)." (A Conway-Jones (S13)).*
- (f) *"The Democrats believe that it is necessary on the grounds of accountability for all parties to be required to disclose all income, not just funds received by donations. This is particularly so if there is to be public funding, but we believe it should be required in any case. Not doing so would leave a significant loophole in disclosure requirements. There seems little point in requiring parties to disclose only certain types of income, as funding can be sought and influence bought by means other than a simple donation." (Australian Democrats (S18)).*
- (g) *"The Liberal Party believes that if there is to be a scheme of disclosure then that disclosure should be extended to the disclosure of nett proceeds of fundraising activities and other income and monies, including income from property, shares, business and any other source." (Liberal Party (S25)).*
- (h) **The National Party (S23) supported the proposition that registered disclosure be extended to cover all income received by political parties and not just funds acquired from donations.**

- (i) In commenting on other submissions, the Australian Democrats (S29) stated:

"As the National Party stated, if disclosure is required, it must be comprehensive, and not leave loopholes. It is for this reason that disclosure must include all income, not just donations, and it must apply to funds used for all purposes, not just electoral activity. We note that the National Party (p.2 & 7) also takes this position. The Liberal Party also supports disclosure of other income (para 7.1), although it appears to suggest that donations made for non-electoral purposes should not be disclosed (para 1.4). The ALP also seems to imply that disclosure should only apply to election related donations. We reject this suggestion as inadequate and prone to loopholes. Professor Wiltshire also recommends that disclosure not be linked solely to election campaigns (p.16), although he doesn't directly comment on disclosure of forms of income other than donations."

- (j) At the Public Hearing P Beattie MLA (T9) noted that political parties sometimes convert donations to capital assets to generate income for future campaigning.

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.174 Experience in other jurisdictions has shown that if disclosure requirements are limited to only a part of the income of political parties' income, it is difficult to make sense of the data. Details of other income are needed as well as the particulars of donations. The main reason is that widened disclosure requirements may eliminate the opportunity for disguising donations under other categories of income and hence not be reported.
- 2.175 The Commonwealth's JSCem in its June 1989 Report recommended that:
- "The Commonwealth Electoral Act 1918 be amended so as to provide for the full disclosure of all forms of income and expenditure by registered parties." (JSCem 1989b, Recommendation 3, para.7.16, p.77).*
- 2.176 The JSCem made its recommendation after finding that " ... there is an alarming lack of information on sources of election funding for political parties in federal elections ... " (JSCem 1989b, p.76).
- 2.177 The Commonwealth scheme since the passage of the PB & PD Act requires disclosure of all income. The NSW scheme also requires the disclosure of the net proceeds of fund-raising activities in addition to political donations. Section 89(c) of the EF Act requires the disclosure of:
- " ... the net proceeds of fund-raising ventures or functions and details of each such venture or function, including a brief description of its nature and the date on which or period in which it was held."*
- 2.178 As noted earlier, the NSW scheme also requires disclosure of the aggregate of party membership fees.
- 2.179 The NZRCR pointed out:
- "There is also a growing trend in both Government and business towards public disclosure of information. Political parties have important public functions and may significantly affect the lives of the country's people. They should not be exempt from such a trend. Moreover, as political parties and candidates request financial and other support from the public, so too must they expect to have their financial activities scrutinised by the public." (1986, p.187).*

- 2.180 There was support in the submissions for disclosure of a wide range of political party income. However, it has already been noted that no jurisdiction has yet attempted to require disclosure of all income.
- 2.181 The Commission considers that in addition to donations there should be requirements for the disclosure of other forms of party and candidate income. The NSW legislation (s.89 of the EF Act) provides a list of additional items and possible suitable provisions. For example:
- (a) annual party membership subscriptions (aggregated); and
 - (b) net proceeds of any fund raising ventures or functions.
- 2.182 Loans are a source of funds available to parties which could be used to circumvent disclosure requirements. For example, a firm or individual may "lend" funds to a party on terms such as "no interest" or "pay back when you can". Contributions over threshold amounts could then be hidden as commercial transactions rather than recognised as donations requiring disclosure.
- 2.183 Section 314AA of the CE Act (which was inserted by the PB & PD Act) prevents concealment by requiring political parties to disclose at the end of each disclosure period:
- "(c) the outstanding amounts, as at the end of the financial year, of all debts incurred by or on behalf of the party and the persons or organisations to whom those outstanding amounts are owed.*
- ...
- (4) Subject to the regulations, subsection (1) does not require particulars of a person or organisation referred to in paragraph (1) (c) to be included in a return if the total of all outstanding amounts referred to in that paragraph owed to the person or organisation is less than \$1,500."*
- 2.184 A similar provision concerning debts should also be contained in Queensland State legislation to overcome this potential problem.
- 2.185 Categories of income which encompass all sources of funds which parties may receive include:
- (a) interest received from banks and other savings;
 - (b) proceeds from sale of real property, other property (including livestock) and chattels;
 - (c) income from rent of property;
 - (d) subscriptions;
 - (e) donations in the form of professional (skilled) services;
 - (f) details of any outstanding loss and debts;
 - (g) details of fundraising activities similar to those prescribed under Section 89(c) of the NSW EF Act (see para.2.177); and
 - (h) any other income;
- in excess of \$1,000.

- 2.186 There should be appropriately heavy penalties for failure to disclose all income.
- 2.187 In connection with individual candidates it is more difficult to argue for full statements of all income because a substantial proportion of their income may have nothing to do with their electoral activities. A scaled down list of items should be included in the legislation, ie., proceeds from fundraising and the donation of professional services. Failure to abide by the disclosure requirements should attract heavy penalties, including the potential for removal from office in the case of elected Members who have failed to disclose all relevant income.

RECOMMENDATIONS

2.188 **The Commission recommends that:**

- (a) **Political parties should be required to disclose their total income other than by way of political donations, provided it is in excess of the threshold of \$1000, from the following sources:**
- (i) **interest received from banks and other savings;**
 - (ii) **proceeds from sale of real property, other property (including livestock) and chattels;**
 - (iii) **income from rent of property;**
 - (iv) **income from share holdings;**
 - (v) **subscriptions (as an aggregated figure except for any individual subscriptions of over \$200 per annum which should be disclosed individually in detail);**
 - (vi) **proceeds from fundraising;**
 - (vii) **donations in the form of professional (skilled) services; and**
 - (viii) **any other income.**

Details of outstanding loans/debts should also be provided.

- (b) **Candidates should be required to disclose, in addition to provisions recommended in this Report on donations and their contribution to their own campaign, proceeds from fundraising provided these proceeds are in excess of the threshold of \$200.**
- (c) **Disclosure periods should be the same as for the disclosure of political donations.**

2.189 The Commission has included provisions in Divisions 2 and 4 of the Draft Bill to implement these recommendations (in particular see 4H, 126M, 126Q and 126Z).

Appointment of Agents

Issue 13 Who should be responsible for furnishing returns/declarations on behalf of parties and candidates? Should a disclosure scheme, so far as it affects parties and candidates, operate through a system of agents? (Issues Paper, p.17).

EVIDENCE AND ARGUMENTS

- 2.190 (a) *"As this submission recommends disclosure of all income the appointment of an agent by parties becomes unnecessary.*
- All parties have Treasurers either full or part time and there would be few of these who would not be adequately qualified. The requirements are not that onerous and would be well within the capabilities of qualified personnel.*
- There may be merit in E.A.R.C. briefing the Auditor General to draw up a set of accounts and procedures for all parties. This would ensure uniformity and ease of auditing.*
- Should this proposal be taken up, discussion should take place with the parties officials, who may even be able to improve on the recommendation particularly in areas of details.*
- Independent candidates would need to appoint an agent who shall be a Certified Public Accountant." (A Sandell (S11)).*
- (b) *"Party accountants or campaign managers. As specified by the Federal and N.S.W. electoral system." (A Conway-Jones (S13)).*
- (c) *"It should be obligatory for each party to appoint a State agent, recognisable and responsible for the disclosure of all party funding." (F Short (S14)).*
- (d) *"We believe that the best process for furnishing returns is through an appointed party agent. It may be that a decentralised State such as Queensland might need a number of party agents throughout the State, although our experience in Federal elections is that a single central agent is effective enough." (Australian Democrats (S18)).*
- (e) *"... a registered agent to be responsible for lodging returns including nil returns." (ALP (S21)).*
- (f) *"The person/s responsible for furnishing returns/declarations on behalf of parties and candidates should be the candidate themselves or the executive of the particular political party concerned." (Rockhampton City Council (S33)).*
- (g) *"Each political party be required to appoint a public officer. Those public officers and each independent candidate should be responsible for compliance with the legislation." (National Party (S23)).*
- (h) *"We advocate the parliamentary leader should be legally accountable for the correct declaration of donations to the whole party. We advocate the responsibility should be borne by the party's organisational head in cases where the party has no parliamentary representation." (Queensland Watchdog Committee (S24)).*
- (i) *"The responsible person for furnishing returns/declarations on behalf of candidates and parties should be an agent in accordance with similar provisions in the Commonwealth and New South Wales. We have no objection to the appointment of additional party agents throughout the State.*

The Liberal Party believes that the party agent should be responsible for making disclosure of donations received by the whole party. Either the candidate's agent (or the candidate) should be responsible for disclosing donations received by the candidate and/or his campaign committee. Accordingly, we would support a model similar to that used in New South Wales which approach would minimise the burden of full-scale record keeping." (Liberal Party (S25)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.191 For the purposes of smooth administration of the disclosure scheme it would be appropriate for political parties and candidates to appoint agents to act as the accountable officers for the scheme and to be responsible for returns.
- 2.192 Both the Commonwealth and NSW disclosure schemes provide for the appointment of agents by political parties and candidates. In both schemes it is compulsory for a political party to appoint an agent, although a candidate is not compelled to appoint one. If a candidate does not appoint an agent, the candidate is obliged to carry out the agent's duties. Among other duties, it is the responsibility of an agent to furnish a return/declaration of political donations received (and electoral expenditure incurred) by the party or candidate.
- 2.193 In both the Commonwealth and NSW schemes, the State agent of a party is required to disclose political donations received (and electoral expenditure incurred) by the whole party within the State, including electorate organisations and local branches.
- 2.194 Commonwealth and NSW experience suggests that the appointment of a party agent should be compulsory since each party then has a readily identifiable officer upon whom the obligations of a disclosure scheme would unambiguously fall. Until the CE Act amendments of 1990, the appointment of an agent by a party was optional. In the absence of an appointment, the party "Secretary" was deemed to be the agent. In some cases problems were experienced in identifying the party office-holder whose duties most closely corresponded to the office of "Secretary" which had been prescribed in the Act.
- 2.195 The majority of submissions indicated support for the appointment of a party agent to be responsible for the furnishing of disclosure returns. No submissions were received as to whether a candidate should also appoint an agent to perform these duties or be responsible themselves for the lodgement of disclosure returns.
- 2.196 The Queensland Watchdog Committee (S24) advocated that the Parliamentary leader or party leader should be accountable for disclosure returns. Given that the Parliamentary leader generally has limited involvement in the administration of party financial matters, this suggestion does not appear appropriate.
- 2.197 The Commission believes that candidates should have the option of either appointing an agent or performing such duties themselves. The Commission further believes that if a number of candidates, either aligned to a non-registered political party or independents, wish to nominate the same person as their agent, this is acceptable.
- 2.198 The Commission proposes a number of machinery provisions (see Division 1, Draft Bill) to ensure the smooth running of the disclosure regime. These include:

- (a) if a registered party fails to appoint an agent, then obligations under the disclosure legislation should fall on each member of the party's executive committee, however this is described; and
- (b) the ECQ should maintain a register of agents.

RECOMMENDATIONS

2.199 **The Commission recommends that:**

- (a) **Political parties should be required to appoint an agent to be responsible for the lodgement of disclosure returns.**
- (b) **Individual candidates should be given the option of appointing an agent to fulfil the disclosure requirements or be responsible themselves.**

2.200 Provisions to enable these recommendations have been included in the Draft Bill in Division 1, clauses 126A and 126B.

Donations to be Disclosed in Returns by Parties and Candidates

Issue 14 What donations (and electoral expenditure) should be disclosed in a party's return and what should be disclosed in the return by a candidate endorsed by the party? (Issues Paper, p.18).

EVIDENCE AND ARGUMENTS

- 2.201 (a) *"Parties and candidates should be required to notify all contributions right up to the day of the election.
... This information should be publicly available in easily accessible locations, and should also be published." (Professor K Wiltshire (S8)).*
- (b) *"A properly audited set of accounts covering all aspects of the campaign and legal parameters." (A Conway-Jones (S13)).*
- (c) *"The N.S.W. scheme (2.85) seems to be appropriate and should work in Queensland." (F Short (S14)).*
- (d) *"A political party's return should include all donations to its candidates. Such candidates should not be required to furnish a return." (National Party (S23)).*
- (e) *"It is considered that all donations made to a candidate should be disclosed in the candidate's return and all donations made to the political party should be disclosed in the party's return." (Rockhampton City Council (S33)).*
- (f) *"We support the adoption of the NSW provision where donations received by the whole party are declared separately from those received only by the candidate." (Queensland Watchdog Committee (S24)).*

ANALYSIS OF EVIDENCE AND ARGUMENTS

2.202 This matter is dealt with in a different manner in Commonwealth and NSW legislation.

- 2.203 Under the Commonwealth scheme, the political party's return must also include the details of donations acquired by the party's endorsed candidates and passed on to the party. The main result of this division of reporting responsibilities is that the vast majority of disclosure returns lodged on behalf of candidates endorsed by parties are "Nil" returns.
- 2.204 In the NSW scheme, the party agent is responsible for making disclosures of donations received by the whole party but the candidate's agent (or candidate) is responsible for disclosing donations received by the candidate and their campaign committee.
- 2.205 The Commission considers that the NSW system has the advantage of separating out the donations and specified other income received by candidates from those received by the political parties.
- 2.206 Most submissions received on this matter supported a scheme whereby separate disclosure returns should be required by political parties and candidates. However, the National Party (S23) suggested that:
- "A political party's return should include all donations to its candidates. Such candidates should not be required to furnish a return."*
- 2.207 Disclosures by a candidate should include any direct contributions made by political parties to the candidate's campaign and vice versa.
- 2.208 The Commission considers that the ECQ should make every effort to make political parties, candidates and interested persons aware of their responsibilities so as to ensure compliance with the new legislative provisions.

RECOMMENDATIONS

- 2.209 **The Commission recommends that:**
- (a) **The agents of political parties should be required to lodge disclosure returns (including nil returns) in relation to donations received by the parties and other relevant income; and**
 - (b) **Individual candidates (or their agents) should be required to lodge disclosure returns (including nil returns) in relation to donations received by them and other relevant income.**
- 2.210 The Draft Bill contains provisions to implement this recommendation in Division 2 at clauses 126L and 126M.

Return Date for Disclosures

Issue 15 When should disclosure be made? (Issues Paper, p.18).

EVIDENCE AND ARGUMENTS

- 2.211 (a) *"Disclosure should be periodic and not linked solely to election campaigns."* (Professor K Wiltshire (S8)).
- (b) *"90 days after the writ for election. (with modern computer technology accounting is so much quicker)."* (A Conway-Jones (S13)).

- (c) *"This is perhaps not of great importance if 2.69 that is continuous yearly disclosure becomes law. A candidate will always know that the source of his/her funding must eventually be disclosed."* (F Short (S14)).
- (d) *"We believe the Federal system works adequately, and for consistency's sake alone could be copied for State electoral purposes. This would also apply to the length of time for disclosures to be furnished ... "*

and

" ... to ensure maximum accountability, donations and income should be declared as promptly as possible. We believe it is possible for candidates and parties to declare such income within a week, and suggest that the Commissioners may wish to investigate such a requirement." (Australian Democrats (S18)).

- (e) *" ... returns to be lodged within 20 weeks of polling day by parties, and 15 weeks by individual candidates."* (ALP (S21)).
- (f) *"At the time limited for publishing the annual accounts of the political parties."* (National Party (S23)).
- (g) *"This submission brings all parties and candidates to a common accounting period. Disclosure should be made within 90 days of the end of the financial year."* (A Sandell (S11)).
- (h) *"Disclosure should be required to be made within three (3) months after polling day."* (Rockhampton City Council (S33)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.212 The deadline for disclosure returns must provide sufficient time for political parties, candidates and interested persons to complete their returns but still ensure that, when received, the information contained in the disclosure returns is as current as possible.
- 2.213 As can be seen by Table 2.3 below, the deadline for lodging disclosure returns varies from jurisdiction to jurisdiction.

TABLE 2.3

DEADLINES FOR DISCLOSURE RETURNS

JURISDICTION	POLITICAL PARTY	CANDIDATES, GROUPS AND THIRD-PARTIES
Commonwealth	20 weeks after polling day	15 weeks after polling day
New South Wales	90 days after return of writ for the election	90 days after return of writ for the election
Victorian Bill	20 weeks after polling day	15 weeks after polling day
Western Australian Bill	To be lodged by 30 Sept of each year	15 weeks after polling day

2.214 Earlier in this chapter, it was recommended that different disclosure periods should apply for:

- political parties - in a year in which there is a general election separate returns for the non-election and election periods, otherwise annually;
- candidates - if a candidate at the previous election: from the 31st day after the previous election to 30 days after polling day; and for new candidates: from the issue of the election writ or the day on which they announce their candidacy, whichever is earlier, to a date 30 days after polling-day;
- interested parties - the last full year of term of Parliament to a date 30 days after polling-day (less if an election is called early (see para.2.112(e)(iv))).

2.215 As is the case elsewhere in Australia, this will involve different deadlines. Various deadlines were suggested in submissions received on this question ranging from the deadlines imposed in the Federal legislation (20 weeks after polling-day for parties, and 15 weeks after polling-day for candidates, groups and third parties) to a suggestion by the Australian Democrats (S18) that:

" ... to ensure maximum accountability, donations and income should be declared as promptly as possible. We believe it is possible for candidates and parties to declare such income within a week, and suggest that the Commissioners may wish to investigate such a requirement."

2.216 The Commission considers that, in order that accurate and comprehensive disclosure returns are able to be lodged, a reasonable period of time should be allowed for their compilation.

2.217 The Commission believes that sufficient time should be allowed for political parties to assemble the information for their returns. It is proposed that their annual returns should be submitted by 30 April of each year. The Commission has noted that Clause 314AB of the current Commonwealth Bill for An Act to amend the *Commonwealth Electoral Act 1918* extends the period for lodgement of returns to 20 weeks after the end of the financial year. The Commission is of the view that the shorter period of 120 days proposed in the Draft Bill allows sufficient time in the smaller Queensland jurisdiction.

2.218 Candidates and interested persons have a proposed disclosure period ending 30 days after polling-day. An additional 90 days after the end of the disclosure period should provide sufficient time to lodge the appropriate return.

2.219 The Commission is sympathetic to the fact that political parties, candidates and interested persons may not always be able to complete and submit returns accurately. Consequently administration of the disclosure scheme should make provision for incomplete returns and amendment of returns, without affecting criminal liability for false or misleading returns. Provisions to this effect have been included in Division 5 of the Draft Bill (Appendix E).

RECOMMENDATIONS

- 2.220 **The Commission recommends that the deadline for receipt of disclosure returns of donations and other income by the Electoral Commission of Queensland should be:**
- (a) **political parties** - (i) 30th April each year; and
(ii) 120 days after each polling-day;
 - (b) **candidates** - 90 days after the end of the disclosure period (ie. 120 days after polling-day); and
 - (c) **interested persons** - 90 days after the end of the disclosure period (ie. 120 days after polling-day).
- 2.221 Provisions have been incorporated into Division 2 of the Draft Bill to implement these recommendations at clauses 126L, 126M and 126N.

Auditing of Returns

Issue 16 Should parties and candidates be required to appoint auditors to provide reports/certificates on their returns/declarations? (Issues Paper, p.19).

EVIDENCE AND ARGUMENTS

- 2.222 (a) A Conway-Jones (S13) proposed that candidates and parties should be required to appoint auditors to provide reports/certificates to accompany their returns/declarations.
- (b) *"Most definitely candidates and parties should be required to have their political donations and expenditure audited. If incorporated bodies of a non-political nature are subject to strict audit, why should political parties be exempt. Surely the public interest here is paramount."* (F Short (S14)).
- (c) The Australian Democrats (S18) were of the opinion that the Federal system which does not require audited statements would be appropriate.
- (d) The National Party (S23) was of the opinion that auditors should be appointed to provide reports or certificates on returns and declarations.
- (e) *"The Liberal Party does not believe that parties and candidates should be required to appoint auditors to provide reports/certificates on their returns."* (Liberal Party (S25)).
- (f) *"The whole accounting system of all parties and independents may need to be examined and complete uniformity introduced.*
It would be safe to assume that parties already have their books audited at least once per year. This audit should be taken over by the Auditor General." (A Sandell (S11)).
- (g) *"Parties and candidates should be required to appoint auditors to provide reports/certificates on their returns/declarations."* (Rockhampton City Council (S33)).

2.223 A number of witnesses at the Public Hearing commented about auditing procedures, especially the possibility of spot audits:

- (a) " ... spot audits is the only way you'd maintain public confidence." (P Beattie MLA (T14)).
- (b) " ... a spot audit would be obviously appropriate." (T Walters, Australian Democrats (T33)).
- (c) "I think the key to success in this area lies in the power of the enforcement agency to follow through; and I think someone mentioned before, spot audits."

and

"But if the power to chase moneys which are spent effectively on campaigns is there in the legislation, there will be little or no incentive for people to engage in artificial manipulation of their funds ..." (W Swan, ALP (T41)).

- (d) However the National Party had a different view. D Russell QC (T65) stated for the party:

"But if one simply had a system of annual audits, as indeed we do, and I expect the other parties do, in one form or another, then there really is no need, in our submission, for spot audits."

He also observed (T66-7) that:

"The second thing is as part of the annual audit report, the auditor has to certify that the Commission has been given all the information to which it was entitled, under the act whatever it is, and, of course, they would, as part of their audit, necessarily have to certify that they had access to all records that were necessary to enable them to form that opinion."

and

"If the position that the Commission had was similar to that which the Commissioner of Taxation has - in other words, in the normal course of events, he accepts audited accounts. If he has reason to question them, then at that stage powers of inspection can be exercised. That would seem to us to be a reasonable balance. The other point that we would make, I think, is that auditors - a regular auditor of continuing concern is far more likely in fact to develop audit programs which will provide the information that the Commission needs than a spot audit would, because a regular auditor ... is always in a position of having an intimate knowledge of the organisation that's being audited - is far more likely to be able to pick up something that's peculiar in any year or something that looks a little untoward ... "

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.224 There is no requirement in the CE Act that returns disclosing political donations and other income (or electoral expenditure) be audited.
- 2.225 In comparison the EF Act provides that a declaration " ... shall be deemed not to be validly lodged with the Authority unless it is accompanied by a certificate of an auditor ... " (s.93).
- 2.226 The Liberal Party (S25) and the Australian Democrats (S24) were not in favour of requiring that disclosure returns be audited. The remaining submissions on this matter supported the need for disclosure returns to be audited.

- 2.227 The Commission considers that auditing requirements, as is the case in NSW, provide a degree of legitimacy to the returns and do not create a burdensome imposition on political parties and candidates.
- 2.228 The CE Act (s.317) provides for the keeping of records which are or could be required to be reported in a disclosure return. The section, which was amended by the PB & PD Act, now stipulates that any such records be retained for a period of three years commencing on the polling-day in that election.
- 2.229 The Commission considers that the Draft Bill should contain a similar requirement. The Commission further considers that the ECQ should be required to retain its disclosure records for a longer period (seven years) after each election.

RECOMMENDATIONS

- 2.230 **The Commission recommends that:**
- (a) **Political parties, individual candidates and interested persons should be required to submit an audited statement in regard to disclosure of donations and other income returns.**
 - (b) **Political parties, candidates and interested persons should be required to keep records that are or could be required to be reported in a disclosure of donations and other income return for a period of at least three years commencing at the end of the relevant disclosure period.**
 - (c) **The Electoral Commission of Queensland should retain disclosure returns in its office for a period of at least seven years commencing on the due day for giving the return.**
- 2.231 The Draft Bill contains provisions in Division 5 to implement this recommendation. The relevant clauses are 126ZF, 126ZG, 126ZH and 126ZI.

Information On Public Register

Issue 17 What information about donors and donations should be recorded on a public register? (Issues Paper, p.19).

EVIDENCE AND ARGUMENTS

- 2.232 (a) *"I agree totally with 2.91 and in the case of large donations the business interests of the donor should be made clear. This is absolutely necessary if corruption is to be stamped out."* (F Short (S14)).
- (b) *"... the name and address of each donor to be provided."* (ALP (S21)).
- (c) *"It is considered that the name and address of the donor and the date and amount of the donation should be disclosed."* (Rockhampton City Council (S33)).
- (d) *"The donor's identity and the size of the donation."* (National Party (S23)).
- (e) *"The Commonwealth details shown in Appendix B3 would seem to be suitable for Queensland and so are recommended."* (A Sandell (S11)).

- (f) *"The public register should contain details of the names and addresses of individual and corporate donors and the amount donated but not the exact date of donation."* (Dr I Ward (S34)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.233 The details to be disclosed under Commonwealth and NSW legislation are essentially the same: names and addresses of donors and the date and the amount of each donation above the prescribed threshold.
- 2.234 Submissions proposed the name and address of the donor and the size of the donation or source of other income should appear on the public register. Anything less would detract from the benefit of introducing such a register. The date of the donation should also be recorded so that its location in the electoral cycle can be noted.
- 2.235 In light of earlier recommendations that donations made below the threshold limit should be aggregated and should not be disclosed individually, these donations should appear in the public register in a manner reflecting this recommendation.

RECOMMENDATIONS

- 2.236 **The Commission recommends that:**
- (a) **The following information should be set out in disclosure returns and made publicly available by the Electoral Commission of Queensland on a public register:**
- (i) **name of the political party or candidate who was the recipient of the donation;**
 - (ii) **name and address of the donor;**
 - (iii) **size of the donation; and**
 - (iv) **date when the donation was received.**
- (b) **Details of donations made below the relevant threshold limit should be aggregated and disclosed in the return for the public register as a single total figure accompanied by a frequency indicator, for example, 25 donations of \$199; 15 donations of \$99.**
- (c) **If aggregated donations from one donor exceed the threshold limit the name and address of the donor should appear on the public register.**
- 2.237 Provisions have been included in the Draft Bill to implement these recommendations in Division 2, clause 126P. Aggregation of donations is provided for in clause 126T.

Offences and Penalties

Issue 18 What acts should constitute offences under any legislation dealing with the registration of political donations? (Issues Paper, p.19).

2.238 This issue is addressed in Chapter Six, Offences and Penalties, of this Report.

Enforcement

Issue 19 What powers should the responsible authority possess if registration/disclosure provisions are to be enforced? Should the authority have an unfettered right of entry and inspection? Should it be able to conduct audits to verify returns/declarations? (Issues Paper, p.20).

EVIDENCE AND ARGUMENTS

2.239 (a) *"Enforcement may well turn out to be one of the most important areas. To make the legislation a success enforcement must be included in full detail".*

The section on enforcement must give whatever authority is finally chosen to operate the legislation sufficient authority to carry out its charter. There must be no doubt about its powers to investigate ... " (A Sandell (S11)).

(b) *"Obviously the responsible authority must have all necessary powers to verify returns/declarations." (F Short (S14)).*

(c) *"In relation to enforcement, it is clear that the powers currently held by the Australian Electoral Commission are not adequate to effectively enforce the Federal scheme, even with its legal loopholes. It is difficult from our perspective to know exactly what powers would be required, but it hardly seems worthwhile setting up the whole scheme if it can't be effectively enforced. The power to have snap inspections of documents would seem to be a minimum requirement." (Australian Democrats (S18)).*

(d) *"Offences, penalties and enforcement procedures must be set at a level which ensures an effective scheme." (ALP (S21)).*

(e) *"The responsible authority (the judiciary) should have adequate powers to verify returns/declarations so that it can establish whether registration/disclosure provisions have been complied with satisfactorily and in accordance with the legislation." (Rockhampton City Council (S33)).*

(f) *"Any enforcement of disclosure legislation should be provided without the establishment of yet another bureaucratic structure to regulate these matters and accordingly the Liberal Party is of the view that the enforcement capacity should be placed with an existing body, probably the Electoral Commission.*

We do not believe that there should be an unfettered right of entry and inspection and that such right should only exist upon establishing the reasonable likelihood of a breach of the disclosure requirements.

We do not believe that it should be able to conduct audits or verify returns/declarations as such proposal would impose yet another financial burden on the party and/or individual concerned.

It should be pointed out that whilst such provisions may be onerous upon parties they would be in many respects intolerable to individual candidates and would tend to discourage candidates from standing at election time." (Liberal Party (S25)).

- (g) The National Party (S23) agreed that the responsible authority should have unfettered right of entry and inspection and should have the power to conduct audits to verify returns/declarations - "... where there is reason to believe that the audit certificate provided is false."
- (h) "Powers of prosecution. Yes, unfettered entry, same as Fitzgerald investigators. Yes, powers of auditing." (A Conway-Jones (S13)).
- (i) Dr I Ward (S34) recommended that the responsible authority's powers:
- " ... should extend to an unfettered right to inspect and verify all party records and accounts - including 'leader accounts' operated by politicians or others and ostensibly not party accounts. It is as least arguable that it should have similar powers to examine the accounts and records of individuals and organisations where there are reasonable grounds to believe that illegitimate payments may have been made to parties or candidates. Without powers to inspect and validate it is unlikely that the public collection agency will be able to curtail private donations to parties and politicians."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 2.240 It is clear from submissions that enforcement provisions should be included in the Draft Bill.
- 2.241 Both the Commonwealth and NSW schemes have provisions for enforcing compliance with disclosure provisions. However, the extent to which these provisions are effective has been questioned. In the case of the Commonwealth, a limitation of its powers to conduct audits of returns has restricted its ability to enforce its disclosure legislation.
- 2.242 The NSW legislation goes further by permitting the EF Authority to enter and inspect records relating to disclosure by political parties/candidates. However, such powers appear to be hampered by an anomaly in the EF Act regarding the auditing of such records. It appears that if the declaration of a party/candidate is accompanied by an auditor's certificate and that certificate is in compliance with the EF Act, the EF Authority has no power to inspect the relevant books and records.
- 2.243 The JSCEM (1989b) considered the impact of these matters on Commonwealth disclosure legislation. The Electoral Commissioner in giving evidence to the Committee stated that he did not believe there were major abuses occurring but added:
- " ... there is the disquieting fact that the affairs that have become public knowledge and that led to further investigation by the police and to persecutions and the like, have invariably come about not as a result of any natural interpretation of the evidence but as a result of some internal controversy within the organisation or between organisations that has caused somebody to do someone in. This is slightly worrying. If they do not fall out, then we never get to know." (p.73).*
- 2.244 The Committee recommended that the CE Act be amended to provide the AEC with the power to conduct spot audits of the electoral activities of registered political parties.
- 2.245 In the words of the ICAC:

" ... it is clear that provided there is an auditor's certificate accompanying a declaration, and that that certificate is in the terms required by the Act, the Authority has no power to inspect the relevant books. It is the privately appointed auditor, and not the Authority, upon whom the Act relies. That is totally unacceptable if the requirement of disclosure of political donations is to be enforced.

The Act should be amended to give the Election Funding Authority an unfettered right of entry and inspection." (ICAC 1990, pp.535-6).

- 2.246 Both the Victorian and Western Australian proposed legislation have taken additional steps in this regard. These Bills provide for the issue of search warrants and the serving of notices upon persons for certain information.
- 2.247 Submissions received in the main supported the need for stringent enforcement provisions to be provided to allow for the verification of details submitted in disclosure returns.
- 2.248 The Commission considers the legislation should provide for an unfettered right of entry and inspection by persons authorised by the ECQ. If an authorised person believes on reasonable grounds that a person may be able to give information needed for an investigation, they should be able to require the person to attend before the authorised person. There should be a regime of accompanying provisions to give an authorised person power to apply to a magistrate for a warrant to enter premises and obtain documentation and other material relevant to their investigation. An authorised person should give written notice containing particulars as to any documentation and material seized from premises in pursuance of their investigation. Machinery provisions to effect these proposals have been included in the Draft Bill in Division 6 and Division 3A.
- 2.249 The Commission is aware that the ECQ is unlikely to have the resources to provide for permanent auditing staff. It is therefore suggested that the ECQ, in consultation with the professional associations, compile a list of auditors who are qualified for the task. This list should then be distributed to political parties for their consideration and comment. Subject to the agreement of the party involved, the ECQ would select an auditor from that list if the need should arise.
- 2.250 Additionally, these powers should allow the administering authority to conduct "spot audits", relevant to an election, of the financial records of a political party, candidate or interested person.
- 2.251 The Commission considers that, whilst these enforcement powers may be drastic, similar powers now exist in other Australian jurisdictions and are considered to be a vital component of the disclosure schemes.
- 2.252 The Commission has also considered the need for the ECQ to have sufficient powers to verify or ascertain the true source of donations. Such powers are necessary so that the public can be confident that no organisation or individual can disguise their identity and exert undue influence on a party or candidate.
- 2.253 To achieve this the ECQ must, in addition to the powers of entry and audit, have powers to write to donors asking them to verify that they are, in fact, the true source of the donation.

- 2.254 Such a power needs a suitable sanction to render it effective. The Commission believes that the ECQ should be empowered to confiscate funds, in excess of the allowed maximum anonymous donation, from recipient registered parties and candidates if it cannot satisfy itself that the true source of the donation can be verified.
- 2.255 The ECQ should be empowered to write to donors seeking verification that they made the donations from their own resources. Consideration has also been given to the setting of a deadline to receive responses to this correspondence from the ECQ seeking information as to the true source of donations made to political parties and candidates.
- 2.256 The Commission considers that a period of 30 days after the date of dispatch of a letter seeking confirmation of the true identity of a donor would be a reasonable period of time to receive responses to this correspondence.

RECOMMENDATIONS

- 2.257 **The Commission recommends that:**
- (a) **The Electoral Commission of Queensland should be provided with powers of unfettered right of entry and inspection; and the power to conduct "spot audits" of the records of a political party, candidate or interested person in relation to disclosure of donations and other income returns.**
 - (b) **The Electoral Commission of Queensland should be empowered to demand from donors to registered parties, candidates and interested persons confirmation that they are the true source of the donation or else the identity of the true donor. The deadline for receipt of such information from donors should be 30 days from the date of dispatch of a letter from the Electoral Commission of Queensland seeking confirmation of the true identity of the donor.**
 - (c) **If the true source of the donation cannot be ascertained then the Electoral Commission of Queensland should have the power to confiscate the amount of the donation that is in excess of the maximum allowed anonymous donation.**
- 2.258 Provisions to implement (a) above are in Division 6 of the Draft Bill; clauses 126O and 126T provide for (b) and (c).

Local Government and Aboriginal and Torres Strait Islander Issues

- 2.259 The foregoing discussion has focused on donations to political parties, candidates and interested persons (third parties) who are campaigning in respect of Legislative Assembly elections and by-elections. The Commission believes that the relevance of the findings and proposals to Local Government, including Community Council elections, deserves consideration.

- 2.260 The potential for corruption or undue influence arising from political donations is obviously not confined to one level of government. With the introduction of the scheme proposed for the Legislative Assembly electoral system in this Report, two levels of government, Commonwealth and State, will be covered by disclosure programs. The risk of improper payments at these two levels will be significantly reduced.
- 2.261 The Commission has noted that certain of the problems raised in the Fitzgerald Inquiry in connection with political donations have also been the subject of investigations by the CJC. The focus of the CJC inquiry was donations from land developers to Gold Coast City Council Aldermen and candidates.
- 2.262 In the *Report on a Public Inquiry into Payments Made by Lands Developers to Aldermen and Candidates for Election to the Council of the Gold Coast*, the CJC found that while substantial donations had been made by certain Gold Coast developers to candidates for election to the Gold Coast City Council, there was no evidence to suggest that particular favours were being sought as a result (1991, pp.129-30).
- 2.263 However, the CJC considered that there was an expectation on the part of the developers that they would all receive "something in return" (p.129) and that such donations would have a definite effect on the deliberations of Aldermen.
- 2.264 The CJC recommended:
- *The Electoral and Administrative Review Commission consider, pursuant to Section 2.10(b)(i) of the Electoral and Administrative Review Act 1989, the question of election funding in the Local Government electoral system.*
 - *The introduction of legislation requiring, as part of a co-ordinated approach, compulsory disclosure of all donations made to Local Authority candidates.*
 - *Such disclosure not be linked solely to election campaigns, but encompass all donations of cash or kind received by any Councillor or Alderman in the discharge of his duties.*
 - *The introduction of harsh and enforceable penalties for failure to disclose. (Forfeiture of the seat is likely to be the most effective sanction.)*
 - *The Local Government Act and Regulations, as they currently stand, do not adequately address the plethora of potential conflict of interest situations which may arise regarding the administration of local government in this State. It is recommended that the Minister for Housing and Local Government conduct a review of the present legislation and direct amendments to be drafted where necessary to ensure it is clearly and unequivocally expressed that the pecuniary interests of Local Authority members and employees cannot be allowed to conflict with the duties. Time limits for prosecution action and penalty options should also be reviewed.*
 - *Local Authorities should be assisted in establishing a uniform and comprehensive code of conduct." (1991, p.130).*
- 2.265 In some of the larger cities of Queensland local government elections are contested by the major parties. In such cases, donations received by the parties for the purpose of local government elections will come under the umbrella of the disclosure provisions in the new legislation. They will have to be disclosed to the ECQ.

- 2.266 This leaves donations to individual candidates and other teams of candidates for election at the local government level. The Commission believes that disclosure of donations provisions should apply to these candidates as well. The Commission believes the potential for corruption at this level to be as significant as at both other levels of government. The evidence of the CJC investigation bears out the Commission's view.
- 2.267 Accordingly the Commission considers that the disclosure requirements relating to individual candidates which have been proposed in this chapter should also apply to local government, including Community Council, elections.
- 2.268 The Commission considers that the Department of Housing and Local Government and the Department of Family Services and Aboriginal and Islander Affairs should develop legislation based on the proposed State scheme, requiring all councils to keep registers relating to the disclosure of political donations. These registers should be open for public inspection.
- 2.269 This would keep the matter at the local level thereby ensuring such information is maintained by the relevant council and is accessible to local media and members of the public.
- 2.270 These registers should be retained for at least seven years. Before destruction, Local Authorities should seek the consent of the ECQ.

RECOMMENDATION

- 2.271 **The Commission recommends that the disclosure of donations provisions of the new electoral legislation should also apply to candidates at Local Government elections, including Community Council elections. The Ministers respectively responsible for Local Government and for Aboriginal and Islander Affairs should develop enabling legislation to extend disclosure requirements to the Local Government level. The registers of donations should be public and be maintained by the relevant Local Authorities themselves. The information on the registers should be maintained for a period of at least seven years following each Local Government election. The approval of the Electoral Commission of Queensland should be sought before any such information is destroyed.**

CHAPTER THREE

DISCLOSURE OF ELECTORAL EXPENDITURE

Introduction

- 3.1 Currently in Queensland relatively little is known about political parties' and candidates' electoral expenditure at the State level. The total amounts expended are not known and little is known about what the money is spent on, save that most of it goes on political advertising, particularly in the electronic media: television and radio. It is also not known to what extent other groups and individuals ("third parties") are engaged in electoral expenditure in the State, although it is known that interest groups are becoming more involved in campaigning.
- 3.2 In other jurisdictions disclosure of electoral expenditure has usually gone hand-in-hand with disclosure of political donations. In those jurisdictions committed to the principle of public disclosure, disclosure is justified on the grounds that it informs the public of the amounts which parties and candidates raise and spend in seeking election, and it brings to the public's attention any gross disparities in the financial capacity of parties and candidates. The public can use the information to assess whether their vote is being influenced by the spending.
- 3.3 When the Commonwealth expenditure disclosure scheme was first proposed, the Joint Select Committee on Electoral Reform (JSCER) explained that it would allow " ... the electorate to be well informed on the major donors to political parties, groups and candidates and the major expenditures of those involved in an election campaign ... " (JSCER 1983, p.177) (emphasis added).
- 3.4 Disclosure of electoral expenditure has also been justified in various jurisdictions as part of a scheme which also includes public funding of election campaigns. In jurisdictions with public funding, such disclosure is sometimes a condition of eligibility for the receipt of public funds. If public funds are provided to parties and/or candidates, it is arguable that the public have the right to know what the money is being spent on.
- 3.5 A concern expressed in relation to the substantial costs of modern election campaigns is that particular parties and candidates may, purely through the exercise of superior resources, dominate the campaign process and therefore potentially dominate election outcomes. The PB & PD Act by banning electronic advertising removes a substantial cost from election campaigns. The limited evidence from the few elections held since the Act has been in effect suggests that political parties now spend more on other forms of advertising, and that candidates have increased the local content of their campaigns.
- 3.6 It may be in the public interest that electoral expenditure should be publicly disclosed. The Commonwealth's *Inquiry Into Disclosure of Electoral Expenditure Report* suggested:

"Requirements for disclosure may by themselves act as a deterrent to excessive expenditure. It is important, in any event, that the people, who are the principal participants in an election, should be fully informed and be therefore in a position to judge whether expenditure has been incurred to an excessive extent and also whether disproportionate amounts of expenditure have been incurred as between parties and as between candidates." (Harders 1981, p.9).

- 3.7 The question which the Commission must address first is whether, in the public interest, details of electoral expenditure should be disclosed on a public record. If the answer to this general question is that there should be disclosure, then the details of such a disclosure scheme can be worked out.

General Issue

Should political parties and candidates be required to disclose their electoral expenditure in Queensland? What are the arguments in support of or against public disclosure? (Issues Paper, p.23).

CURRENT SITUATION

- 3.8 Queensland has no legislation or administrative arrangements which require the disclosure of electoral expenditure, and it has never had such requirements.
- 3.9 The Commonwealth and New South Wales have a statutory requirement for all political parties, candidates and groups to report details of electoral expenditure incurred during an election campaign. As well, the Commonwealth provisions require "third parties" (persons other than registered political parties, candidates and Senate groups) to report electoral expenditure. The CE Act also requires broadcasters (including television stations) and publishers of any newspaper, magazine or other periodical, whether published for sale or distribution without charge, to submit returns of electoral advertisements broadcast or published during an election period. A modified Commonwealth scheme operates in the Australian Capital Territory.
- 3.10 Currently, Victorian and Tasmanian legislation contain provisions relating to candidates' electoral expenses. The approach in those States has been to set a flat rate maximum permissible limit which applies regardless of the number of electors in an electorate.
- 3.11 The Tasmanian Act also provides that no one other than the candidate or their agent shall incur electoral expenditure promoting the candidate's election. The ban extends to the political party endorsing the candidate. A return must be filed within 60 days after the day on which the result of the election is declared.
- 3.12 Western Australia and South Australia have no legislative restrictions on electoral expenditure. The Western Australia Government intends introducing a Bill relating to electoral expenditure in the near future.

EVIDENCE AND ARGUMENTS

- (a) *"The Liberal Party has no objection to the disclosure of electoral expenditure."* (Liberal Party (S25)).
- (b) *"... we support the rationale that it is useful for the public to be aware of amounts expended on campaigning, and how it was expended. Even without public funding, we support the disclosure of electoral expenditure ..."* (Australian Democrats (S18)).
- (c) The ALP (S21) advocated disclosure of electoral expenditure only if a public funding scheme was also introduced:

"The main purpose of the reporting of expenditure is to ensure a check-back on the effectiveness of public funding arrangements and the requirements for disclosure of donations."

(d) *"Public confidence in political financing should be strengthened, by requiring candidates and parties to disclose their incomes and expenditure." (Professor K Wiltshire (S8)).*

(e) *"A record of spending by political parties is extremely important if you have any interest in democracy and political honesty. In many countries overseas the elections are always won by the parties that spend the most money. At least we should know about this when it happens here. Who spends what is very important to many voters. A rich party should not be able to buy the election and if they do the voters should be made aware of such facts.*

All political parties, politicians and those groups or individuals who seek to influence the outcome of an election must be open to careful audit. All such records must be available to all who wish to see them. All such records must be exact and specific in all details. At the end of each calendar year all such financial details relating to political activity must be submitted to the appropriate state agency for secure storage. Such records must be available to those who seek such information in studies of the written records." (H Duncan (S1 and S2)).

(f) The National Party (S23) supported the introduction of a disclosure of electoral expenditure scheme.

3.13 Not all submissions were in favour of disclosure of electoral expenditure:

(a) *"... disclosure may well penalise the honest." (M Passmore (S9)).*

(b) *"One major disadvantage of expenditure disclosure is that it will allow each party to conduct a detailed analysis of either parties priorities. This further allows the analysis to be matched with the success or failure of the other party. Should any party have discovered that one form of advertising is singularly successful should it not be allowed to retain its secret." (A Sandell (S11)).*

(c) *"... disclosure of electoral expenditure ... most issues mentioned would have to be considered an affront and threat to the political liberties, traditions and expectations of the people of Queensland. In short should they be implemented they would be bound to be repealed at the first given opportunity by later non-socialist Governments." (Australian Republican Party (S20)).*

ANALYSIS OF EVIDENCE AND ARGUMENTS

3.14 The arguments in support of disclosure schemes are:

(a) the public has a right to know how much is being spent by individuals and organisations in soliciting their votes;

(b) election outcomes may be dominated by parties with superior financial resources;

(c) disclosure provisions may deter excessive expenditure;

(d) the public has a right to know the extent to which third parties are involved in election campaigns; and

(e) as an accountability mechanism where public funding is provided.

3.15 Arguments against disclosure usually centre on:

- (a) the right of candidates and parties to spend money on election campaigns as, and to whatever extent, they wish; and
 - (b) the administrative costs associated with disclosure provisions.
- 3.16 The major political parties and a number of other submissions supported the introduction of a scheme for the disclosure of electoral expenditure.
- 3.17 A number of arguments were put forward by those opposing such a scheme. However, the Commission considers that these were not as persuasive as those in favour of disclosure of electoral expenditure.
- 3.18 The Commission is of the view that if, as recommended in Chapter Two of this Report, a system of disclosure of political donations is introduced, the information on the public register will be more meaningful if details of electoral expenditure are also available. In combination they will serve to generate a comprehensive picture of election finance in Queensland elections.
- 3.19 The Commission considers that political parties and candidates should be required to disclose their political expenditure. The main reasons in support of this proposal are:
- (a) the public have a right to know where electoral expenditure is directed;
 - (b) by the end of this year it is possible that only Queensland, South Australia and Tasmania (in respect of the House of Assembly) will not have legislation for disclosure of electoral expenditure;
 - (c) the arguments in favour of disclosure schemes outweigh those against;
 - (d) most submissions supported such a scheme; and
 - (e) most political parties did not oppose a disclosure scheme.
- 3.20 The Commission will consider the question of whether electoral expenditure by third parties should also be disclosed later in this chapter (paras.3.45-3.58).
- 3.21 The Commission will also consider the question of whether political parties and candidates for Local Government, including Community Council elections should also be subject to disclosure requirements. Issues associated with this matter are discussed at the end of this chapter (paras.3.142-3.144).

RECOMMENDATION

- 3.22 **The Commission recommends that electoral expenditure by political parties and candidates should be disclosed.**

The Proposed Scheme for the Disclosure of Electoral Expenditure

- 3.23 The Commission has concluded on the evidence that a scheme for the disclosure of electoral expenditure should be introduced in Queensland. It is now necessary to consider the details of an appropriate scheme for the State.

MATTERS FOR CONSIDERATION

- 3.24 There are a number of major questions the answers to which define the scope and administration of disclosure schemes:
- (a) What should be the definition of electoral expenditure?
 - (b) What should be the disclosure period?
 - (c) Should other interested persons (ie third parties, both organisations and individuals) who engage in electoral expenditure be required to disclose their expenditure?
 - (d) Should disclosures be required of those who provide the services on which the money is spent (eg. broadcasters and publishers)?
 - (e) How should government advertising be treated?
 - (f) Should there be any limits on electoral expenditure?
 - (g) What processes should apply to disclosure?
 - (h) What should be the extent of public availability of returns/declarations?
 - (i) Should individual items of expenditure be disclosed or would aggregated totals be sufficient?
 - (j) Should there be limits below which expenditure should not be disclosed?
 - (k) What offences and penalties should apply for non-compliance or false returns?
 - (l) How should enforcement of the provisions be conducted?

Definition of Electoral Expenditure

Issue 1 What should be the definition of electoral expenditure? Should all electoral expenditure be disclosed or should disclosure be confined to specified items of expenditure? (Issues Paper, p.27).

EVIDENCE AND ARGUMENTS

- 3.25 Some submissions recommended that all electoral expenditure be disclosed. For example:

"Expenditure on every aspect of promoting a candidate. All expenditure disclosed." (A Conway-Jones (S13)).

- 3.26 The majority of submissions which commented on this issue favoured the NSW definition:

- (a) *"The Commonwealth scheme seems to be adequate but with the addition of postage, telephones, messages and telegrams as in the NSW practice having regard for the size of Queensland electorates, travel and accommodation could be eliminated." (F Short (S14)).*

- (b) *"If expenditure is to be disclosed, the definition of electoral expenditure should be relatively comprehensive. We believe the New South Wales definition, as detailed in paragraph 3.23 of the Issues Paper is suitable. The disclosure period which applies for the Federal scheme would be suitable for Queensland."* (Australian Democrats (S18)).
- (c) *"The definition contained in the Electoral Funding Act (NSW) should be adopted."* (National Party (S23)).
- (d) *"We are of the view that the definition of electoral expenditure should be such as to disclose all electoral expenditure., Accordingly we would recommend that the definition used in the New South Wales scheme should be adopted."* (Liberal Party (S25)).
- (e) *"For the legislative definition the Commonwealth details in Appendix C would form the best basis. The NSW additions in paragraph 3.23 could be added. A further addition might be how-to-vote cards."* (A Sandell (S11)).

3.27 The Queensland Watchdog Committee (S24) specified a list of items they believed should be disclosed. All relate directly or indirectly to political advertising:

"The categories of expenditure to be disclosed should include those relating to spending on political advertising - advertising costs through the electronic, print, and other media, printing of electoral material distributed during the campaign period, consultants and advertising agents fees, expenditure on opinion polls or other research, and direct mail costs."

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 3.28 Central to any disclosure scheme is the specification of expenditure items on which expenditure must be disclosed. Schemes currently in operation in Australia differ as to how comprehensive they are.
- 3.29 It is important that electoral expenditure be clearly defined in any disclosure scheme so that those required to furnish returns understand the requirements and keep the necessary records. It is equally important that any definition should encompass all components of party and candidate expenditure which are directed towards electoral success. It is also important that the definition can be extended to third parties if disclosure of their expenditure is required by the scheme adopted.
- 3.30 However, this approach poses a dilemma. It can be argued that all expenditure by political parties is ultimately aimed at winning elections and should therefore be publicly disclosed. This would include expenditure on party administration and infrastructure well outside the timeframe of an election campaign.
- 3.31 Up to now no jurisdiction in Australia has attempted to enforce disclosure of all party expenditure. Such a proposal would place major accounting burdens on the parties and the relevance and value of much of the information would be questionable.
- 3.32 A compromise position is to list certain categories of expenditure which must be disclosed. This is the approach which has been adopted by other jurisdictions.

3.33 Definitions in use or proposed elsewhere in Australia are:

(a) *Commonwealth Electoral Act 1918:*

"308. (1) In this Division, 'electoral expenditure', in relation to an election, means expenditure incurred (whether or not incurred during the election period) on -

- (a) the broadcasting, during the election period, of an advertisement relating to the election;*
- (b) the publishing in a journal, during the election period, of an advertisement relating to the election;*
- (c) the display, during the election period, at a theatre or other place of entertainment, of an advertisement relating to the election;*
- (d) the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c);*
- (e) the production of any material (not being material referred to in paragraph (a), (b) or (c)) that is required under section 328 or 332 to include the name and address of the author of the material or of the person authorising the material and that is used during the election period;*
- (f) consultant's or advertising agent's fees in respect of -*
 - (i) services provided during the election period, being services relating to the election; or*
 - (ii) material relating to the election that is used during the election period; or*
- (g) the carrying out, during the election period, of an opinion poll, or other research, relating to the election."*

(b) *NSW Election Funding Act 1981:*

"88. (1) The electoral expenditure to be disclosed under this Part by the agent of a party, group or candidate is expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates or for the purpose of influencing, directly or indirectly, the voting at an election.

(2) For the purposes of this Act -

- (a) expenditure on advertisements in radio, television, cinemas, newspapers, periodicals, billboards, posters, brochures, how-to-vote cards and any other printed election material;*
- (b) expenditure on the holding of election rallies;*
- (c) expenditure on the distribution of election material;*
- (d) expenditure on travel and accommodation expenditure of a candidate for election;*
- (e) expenditure on research associated with election campaigns;*
- (f) expenditure incurred in raising funds for an election;*
- (g) expenditure on stationery, telephones, messages, postage and telegrams;*
- (h) expenditure on committee rooms;*
- (i) expenditure classified as electoral expenditure by the Authority; and*
- (j) such other expenditure as may be prescribed,*

is electoral expenditure.

(3) *For the purposes of this Act, expenditure on factual advertising of-*

- (a) *meetings to be held for the purpose of selecting persons for nomination as candidates for election;*
- (b) *meetings of parties, branches of parties or conferences, committees or other bodies of parties for organisational purposes; and*
- (c) *any other matter involving solely the administration of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties,*

is not electoral expenditure."

(c) (Victorian) Election Donations Disclosure Bill. Victoria has adopted the Commonwealth definition verbatim but added the following paragraph:

"(h) the making of a gift by a person or organisation (other than a political party, the Victorian division or a branch of a political party or a candidate in the election) to:

- (i) any political party or the Victorian division or a branch of a political party;*
- (ii) any candidate in an election; or*
- (iii) any person or body (whether incorporated or not) specified by the Electoral Commissioner by notice in the Government Gazette."*

3.34 The paragraph has been added because the Victorian Bill classifies donations as electoral expenditure by donors. The Victorian definition thus is the widest definition and its inclusion appears to be part of Victoria's attempt to ensure disclosure of third party donations.

3.35 A number of options are available which would define the types of political expenditure that should be disclosed. They vary in their comprehensiveness:

- (a) disclosure of expenditure on political advertising only (as suggested by the Queensland Watchdog Committee);
- (b) disclosure of a limited set of expenditure items (eg. the Commonwealth definition);
- (c) disclosure of expenditure on a more extensive set of expenditure items (eg. the NSW definition);
- (d) the Commonwealth or NSW definition with the Victorian addition as set out above; and
- (e) full disclosure of all expenditure by parties and full disclosure of all electoral expenditure by candidates.

3.36 Most submissions felt that the NSW definition was more comprehensive than the Commonwealth's and therefore preferable. It also includes expenditure on rallies, travel, fund raising, communications and accommodation. These items can be significant elements of election expenses.

- 3.37 The Queensland Watchdog Committee's (S24) suggestion that disclosure should be restricted to advertising expenditure will not cover sufficient elements of the total range of possible expenditure items. On the other hand, full disclosure of every sort of party expenditure may be too onerous a burden to place on political parties.
- 3.38 The Commission's preferred option is 3.38(d) above: the NSW list together with the Victorian addition to which should be added the special but not unknown case of a party paying the deposit of a candidate other than that party's official candidate. The list should apply to parties and candidates alike.

RECOMMENDATIONS

3.39 **The Commission recommends:**

- (a) **Electoral expenditure be defined as expenditure incurred:**
- (i) **for the purpose of promoting or opposing, directly or indirectly -**
 - (A) **a political party; or**
 - (B) **the election of a candidate or candidates for an election; or**
 - (ii) **with a view to influencing, directly or indirectly, voting at an election.**
- (b) **Electoral expenditure should include such items as:**
- (i) **expenditure on advertisements in radio, television, cinemas, newspapers, periodicals, billboards, posters, brochures, how-to-vote cards and any other printed election material;**
 - (ii) **expenditure on the holding of election rallies;**
 - (iii) **expenditure on the distribution of election material;**
 - (iv) **expenditure on travel and accommodation expenditure of a candidate for election;**
 - (v) **expenditure on research associated with election campaigns;**
 - (vi) **expenditure incurred in raising funds for an election;**
 - (vii) **expenditure on stationery, telephones, messages, postage and telegrams;**
 - (viii) **expenditure on committee rooms;**
 - (ix) **the payment by a political party or other person, other than the candidate for the election, of a candidate's deposit;**
 - (x) **expenditure classified as electoral expenditure by the Electoral Commission of Queensland; and**
 - (xi) **the making of a gift by a person or organisation (other than a political party, the Queensland division or a branch of a political party or a candidate in the election) to:**
 - (A) **any political party or the Queensland division or a branch of a political party;**

- (B) any candidate in an election; or
 - (C) any person or body (whether incorporated or not) specified by the Electoral Commissioner by notice in the Government Gazette.
- (c) The following should not be classified as electoral expenditure:
- (i) meetings to be held for the purpose of selecting persons for nomination as candidates for election;
 - (ii) meetings of parties, branches of parties or conferences, committees or other bodies of parties for organisational purposes; and
 - (iii) any other matter involving solely the administration of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties.

3.40 A definition of electoral expenditure has been included in the Draft Bill in clause 4E.

Disclosure Period

Issue 2 What period should be covered by a return of electoral expenditure?
(Issues Paper, p.28).

EVIDENCE AND ARGUMENTS

- 3.41
- (a) The Commonwealth disclosure period of election to election plus 30 days was supported by A Conway-Jones (S13) and F Short (S14).
 - (b) The NSW disclosure period of election to election was favoured by the Queensland Watchdog Committee (S24) and the Liberal Party (S25).
 - (c) *"Disclosure arrangements must cover the full period between elections, with agents responsible for returns, including nil returns, within 20 weeks after polling day for parties, and 15 weeks for individual candidates."* (ALP (S21)).
 - (d) *"... it would be wrong to assume that election expenditure is limited to the actual campaign. Expenditure between elections could well have a bearing on a particular endorsed candidate, but may not be classed by the party as election expenditure."* (A Sandell (S11)).
 - (e) The National Party (S23) also supported the proposal that the election cycle should the disclosure period but proposed that *"... disclosure should be on the basis of each financial year."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

3.42 The Commission considers that the periods for electoral expenditure returns should be the same as the disclosure periods defined for the disclosure of political donations and other income in Chapter Two. Most submissions supported this approach.

RECOMMENDATIONS

- 3.43 **The Commission recommends the following disclosure periods for electoral expenditure returns:**
- (a) **political parties** - each calendar year, except in a year in which an election is held, in which case two periods should apply:
 - A. the period between the issue of the election writ and 30 days after polling-day; and
 - B. the remainder of the calendar year.
 - (b) **Candidates who contested a district at the previous election** - from 31 days after the polling-day for the previous election to 30 days after the polling-day for the current election.
 - (c) **Candidates who did not contest a district at the previous election** - from the day the candidate announces their candidacy or the day the writ is issued, whichever is the earlier, to 30 days after polling-day.
 - (d) **interested persons** - the last full year of the term of Parliament to a date 30 days after polling-day but if the writ is issued for an election during the third year of the scheduled term of Parliament the period will be less than 12 months. If the writ is issued during the first or second years of the term then the period will run from the date of issue of the writ to 30 days after the election.
- 3.44 These recommendations are included in the Draft Bill in clauses 4A, 4B and 4C.

Expenditure by Third Party Organisations and Interested Persons

Issue 3 Should 'third parties' be required to disclose electoral expenditure incurred? (Issues Paper, p.28).

EVIDENCE AND ARGUMENTS

- 3.45 There was general support for requiring disclosure of electoral expenditure by third parties.
- (a) *"We believe that disclosure of electoral expenditure incurred by third parties should be required, as per Federal requirements. Companies, trade unions, and any organisation which receives subscriptions or funds from its members must clearly disclose in audited annual statements any donations or financial support which it makes to candidates, political parties or groups or for any political purposes."* (Australian Democrats (S18)).
 - (b) *"Disclosure by third parties, broadcasters and publishers should be required, with provisions similar to those in the Commonwealth Electoral Act."* (ALP (S21)).

- (c) *"Should third parties be required to disclose electoral expenditure incurred? Yes."* (National Party (S23)).
- (d) *"The Liberal Party is of the view that third parties should be required to disclose electoral expenditure incurred and also should be subject to the same requirements as to disclosure of donations as or are parties and candidates. Failure to adopt such a course would lead to the establishment of 'third party' campaign organisations to gather funds and expend it on behalf of particular parties or candidates."* (Liberal Party (S25)).
- (e) *"As this submission recommends third party donations be disclosed it also recommends disclosure of expenditure.*
The period would also be the same as for donations, a maximum of 30 days from the Return of Writs." (A Sandell (S11)).
- (f) A Conway-Jones (S13) supported disclosure of third party and interested person donations.
- (g) *"Notwithstanding the difficulties involved 'third parties' should be required to disclose expenditure on an election. Clause 3.33 is irrefutable."* (F Short (S14)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 3.46 This Report has previously mentioned the potential that "third party" organisations or "interested persons" have to influence the result of elections.
- 3.47 The ability to play an influential role in the political process indicates that there is a need that these persons disclose electoral expenditure incurred by them.
- 3.48 This information, added to that supplied by political parties and candidates, would also assist in providing a more complete and accurate indication of election finance in Queensland.
- 3.49 As indicated in the submissions received on this topic, there is general support for a requirement that interested persons disclose electoral expenditure incurred by them.
- 3.50 In the run-up to the 1989 Queensland Legislative Assembly election there were a number of press reports about expenditure in support of particular parties or candidates without the written authorisations of the parties concerned. As the Issues Paper pointed out, requirements for disclosure of this expenditure can be justified on the grounds that the public has a right to know to what extent individuals and organisations have attempted to influence the outcome of an election.
- 3.51 The CE Act (s.309(4), (5)) requires a "third party" to furnish a return of electoral expenditure if such expenditure was incurred in excess of \$200.00 without the written authority of a political party/candidate.
- 3.52 The proposed Victorian legislation has sought to improve on the Commonwealth legislation by deleting the reference to "... written authority of a political party/candidate (etc)".
- 3.53 Clause 13 of the Victorian Bill includes donations or gifts to a political party/candidate by a person "... who is not a political party, the Victorian Division or a branch of a political party or a candidate ..." as electoral expenditure.

- 3.54 The Commission considers that political expenditure by third parties or interested persons should be required to be disclosed. This disclosure should occur regardless of whether the expenditure was incurred with the written authority of a political party/candidate. It would also avoid the possibility that parties and candidates would withdraw from electoral activities which would thereafter be conducted by third parties in order to avoid disclosure requirements - the PAC problem in the United States. For example, what is ostensibly a government advertisement might have been paid for by a political party.
- 3.55 A threshold level should be imposed below which disclosure not be required.
- 3.56 The Commission considers that this threshold should be set at a low rate. A level similar to that applying for individual candidates (\$200) would be appropriate.

RECOMMENDATION

- 3.57 **The Commission recommends that third parties or interested persons be required to disclose electoral expenditure incurred by them above a threshold figure of \$200.**
- 3.58 This recommendation is included in the Draft Bill in clauses 126W and 126Y.

Disclosure by Others (Broadcasters and Publishers)

Issue 4 Should broadcasters/publishers be required to furnish returns disclosing electoral matter broadcast/published or printed during a State election period? (Issues Paper, p.29).

- 3.59 In its *Report on the Review of the Elections Act 1983-1991 and Related Matters*, the Commission recommended that:
- "(a) The definition of "electoral matter" should include anything able to, or intended to**
- (i) influence an elector in relation to voting at an election; or**
 - (ii) affect the result of an election."**

EVIDENCE AND ARGUMENTS

- 3.60 (a) *"The arguments presented in 3.35/3.37 are sound and acceptable.*
- Should the restrictions contemplated on TV advertising come about EARC may need to examine current affairs segments and comments by experts." (A Sandell (S11)).*
- (b) *"Yes, if the administrative burden as identified by AEC can be simplified. (ways and means committee)." (A Conway-Jones (S13)).*
- (c) In their submission the Australian Democrats (S18) supported disclosure of electoral matter broadcast and published:

"We believe disclosing electoral matter broadcast or published should also be required, but we do not see a need to require printers to furnish returns of electoral material printed. This does not appear necessary for a State election, and would place too heavy an administrative burden on these businesses."

- (d) The ALP (S21) was of the opinion that disclosure by third parties, broadcasters, and publishers:

"... should be required, with provisions similar to these in the Commonwealth Electoral Act."

- (e) *"Broadcasters and publishers should be required to furnish returns on moneys received for political advertising as a cross-reference to returns from political parties and candidates."* (Queensland Watchdog Committee (S24)).

- (f) The National Party (S23) did not support the proposal that broadcasters and publishers/printers be required to furnish returns disclosing expenditure for electoral matter broadcast/published or printed during a State election period.

- (g) *"The Liberal Party does not believe that disclosure of electoral matters broadcast /published or printed during a State election period should be required."*

To adopt such an approach would place an intolerable burden upon members of the community and small business who are not themselves part of the political process but who may well suffer the consequences of the reporting requirements which would place another cost on business that it can ill afford." (Liberal Party (S25)).

ANALYSIS OF EVIDENCE AND ARGUMENT

- 3.61 Returns from broadcasters and publishers are an integral part of any disclosure scheme; they will assist in providing a profile of election expenditure by the various contestants in the election campaign. They provide details of people and organisations, apart from political parties and candidates, who are expending moneys on what is by far the largest part of political advertising. This information is useful as it can identify persons and organisations from whom a disclosure return is required who otherwise would be overlooked.
- 3.62 There are no provisions requiring returns by broadcasters, publishers or printers under NSW legislation.
- 3.63 Commonwealth legislation (CE Act ss.310, 311) requires broadcasters to furnish returns of electoral advertisements broadcast during the election period (from the day of the issue of the writ to 6.00 p.m. on polling day), and requires publishers to furnish returns of electoral advertisements published during the election period if the total charges for such advertisements exceed \$1,000. At the 1984 federal election, printers also were required to furnish returns of electoral material printed if the total charges for such material exceeded \$1,000. This obligation was removed from the CE Act before the 1987 federal election for it had proved to be of little value and unenforceable.

- 3.64 In the Commonwealth scheme disclosure of electoral advertising by broadcasters and publishers has been justified on the grounds that the returns serve as a useful cross-check to returns by political parties, candidates and "third parties" and that they help the AEC identify "third parties" who have incurred electoral expenditure. The experience of the AEC has been, however, that such reporting has had limited usefulness for the first purpose of cross-checking.
- 3.65 While difficulties in the Commonwealth legislation are recognised, a major advantage in seeking this information may be to:
- (a) assist in identifying "third parties" or "interested persons"; and
 - (b) provide evidence about the media costs incurred by political parties and candidates.
- 3.66 The majority of submissions were in favour of seeking returns from broadcasters and publishers.
- 3.67 The National Party (S23) and the Liberal Party (S25) did not support the proposal. The Liberal Party suggested that these returns would place a burden upon members of the community and on small business.
- 3.68 The Commission considered this argument but concluded that requiring such returns is warranted to secure more comprehensive information on campaign finances. Such returns are already sought for Federal elections. To ensure that the impact of a similar State requirement on those required to lodge returns is minimised, State legislation should reflect the provisions of s.311 of the CE Act. Also, Queensland forms should be modelled on Commonwealth forms as much as possible to simplify the task for those completing the returns.
- 3.69 The passage of the PB & PD Act which bans electronic political advertising at certain times removes the necessity for broadcasters to disclose details of advertising expenditure by registered parties, candidates and third parties in a State election period. However, broadcasters should be required to lodge returns if the ban on electronic advertising of election campaigns is declared invalid by the High Court or repealed by the Federal Government.

RECOMMENDATIONS

- 3.70 **The Commission recommends that:**
- (a) **Publishers should be required to furnish returns as to expenditure by political parties, candidates, third parties and interested parties during the election period (from the day of the issue of the writ to 6.00 p.m. on polling day) on advertising and details provided in the returns should reflect Commonwealth provisions. These returns should be submitted within 90 days of polling-day.**
 - (b) **These returns should be required in relation to expenditure incurred on or in excess of a threshold level and the threshold level below which expenditure by political parties, candidates and interested persons will not require disclosure by broadcasters and publishers should be \$200.**

- (c) **Should the *Political Broadcasts and Political Disclosures Act 1991* not survive the High Court challenge to its validity, or be repealed, then recommendations (a) and (b) above should also apply to broadcasters.**

3.71 These recommendations are included in the Draft Bill in Division 4, clause 126ZA.

Treatment of Government Advertising

Issue 5 Should electoral advertising by Government instrumentalities be subject to disclosure requirements? (Issues Paper, p.30).

EVIDENCE AND ARGUMENTS

3.72 (a) *"The circumstances described in paragraph 3.38 are obviously satisfactory and necessary for Commonwealth Elections.*

This submission recommends that such precautions are unnecessary in Queensland unless and until it becomes apparent that Government Departments are incurring election advertising sufficiently large to be subjected to disclosure." (A Sandell (S11)).

(b) *"Yes, electoral advertising by Government instrumentalities should be included in disclosures. I agree with 3.38 that this is only logical."* (F Short (S14)).

(c) *"The E.C. should be able to rule on what constitutes government advertising ie. previous to last election TV advertising of National Party ministers and their roles in government. Charges reported in the press of public funds used to promote the election chances of those ministers, in the electorate (disguised election material)." (A Conway-Jones (S13)).*

(d) *"Electoral advertising by Government instrumentalities should be subject to disclosure."* (Australian Democrats (S18)).

(e) *"Should electoral advertising by Government instrumentalities be subject to disclosure requirements?"*

(a) *electoral advertising and any promotion of Government policies or personnel by Government instrumentalities should be prohibited.*

(b) *subject to the above, yes."* (National Party (S23)).

(f) *"All expenditure by government departments and instrumentalities should be subject to disclosure requirements. The Liberal Party is concerned at the increasing level of advertising undertaken by government authorities and departments for what purport to be public relations purposes but which in fact would be more accurately described as political campaigning on behalf of the government of the day."* (Liberal Party (S25)).

(g) *"It is considered that electoral advertising by Government instrumentalities should not be allowed and legislation should prohibit such activity."* (Rockhampton City Council (S33)).

3.73 The Commission has noted a further issue which was raised before the SSCPBPD. A witness, R D Hogg, appearing on behalf of the ALP, and Senator J W Olsen, a member of the Select Committee, had the following exchange:

Mr Hogg:

I think we should also be taking a very strong look at government advertising. I do not support government advertising. I support it for purposes of information and services. I believe that, federally, it has very rarely reached across that point. It is more of a problem in Victoria and New South Wales. Queensland has turned it into an art form where it was the most publicly funded political campaign year in and year out, not just through the election period. So the other question we need to grapple with is government advertising and how we can quarantine that for political purposes.

...

Certainly in an election period I think it all should be off, unless there is a disaster, a community problem of a substantial kind that is being dealt with. So I think you can certainly limit it through an election period. Again, in terms of incumbency, we have to look at how to handle it in the lead up to an election period. It is not easy to deal with - I know that - but I think it deserves examination.

Senator Olsen:

An incumbent government would have a better idea as to when the election is likely to be and can run government advertising up to a particular point?

Mr Hogg:

That is correct, yes." (SSCPBPD 1991a, p.5).

- 3.74 Subsequently another witness, Mr G C Morgan, giving evidence on 11 October 1991 elaborated other possibilities:

"This is a way of getting around the disclosure requirement. ... It is a way of getting around the disclosure requirement and the ceiling. It is to be divided into two areas: first, private donations through commissioning market research and the information given to political parties; and secondly, the fact of public donations whereby a department may commission a survey." (SSCPBPD 1991a, pp.264-5).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 3.75 For the 1984 federal election, the first election at which the Commonwealth disclosure scheme applied, Government advertisements were not subject to disclosure requirements because the section of the CE Act requiring "third party" returns (s.309) did not bind the Crown.
- 3.76 The Act was amended before the 1987 election to bind the Crown. Government instrumentalities which incurred electoral expenditure through authorising electoral advertisements during the 1987 and 1990 election periods were required to furnish returns. Such returns required the disclosure of electoral expenditure incurred for services rendered during the period between the issue of writ and the close of polling.
- 3.77 The submissions received indicated strong support for the application of disclosure requirements to advertising initiated by Government instrumentalities. As stated in the Issues Paper, there would seem to be no logical reason for an exemption to be granted to Government instrumentalities, particularly if such disclosure requirements apply to "third parties" or "interested persons".
- 3.78 Previously in Queensland there has been considerable public criticism of earlier governments for using departmental advertisements for political purposes.

- 3.79 A major problem arises in trying to define whether a particular piece of advertising is in fact "political advertising", in which case expenditure on it should be disclosed. Whilst disapproving of the practice where government advertisements are used for political purposes and believing that it should be avoided to the maximum extent possible, the Commission considers that provisions should be contained in the disclosure legislation requiring the disclosure of expenditure on advertising by government instrumentalities.
- 3.80 The Commonwealth's PB & PD Act has significantly altered reporting requirements for its government departments and instrumentalities. The CE Act (as amended by the PB & PD Act) now requires:

"Annual returns of income and expenditure of Commonwealth Departments

311A (1) Subject to this section, the principal officer of each Commonwealth Department must attach a statement to its annual report setting out particulars of all amounts paid by, or on behalf on, the Commonwealth Department during the financial year to:

- (a) advertising agencies;*
- (b) market research organisations;*
- (c) polling organisations;*
- (d) direct mail organisations; and*
- (e) media advertising organisations;*

and the persons or organisations to whom those amounts were paid.

(2) Nothing in subsection (1) requires particulars of a payment made by a Commonwealth Department in a financial year to be included in a return if the value of the payment is less than \$1,500.

(3) The first return under this section need only contain particulars in relation to the period starting on the commencement of this section and ending on the next 30 June.

(4) In this section:

'Commonwealth Department' means:

- (a) a Department of State of the Commonwealth; or*
- (b) a Department of the Parliament; or*
- (c) a branch or part of the Australian Public Service in relation to the staff of which a person has, under an Act, the powers of, or exercisable by, a Secretary under the Public Service Act 1922;*

'principal officer' means:

- (a) in relation to a Department - the person holding, or performing the duties of, the office of Secretary of the Department; and*
- (b) in relation to a branch or part of the Australian Public Service referred to in paragraph (c) of the definition of Commonwealth Department, the person who has, under an Act, the powers of, or exercisable by, a Secretary under the Public Service Act 1922."*

- 3.81 The Commission considers that the Commonwealth approach is preferable to government departments and agencies being required to disclose details only of expenditure on political advertising, as it avoids the difficulty of determining what constitutes "political" advertising as distinct from "normal" advertising. It would also add to the Commonwealth itemization public relations organisations and direct mail communications to electors or to householders. The Commission believes that the definition of government instrumentalities as "units of the public sector" as defined in the Draft Bill is appropriate.

RECOMMENDATIONS

- 3.82 **The Commission recommends that:**

- (a) **Government instrumentalities be required as part of their Annual Reports to disclose all expenditure on:**
- (i) **advertising agencies;**
 - (ii) **market research organisations;**
 - (iii) **polling organisations;**
 - (iv) **direct mail organisations;**
 - (v) **direct postal or other direct communications to electors or to householders;**
 - (vi) **public relations organisations; and**
 - (vii) **media advertising organisations,**
- and the persons or organisations to whom those amounts were paid.**
- (b) **The threshold below which disclosure is not required should be \$1000.**

- 3.83 These recommendations are provided for in the Draft Bill in Division 4, clause 126ZB.

Limits On Electoral Expenditure

Issue 6 Should maximum limits be imposed on electoral expenditure? Should there be restrictions/controls on permissible forms of electoral expenditure? (Issues Paper, p.30).

EVIDENCE AND ARGUMENTS

- 3.84 Some submissions supported the proposal that a maximum limit should be imposed on electoral expenditure.
- (a) *"There should be inflation-indexed ceilings on election expenditure both by political parties as a whole and by candidates." (G Jamieson (S1)).*

- (b) *"Unless there is some limitation imposed on the amount of money to be spent by the political parties, these costs will continue to skyrocket. I submit that a limitation or ceiling, on election expenditure will introduce equality and fairness into the current electoral system.*

It is my strong submission that there should be some limitation on the amount of expenditure in election campaigns by the political parties or there should be public funding of election campaigns similar to the Federal system." (P Beattie MLA (S3)).

Mr Beattie (T5) reaffirmed his support for a ceiling on electoral expenditure at the public hearings but acknowledged the difficulties associated with determining an appropriate ceiling.

- (c) *"There is a need to limit Electorate Electioneering Expenditure per candidate and this should be directly related to the number of electors on the roll of an Electorate." (J Russell (S10)).*

- (d) *"Yes, it has been proven that money can buy votes by swamping newspaper and TV and other media, these advertisements can sway voters.*

As per Victoria legislation with modifications to suit Qld conditions with regard to monetary limits." (A Conway-Jones (S13)).

- (e) *"From all that has been said in this Issue Paper No 12 it does not appear that setting limits to electoral expenditure would be impractical. Disclosure should in itself reveal any unfairness and invite therapeutic reaction from the public." (F Short (S14)).*

- (f) *"... we believe that maximum limits on electoral expenditure are worth considering. There are arguments of economic efficiency and appropriate use of resources which could be put in favour of such a limit, although these may outside the parameters which the Commission should use for coming to its decisions. Given that such a limit is not common in Australia, and does not apply Federally, we do foresee problems with such a proposal. Enforcing it may also present difficulties. Any limits applied here would also have to apply to third parties." (Australian Democrats (S18)).*

- (g) *"An upper ceiling on expenditure by any political party or group should be based on the above expenditure categories.*

...

The Queensland Watchdog Committee advocates a spending ceiling on advertising for political parties. Consequently we believe the disclosure of electoral expenditure is a necessary means of achieving this.

...

Any agreed ceiling should be placed on the total funds political parties, candidates and third parties spend on advertising, and there is a need for these to be monitored. We reject an outright ban on political advertising.

...

A ceiling on advertising expenditure by political parties, candidates and groups is a better way of reducing the corruption that can result when parties are forced to accept strings-attached donations in order to pay huge advertising accounts.

This ceiling should include monies spent on advertising according to the categories already defined: advertising expenditure, including advertising costs through the electronic, print and other media, printing of electoral material distributed during the campaign period, consultants' and advertising agents' fees, expenditure on opinion polls or other research, and direct mail costs.

...

Consequently it appears the major requirement of legislation is two fold - to monitor in the public interest who donates to political parties, and to monitor the amounts of money spent on advertising. The monitoring of spending would allow the authority to enforce a spending ceiling to relieve the pressure on parties to accept dubious donations." (Queensland Watchdog Committee (S24 and 27)).

- (h) "In order to secure the broadest community access to Local Government and to reduce the propensity for corruption a reasonable upper limit should be imposed on campaign spending.

This upper limit could be determined by a population based formula that reflected a reasonable cost of providing information of substance to the public on the candidate and his or her policies.

This upper limit would include advertising costed at market rates in order to include 'in kind' donations from the advertising media." (P Jardine (S26)).

3.85 The following submissions did not support a maximum limit being imposed on electoral expenditure or any restrictions/controls on permissible forms of electoral expenditure:

- (a) "Expenditure limitations could be easily avoided by using front organisations in a similar way as discussed above. A further problem with expenditure limitation is that it could well perpetuate the existing problems associated with campaign finances. It can be argued forcefully that the current levels of expenditure of political campaigning on the broadcast media have already reached a stage where undue influence and corruption are a real threat." (National Party (S23)).

- (b) "The Liberal Party does not believe there should be maximum limits imposed on electoral expenditure." (Liberal Party (S25)).

- (c) "When public funding becomes part of election finances limits on expenditure will become a subject for discussion.

In the meantime no limits should be placed on any aspect of election expenditure." (A Sandell (S11)).

- (d) "Limits on expenditure are not advocated. The latter could be introduced should the experience and knowledge gained from the reporting of expenditure demonstrate such a need. It is submitted that the imposition of a limit would only switch expenditure to third parties and others." (ALP (S21)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

3.86 Neither the CE Act nor the EF Act set maximum limits on electoral expenditure. On the other hand both Victorian and Tasmanian legislation set limits on candidates' electoral expenses.

3.87 A number of other countries have legislated to impose limits upon electoral expenditure. In Canada the *Elections Act* sets limits on electoral expenditure by political parties and candidates. In the United Kingdom there is a maximum placed on election expenses of candidates, but not on parties.

3.88 The Victorian *Constitution Act Amendment Act 1958* permits expenditure on 11 specified items, and limits the total amount of electoral expenses which may be incurred by a candidate to \$3,000 for a Legislative Council election, and \$1,500 for a Legislative Assembly election. A candidate must file a return of electoral expenses within 3 months after polling-day.

- 3.89 On 20 December 1990 there were 2,826,431 electors enrolled in Victoria. This effectively means that each candidate for the 88 seats in the Victorian Legislative Assembly could have spent, on average, a maximum amount of 4.7 (32,119 electors) cents per elector whereas the corresponding figure for the 22 seats in the Legislative Council contested at one general election is only half this amount, viz. 2.3 (128,474 electors) cents per elector. This expenditure limit only relates to expenditure by candidates and does not cover party expenditure.
- 3.90 The provisions in the *Tasmanian Electoral Act 1985* relate to Legislative Council elections only. Section 197(1) of that Act places a ceiling of \$5,000 (plus \$250 for each year after 1985) on electoral expenditure by a candidate and his/her agent. In 1990 the expenditure ceiling was \$6,250. In December 1990, the 19 Members of the Legislative Council each represented on average, 15,328 electors and thus candidates could spend a maximum of about 40.8 cents per elector. Political parties are not permitted to incur expenditure in relation to individual candidates, but few candidates for the Tasmanian Legislative Council are endorsed by political parties.
- 3.91 In most cases where schemes of public funding have been introduced limits on electoral expenditure have been imposed.
- 3.92 As the bulk of monies expended by both parties and candidates is directed towards advertising this becomes essentially a case of imposing limits on political advertising. There are two ways to control expenditure on political advertising. The first is to impose a limit on the amount and the second is to provide "free" broadcasting time for all parties. It is uncertain whether Queensland's legislative jurisdiction would extend to imposing time limits on broadcast advertising.
- 3.93 Moreover, any attempt to limit spending on advertising may lead to complaints that parties and candidates are unable to promote their policies effectively due to limits on expenditure.
- 3.94 Additionally, the imposition of limits, while appearing to "level the playing field", does not do so without causing other concerns. It could be argued that since incumbent Members and governing parties have access to resources unavailable to their challengers, the application of expenditure limits increases the relative value of incumbency and thus could have unfair effects.
- 3.95 Senator W Parer told the SSCPBD:
- "My view is that the definition involved in putting a ceiling is just as darned complex that I am not sure you will ever be able to handle it, particularly as these days incumbent members already have a substantial advantage over anyone who is challenging someone for a seat, whether in the Senate or in the House of Representatives. They have massive office facilities, such as computers, telephones and unlimited expenses. As a result of the Remuneration Tribunal, the stamp allowances has gone up to \$22,000."* (SSCPBD 1991a, p.36).
- 3.96 Whilst State Members may not be so generously funded and equipped, they still have significant advantages over challengers.
- 3.97 Campaign expenditure limits are often rejected because of the problems associated with:
- (a) setting limits which are realistic (ie. which take into account the realities of political campaigning);

- (b) determining the expenditure period outside of which spending would not be included in the limit applied; and
- (c) closing loopholes so that limits cannot be evaded.

3.98 The Parliament of NSW Joint Committee Upon Public Funding of Election Campaigns stated in its November 1980 Report:

"All of the problems that have been encountered overseas and the practical difficulties the Committee could see have persuaded us not to recommend any limitations on expenditure ... " (para.4.12.19, p.xxxvi).

3.99 The JSCER in its First Report September 1983 likewise rejected limits. It stated:

"Such limitations have proved to be unenforceable in Australia and overseas. Any limits set would quite quickly become obsolete. The Committee recommends that no election campaign expenditure limits be imposed and considers that its further proposals (public funding and disclosure) would render any expenditure limits superfluous." (JSCER 1983, p.172).

3.100 In general, most commentators have stated that it is difficult to justify placing restrictions/controls on permissible forms of electoral expenditure by political parties and candidates. The Commission considers it is difficult to identify any worthwhile purposes which would be served in restricting parties' and candidates' freedom to campaign in whatever ways and to whatever extent they choose, subject to sanctions for misleading advertising.

3.101 The Australian Democrats, National Party and the ALP referred to the possible impact on campaign spending that "third party" organisations could have if a maximum limit were to be applied to expenditure incurred by political parties and candidates.

3.102 In the United States, attempts to limit campaign expenditure of parties and candidates have resulted in a proliferation of PACs. If funds are unavailable for political parties, bodies such as PACs are able to play a vital role in the election campaign and in some cases have been alleged to be merely front organisations for political parties and candidates.

3.103 At the SSCPBPD, R D Hogg, National Secretary of the ALP, commented:

"The endeavours in the United States have to be recognised as having failed where it tried to come to grips in the 1970s with containing election costs. The changes it brought about in fact worsened the situation: they probably led to assisting in the destruction of the political party system there and to the rise of increased influence of lobbyists, PACs and other organisations; which have an impact, and I do not think a very healthy one on that system." (SSCPBPD 1991a, p.2).

3.104 The National Party in their submission (S23) referred the Commission to the operations of similar bodies, dubbed PAGUTs (Political Advocacy Groups Utilising Taxes). In an article by Bob Browning, "The Rise of the PAGUTs", attached to their submission, it was stated:

"Taxpayers are being required to finance the political activities of increasing numbers of groups opposed to mainstream Australian values. Such funding is dividing Australian society and intensifying political conflict."

3.105 A J Robb of the federal Liberal Party organisation said to the Senate Select Committee:

"... the funding of third party groups involved in political campaigns needs to be addressed if we are to have effective disclosure. In 1991 the Australian Conservation Foundation will receive in excess of \$1m from the Government. It was very active in the last campaign, which it was entitled to be but it does concern us that if you get government grants for other purposes, it frees up membership money to perhaps use for political campaigns having run two national organisations - two unions of farmers, if you like - I do know that if you get government support for a research project or whatever, in terms of the global budget you are working with, it will free up funds in other areas of your budget to do other things." (SSCPBPD 1991a, p.239).

- 3.106 On balance the Commission has found no convincing evidence for the specification of a maximum limit on electoral expenditure. It therefore does not recommend the introduction of such a limit in Queensland.

RECOMMENDATION

- 3.107 **The Commission recommends there be no maximum limit fixed on electoral expenditure by political parties, candidates or "third parties".**

Processes of Disclosure

Issue 7 Who should be responsible for furnishing returns/declarations on behalf of parties and candidates? Should a disclosure scheme, so far as it affects parties and candidates, operate through a system of agents? (Issues Paper, p.32).

Issue 8 What electoral expenditure should be disclosed in a party's return and what should be disclosed in the return by a candidate endorsed by the party? (Issues Paper, p.32).

Issue 9 When should disclosure be made? (Issues Paper, p.32).

Issue 10 Should parties and candidates be required to appoint auditors to provide reports/certificates on their returns/declarations? (Issues Paper, p.32).

EVIDENCE AND ARGUMENTS

- 3.108 (a) *"Will disclosure just detail expenditure, say in newspapers as one figure for the election or will it have to supply break down figure for different areas and different electorates.*

However as disclosure of expenditure will come about then it must be complete. In other words as already submitted the whole financial details must be supplied. This would include elections, administration, maintenance etc.

...

The queries raised in 7.1, 7.2, 7.3 and 7.4 have all been discussed and recommendations made in respect of donations. This submission is of the opinion that in these machinery areas expenditure disclosures should be exactly the same as for receipts." (A Sandell (S11)).

- (b) *"7.1 Party secretary or for independent candidate an agent. Optional by party either the secretary or appointed agent.*
- 7.2 Each electoral district by the party, a breakdown of expenditure, must be done anyway by any prudent party, for their own party analysts to equate expenditure to results. ie. safe seats less expenditure.*
- 7.3 90 days after the writ for election.*
- 7.4 Yes." (A Conway-Jones (S13)).*

- (c) *"The Liberal Party is of the view that similar processes of disclosure of expenditure should be adopted as we have proposed with respect to the public registration of political donations." (Liberal Party (S25)).*
- (d) *"The disclosure scheme should operate through agents who would at the same time be auditors for both the party and the candidates and in this way accounts would have to tally. This should happen annually and be available for public scrutiny.*
What are auditors for if not to sort out and tally all expenditure? If the party's expenses are audited it should include expenditure at district level in the itemization." (F Short (S14)).
- (e) *"7.1 The same persons responsible for disclosure of donations should make disclosure of expenditure.*
7.2 All disclosure should be made by the Party.
7.3 Annually, when accounts are required to be published.
7.4 Yes." (National Party (S23)).
- (f) *"Disclosure should be by the candidate or the executive of the party and there should be a requirement for a statutory declaration to be signed by the particular party concerned in lodging the return/declaration" (Rockhampton City Council (S33)).*

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 3.109 The matters relevant to the processes of disclosure have in the main been discussed in Chapter Two.
- 3.110 Other jurisdictions in Australia have tended to incorporate parallel procedures for the registration of political donations and disclosure of electoral expenditure. A similar approach would be appropriate in any Queensland legislation. As far as possible the form of returns, timetable and auditing requirements should be identical for all disclosure requirements.
- 3.111 As stated in Chapter Two, the Commission considers that the ECQ should make every effort to make political parties, candidates and interested persons aware of their responsibilities so as to ensure compliance with the new legislative provisions.

RECOMMENDATIONS

- 3.112 **The Commission recommends parallel procedures for the disclosure of political donations and electoral expenditure, that is:**
- (a) **Parties should appoint agents; candidates should have the choice of appointing agents or acting as agents themselves. This recommendation is the same as that proposed in respect of disclosure of donations and other income.**
- (b) **Parties and candidates should be required to disclose their own electoral expenditure. Expenditure on behalf of candidates by the central party should be disclosed by the party and vice versa.**

- (c) **The same timetable proposed in respect of submission of returns relating to disclosure of donations and other income should apply to submission of returns on disclosure of electoral expenditure, that is:**
- (i) **political parties** - **A. 30th April of each year; and
B. 90 days after the end of the disclosure period (ie. 120 days after polling-day).**
 - (ii) **candidates** - **90 days after the end of the disclosure period (ie. 120 days after polling-day); and**
 - (iii) **interested persons** - **90 days after the end of the disclosure period (ie. 120 days after polling-day).**
- (d) **As with parties, the disclosure of donations and other income by candidates and third party or interested persons, there should be a requirement for statements of electoral expenditure to be certified by qualified auditors.**

3.113 These recommendations are included in the Draft Bill in Division 1 and clauses 126U, 126V, 126W and 126ZF.

Public Availability of Returns/Declarations

Issue 11 Should returns/declarations lodged on behalf of parties and candidates be made publicly available? (Issues Paper, p.32).

EVIDENCE AND ARGUMENTS

- 3.114 (a) *"If these submissions are accepted, reports submitted to Parliament by the appropriate authority would then be available for disclosure to the general public." (A Sandell (S11)).*
- (b) *"Yes, (only way to overcome secrecy and buying influence)." (A Conway-Jones (S13)).*
- (c) **F Short (S14) and the National Party (S23) supported the proposal that returns/declarations lodged on behalf of parties and candidates should be made publicly available.**

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 3.115 Under the provisions of s.320 of the CE Act the AEC is required to keep at its principal office in Canberra a copy of each return of political expenditure made by a political party or candidate.
- 3.116 This copy is available for public inspection and copies may be provided on payment of a fee to cover the photocopying costs.
- 3.117 The EF Act (s.95) deals with public access to declarations etc., in relation to political contributions and electoral expenditure. It permits any relevant declarations, papers and correspondence or a copy thereof, to be available for public inspection. As with the CE Act, copies are available upon payment of a cost-recovery fee.

- 3.118 There was unanimous support in submissions in regard to the public availability of returns.
- 3.119 The objective behind disclosure of electoral expenditure is the dissemination of knowledge of what parties and candidates are spending on campaigns; this information should be made available to the public.
- 3.120 The Commission recommended in Chapter Two that all returns be available for perusal on the public register. The Commission considers that a similar approach should be taken to disclosure of electoral expenditure.
- 3.121 Provision should be made to prescribe a minimum period of retention time (seven years) by the ECQ of disclosure returns for both expenditure and donations, and other income.
- 3.122 The CE Act (s.317) provides for the keeping of records by political parties, candidates, interested persons, broadcasters and publishers, and Commonwealth Government Departments which are or could be required to be reported in a disclosure return. It is stipulated in this section that their records should be kept for three years commencing on the polling-day of each election.
- 3.123 The Commission considers that the Draft Bill should contain similar requirements.

RECOMMENDATION

- 3.124 **The Commission recommends that:**
- (a) All returns disclosing electoral expenditure from parties, candidates and third parties should be made publicly available.
 - (b) The Electoral Commission of Queensland should retain records in relation to disclosure of expenditure returns for a period of not less than seven years from the deadline by which disclosure returns are required to be lodged by political parties, candidates and interested persons.
 - (c) Political parties, candidates and interested persons should be required to retain records that are or could be required to be reported in a disclosure of expenditure return for a period of at least three years commencing at the end of the relevant disclosure period.
- 3.125 The Draft Bill contains provisions for these recommendations in Division 5.

Individual/Aggregated Total of Expenditure

Issue 7.6 Should returns from political parties show expenditure at the individual electoral level or show an aggregated total? (Issues Paper, p.33).

EVIDENCE AND ARGUMENTS

- 3.126 (a) *"Independent candidates will show detailed returns for their electorate.*
- Parties returns could simply show expenditure as per the Commonwealth Scheme described in paragraph 3.53.*

This will not find favour with members of the general public most of whom will want to know details applicable to their own electorate." (A Sandell (S11)).

- (b) *"As per 7.2. Each electoral district by the party." (A Conway-Jones (S13)).*
- (c) *"The Liberal Party sees no sufficient benefit to warrant the disclosure of expenditure on an electorate by electorate basis and feels that it is sufficient that an aggregated total be disclosed." (Liberal Party (S25)).*
- (d) The National Party (S23) agreed that returns from political parties should show expenditure as an aggregated total.

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 3.127 In the Commonwealth scheme there is no requirement that a State party's return should show electoral expenditure at the level of the individual division (CE Act s.314). The party's return simply shows total expenditure in each of the seven specified categories of electoral expenditure. Since the party's return also includes electoral expenditure incurred by endorsed candidates' campaign committees (CE Act s.287A), there is very little information available as to the amount spent on campaigning in individual divisions.
- 3.128 The EF Act (ss.83 and 85) requires political parties and individual candidates to lodge disclosure returns separately. A return by a political party would therefore include political donations received and electoral expenditure incurred by the party only. Returns by candidates provide information at the individual electoral district level.
- 3.129 Although there are merits in requiring political parties to submit disclosure details at individual electoral district level, it may be imposing an excessive burden on them. For example, in regard to party spending on media advertising, most money spent is on advertisements which reach a wider audience than any particular electoral district. To merely apportion the total cost among 89 electoral districts would not accurately reflect the level of spending in each district.
- 3.130 The National and Liberal Parties preferred method was to submit a total or aggregated figure for all electoral districts. However, that would fail to account for candidates' returns.
- 3.131 The Commission considers that a preferable method would be to require an aggregated statewide spending total from the political parties, and individual returns (at the electoral district level of spending) from candidates. This would ensure that expenditure at both levels is fully accounted for. However the Commission believes that there is no need for unwarranted detail and therefore the same limits which have been recommended for non-donation income (see para.2.188) are also appropriate for disclosure of expenditure.

RECOMMENDATIONS

- 3.132 **The Commission recommends that:**
 - (a) **Political parties should submit an aggregated statewide total of electoral expenditure for each class of expenditure.**

- (b) Individual candidates should submit individual returns (at the district level) for each class of electoral expenditure.
- (c) Limits below which details of expenditure need not be disclosed should be the same as for non-donation income.

3.133 Division 3 (clause 126X) of the Draft Bill contains provisions for these recommendations.

Offences and Penalties

Issue 12 What acts should constitute offences under any legislation dealing with the disclosure of electoral expenditure? (Issues Paper, p.33).

Issue 13 Should non-compliance with disclosure provisions invalidate a candidate's election? Should a person who is an agent be disqualified from holding office as an agent if they are convicted of an offence against the disclosure provisions? (Issues Paper, p.33).

EVIDENCE AND ARGUMENTS

- 3.134 (a) *"These should follow the same pattern as for donations. These were covered in paragraph 18.1."* (A Sandell (S11)).
- (b) *"Invalidation of a candidate's election, or a fine if not elected, depending on seriousness imprisonment. Convicted offenders should be barred from any involvement. Any act of secreting money or hiding identity of the donor or both."* (A Conway-Jones (S13)).
- (c) *"We adopt a similar position as that taken with respect to Issue 9 in the public registration of political donations."* (Liberal Party (S25)).
- (d) The National Party (S25) supported the adoption of s.315 of the CE Act as being appropriate to deal with acts which constituted offences arising from the disclosure of electoral expenditure. The Party disagreed with the proposition that a candidate's election should be invalidated upon proof of non-compliance with disclosure provisions. However, it agreed that an agent should be disqualified from holding office if convicted of an offence against disclosure provisions.

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 3.135 The matters raised above have been largely dealt with in Chapter Two. The Commission considers that similar offences and penalties should apply to disclosure of electoral expenditure.
- 3.136 Commonwealth, New South Wales and the proposed Victorian legislation provide generally similar offence processes and penalties for political donations and electoral expenditure.
- 3.137 A similar approach to offence and penalty provisions is considered appropriate for Queensland. Further detailed discussion on offences and penalties is contained in Chapter Six, Offences and Penalties.

Enforcement

Issue 14 What powers should the responsible authority possess if disclosure provisions are to be enforced? Should the authority have an unfettered right of entry and inspection? Should it be able to conduct audits to verify returns/declarations? (Issues Paper, p.33).

EVIDENCE AND ARGUMENTS

3.138 (a) *"As for 8.1 and 8.2 this has been covered earlier.*

...

In that enforcement must be given whatever authority is finally chosen to operate the legislation sufficient authority to carry out its charter. There must be no doubt about its powers to investigate and if thought fit, levy the appropriate penalty." (A Sandell (S11)).

- (b) *"Authority must have the power to police this legislation, it must not be a paper tiger like the ICAC. Possibly same as Fitzgerald to seize and analyse relevant material. Auditing is necessary, the powers to carry this out could act as a deterrent." (A Conway-Jones (S13)).*
- (c) *"We adopt a similar position as that taken with respect to issue 9 in the public registration of political donations." (Liberal Party (S25)).*
- (d) F Short (S14) referred to his previous submission on disclosure of political donations: *" ... the responsible authority must have all necessary powers to verify returns/declarations."*
- (e) The National Party (S23) recommended that the responsible authority have an unfettered right of entry and disclosure to be able to conduct audits to verify returns/declarations *" ... when there is reason to believe that the audit certificate produced is false."*

ANALYSIS OF EVIDENCE AND ARGUMENTS

3.139 Submissions indicate that enforcement procedures similar to those in relation to the disclosure of donations and other income should be implemented. These include such provisions as granting the ECQ powers to conduct "spot audits" and unfettered right of entry and inspection. The Commission agrees with these views and has provided for the appointment of "authorised persons" with appropriate powers at para.2.248.

RECOMMENDATION

3.140 **The Commission recommends that the Electoral Commission of Queensland be given the powers of entry and inspection by authorised persons and power to conduct "spot audits" of the records of a political party, candidate or interested person in relation to disclosure of electoral expenditure where there is reason to believe that disclosure provisions have not or are not being complied with.**

3.141 This recommendation is provided for in the Draft Bill in Division 6.

Local Government and Aboriginal and Torres Strait Islander Issues

- 3.142 The discussion in this chapter to this point has been in relation to the disclosure expenditure of political expenditure by political parties, candidates and interested persons (third parties) who are campaigning in Legislative Assembly elections and by-elections.
- 3.143 As was the case in Chapter Two of this Report, dealing with the disclosure of political donations and other income, the Commission considers that the disclosure requirements should also apply to political parties and candidates contesting Local Authority and Aboriginal and Torres Strait Islander (ATSI) Community Council elections. These disclosure requirements should also apply to interested persons (third parties) who have an involvement in these elections. This would keep such matters at the local level ensuring such information is available locally. All these disclosures should be registered locally, not centrally with the ECQ.

RECOMMENDATIONS

- 3.144 **The Commission recommends that:**
- (a) **The disclosure of electoral expenditure provisions contained in the new electoral legislation should also apply to:**
 - (i) **political parties;**
 - (ii) **candidates; and**
 - (iii) **interested persons,**

at Local Government elections, including Community Council elections. Enabling legislation should be developed to extend disclosure requirements to the Local Government level.
 - (b) **The Department of Housing and Local Government and the Department of Family Services and Aboriginal and Islander Affairs should develop legislation based on the proposed State scheme, requiring councils to keep registers relating to the disclosure of electoral expenditure. These registers should be open for public inspection.**
 - (c) **These registers should be retained for at least seven years. Before destruction of records, Local Authorities should seek the consent of the Electoral Commission of Queensland.**

CHAPTER FOUR

PUBLIC FUNDING OF ELECTION CAMPAIGNS

Introduction

- 4.1 Any candidate, group or political party competing in a modern election must have access to, and be willing to spend, considerable amounts of money if they are to wage effective modern campaigns. The cost of campaigning has risen sharply in recent years and both candidates and political parties are under greater financial pressures as a result. A major part of this electoral expenditure is spent on informing electors through advertising of policies and programs and thereby attempting to influence voters' choices of candidates. This is a worldwide phenomenon, but it would appear that Australian elections are now among the most expensive.
- 4.2 In Chapter Two of this Report it was argued that the need to meet campaigns costs is the primary reason why political donations must be sought and accepted. The need to accept money from donors to meet the rising costs of advertising potentially increases the vulnerability of parties and candidates to influence, particularly from wealthy sectional interests.
- 4.3 Particular concern has been expressed about the possibility of increased dependency of the major parties on parts of the corporate sector to fund election campaigns. Recent scandals overseas and the investigations of various Australian Commissions of Inquiry have highlighted this problem. For example, in Japan there has been the Recruit scandal; in West Germany the Flick scandal; in the United States there have been the Lockheed and Watergate scandals; and in Western Australia there is currently the "WA Inc." Royal Commission. Recently in Queensland there has been a Criminal Justice Commission inquiry into allegations that donations were made to candidates at Gold Coast City Council elections to secure favourable decisions. The Fitzgerald Report dealt at length with allegations that political donations had been made to the National Party to secure influence.
- 4.4 A number of strategies have sought to reduce the increasing dependency of parties and candidates on political donations. One has been the introduction of various schemes of public assistance to parties and/or candidates, whereby parties and candidates receive some or all of their campaign costs from the public purse or receive assistance in some form other than cash. For example, public funds may be paid directly to candidates, parties or both, and may be paid to offset actual electoral expenditure or in proportion to the level of electoral support secured at the ballot-box or both.
- 4.5 In some jurisdictions public assistance has been introduced at the same time as the imposition of restrictions on the amount of expenditure permitted on campaigns; in other jurisdictions public funding largely replaces fund raising; still others provide free advertising in the electronic and print media and other forms of assistance in lieu of funding - for example, free radio and television time or free post for party literature during election campaigns. The recent PB & PD Act provides free broadcasting of political material during election campaigns for Commonwealth, State and Territory elections thereby removing a considerable expense from political parties.

- 4.6 Usually, assistance is provided to parties and/or candidates in the form of direct funding in cash rather than as aid in some other form. In Canada and the United States political donations are tax deductible so that party supporters receive a rebate on their income tax proportionate to the donations they have made.
- 4.7 There have also been expressions of concern about what are seen as unanticipated or indirect assistance. For example, a government may give financial assistance to a community organisation which uses that money, or other funds released by the availability of the grant, to campaign on behalf of the party in office. Similarly it is said that some organisations receive tax assistance which enables them to contribute more generously than those which do not receive the same exemptions.
- 4.8 Providing assistance to parties and candidates for their election campaigns is a contentious issue. On the one hand some parties and candidates argue that they should be given public assistance so that they can get their electoral message across more effectively - candidates who do not have the support of a political party are particularly needy - and thereby inform the electors more fully.
- 4.9 On the other hand, many members of the public, quite possibly a majority, do not believe that public assistance for political campaigns is in any way justified or appropriate. This argument is usually put forward in the following terms: those who wish to offer as candidates (and secure the consequent "spoils" of office) should be willing to pay for their bid from their own pockets. That argument fails to acknowledge that not all potential candidates can afford to mount competitive campaigns and are therefore disadvantaged; this handicap may limit the public's choice of otherwise suitable candidates.
- 4.10 The argument is also sometimes based on a public perception that political parties are wealthy and quite able to pay for their candidates' campaigns. Furthermore, and possibly more so in recent years, public opinion of political parties has not generally been high. Whether or not public assistance is worthwhile for any number of good reasons, there is a public perception that parties would merely help themselves to public monies if funding or other forms of assistance were introduced.
- 4.11 In this chapter the Commission investigates arguments in support of and opposed to public assistance for Queensland election campaigns. In particular it is concerned with assistance in the form of direct funding because this is the model which has been adopted in most other jurisdictions and is the one most amenable to implementation by a State.

Matters for Consideration

- 4.12 In this chapter, the Commission will initially consider:
- (a) whether a scheme of public funding of election campaigns should be introduced; and
 - (b) the implications for any funding scheme of the High Court challenge to the PB & PD Act.

Current Situation

- 4.13 At the present time the Queensland electoral system provides assistance to parties and candidates in a number of ways which do not include direct public funding. However, much of this assistance is indirect in that it is associated with the administration of a fair electoral system - the assistance is primarily in the form of the infrastructure of rules and administration that treat all candidates equally and ensure that the voting population is informed about and can carry out its electoral obligations. Parties and candidates do not have to work and pay to enrol potential voters to "get the vote out". This type of indirect assistance is the only help which unsuccessful candidates for election receive in Queensland.
- 4.14 Currently, direct assistance in Queensland is effectively limited to those candidates who have been successful in being elected and is not connected with their or their party's campaign. Direct assistance is only available after the election and takes the form of electoral allowances and the provision of rooms and other facilities in Parliament House - forms of assistance which are generally accepted as being important for good government.
- 4.15 There is no direct assistance to candidates or parties in cash or kind for elections. They must fund their campaigns from their own sources, including donations from others. The impact of the campaign they can mount is thus largely determined by the level of funds they can secure. Obviously independent candidates and candidates from smaller parties are at a considerable disadvantage compared to candidates backed by the larger political parties. The playing field is far from level.
- 4.16 It has also been argued that a sitting Member has a distinct advantage over other candidates at elections because of the less tangible but significant benefits which accrue from having a permanent office in the electoral district. While sitting Members are not meant to use their electoral allowances directly for campaigning, their visible presence in the district as a representative of government usually assists their electoral prospects. *The Report of the Committee of Inquiry Appointed to Inquire into and Report upon the Salaries and Allowances of Members of Parliament, Officials in Parliament and Ministers of the Crown of the State of Queensland (1965)* stated:
- "The Committee concludes that the electorate allowance should be provided as one amount. It should provide for reasonable expenses incurred by a Member in carrying out his Parliamentary duties but should not be so liberal as will enable a Member to expend moneys from the public purse in a form of 'glorified electioneering' during his three-year term of office. This Committee can see no reason why Members of Parliament should be entitled to receive moneys for this purpose from public funds which could create a position that a person desiring to contest an election could not afford the cost of meeting such competition." (p.20).*
- 4.17 Many Western democracies provide financial assistance or other aid to political parties and candidates for at least some election campaigns, including Canada, Finland, France, Italy, Norway, Sweden, the United States and West Germany.
- 4.18 European systems have generally provided public subsidies not only for campaigns but also for the regular operations of political parties. The money is usually distributed according to a formula based on the number of Parliamentary seats that a party holds. Parties raise private donations to supplement their public subsidy.

- 4.19 In the United States, there are three systems of campaign finance for federal elections - one for the two houses of Congress, a second for presidential candidates before the nominating convention and for the parties to hold nominating conventions, and a third for the major party candidates for the presidency after the conventions. There is no public funding for the first, partial public funding for the second, and full public funding available for the third (Sorauf 1988, p.6).
- 4.20 In the United States, the schemes providing public funding of State elections vary widely. In some States the money is paid to political parties, in others directly to candidates. Some American funding schemes help to finance both primary and general elections whilst others fund only general elections. (For an indication of the extent of variation in State arrangements see Jones 1980, pp.198-204).
- 4.21 Public funding of Canadian federal elections was introduced in 1974 and initially provided limited public funds for candidates only. The legislation was subsequently amended in 1980 to provide for the public funding of political parties, though only to the extent of providing reimbursement of broadcasting expenses. In the Provinces, however, different funding systems are in place ranging from funding of political parties in Manitoba to the funding of candidates only in Ontario.
- 4.22 The Commonwealth and New South Wales are the only jurisdictions in Australia which currently have legislation providing for the public funding of election campaigns. The ACT Elections Act provided for public funding for the election held in 1988; this legislation (which was similar to the Commonwealth's) has since been repealed.
- 4.23 Public funding under the CE Act is available to registered political parties and to candidates for the House of Representatives and to Senate candidates and groups that are unendorsed (independent) or endorsed by unregistered political parties. However, candidates endorsed by registered political parties do not personally claim public funding as this function is performed by the party agent (s.295).
- 4.24 The entitlement to public funding provided in the CE Act is calculated as being the lesser of:
- (a) the number of formal first preference votes gained in the election multiplied by the appropriate public funding rate; or
 - (b) the amount of electoral (campaign) expenditure incurred.
- 4.25 Under the EF Act in NSW public funding of election campaigns is available to political parties, groups and candidates (ss.59-61, 65). Funding arrangements in NSW consist of a Central Fund and a Constituency Fund.
- 4.26 Central Fund payments are available to parties, groups and independent candidates and are based on results obtained in Legislative Council elections. This fund comprises two-thirds of the total monies available for public funding in NSW elections.
- 4.27 The remaining one-third of total public funding is allocated to the Constituency Fund. Payments from this fund are paid to eligible candidates contesting Legislative Assembly elections.

- 4.28 The following equation in the EF Act (s.67) is used to determine the amount an eligible candidate will receive in public funding:

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

- C - represents the amount (in dollars) payable to a candidate who has been nominated for election for an electoral district at a general election;
- F - represents the amount (in dollars) available for distribution in respect of the electoral district. (This figure is determined by dividing the total amount available in the Fund by the number of electoral districts for which there are two or more candidates standing);
- CV - represents the primary votes of the candidate; and
- TEV - represents the total primary votes of all candidates for election for the electoral district eligible to participate in the distribution of that amount.
- 4.29 A restriction is placed on funding from both the Central and Constituency Funds in that no eligible party or candidate can receive in excess of 50% of the money available for public funding.

General Issue

Should public funding of election campaigns be introduced in Queensland? What are the arguments in support of or against public funding? (Issues Paper, p.35).

- 4.30 The question which the Commission must address first is whether, in the public interest, parties and/or candidates should receive public assistance in conducting their campaigns. In carrying out its investigation the Commission has received considerable assistance from the public submissions it received in connection with this broad issue. The views expressed in those submissions are set out below.
- 4.31 The Issues Paper emphasised the vital role political parties and candidates play in the electoral system and in maintaining public confidence in the legitimacy of Parliamentary democracy. Their role includes the development of policy across the full spectrum of public administration, civic education, representation of constituents' concerns and encouragement of public participation in the democratic process. The purpose of the electoral system is to give electors a choice of candidates who can represent their interests in the Parliament. To achieve this, the electoral system must ensure that voters have an opportunity to fairly compare and contrast the alternative candidates and what they stand for.

EVIDENCE AND ARGUMENTS

Submissions and Transcript Evidence in Favour of Public Funding

- 4.32 The following submissions were received in favour of public funding.
- (a) *"It is my strong submission that there should be some limitation on the amount of expenditure in election campaigns by the political parties or there should be public funding of election campaigns similar to the Federal system.*
- If there is going to be public disclosure of political donors, it is my submission that this should be considered in conjunction with public funding."* (P Beattie MLA (S3)).

Mr Beattie added:

" ... I'm a firm believer in the public funding of election campaigns, with the amount based on the vote the particular party received at the last election.

... honesty and integrity in government are more likely to flow from public funding and public disclosure than they are with the current ad hoc situation where the Party fund raiser goes around door-knocking leading business houses for funds." (S3).

- (b) *"Public funding is the only feasible method I can see for avoiding these disclosure problems. Importantly the fund should not actually be handled by the candidate rather they should use electronic cards and should not be allowed credit passed the final week of the election campaign. Furthermore media outlets etc should notify their advertising rates prior to the election. General party funding doesn't assist much in actually influencing the public. It mainly involves research, transport and administration."* (M Passmore (S9)).
- (c) *"Public funding should be introduced - but only for fair presentation of informative issues material to be posted to each voter."* (R MacKinnon (S16)).
- (d) *"Ideally election campaigns should be public funded, historically donations to political parties are tied in with influencing government on policies that favour the fund donor.*

Political donations should be banned if funding introduced. Feasibility studies should be done, using investigations into Canada, NSW and Federal to obtain the best system and costing." (A Conway-Jones (S13)).

- (e) *"The Democrats support the introduction of public funding in Queensland as a means of strengthening and improving the democratic process in Queensland. As paragraph 4.5 of the Issues Paper implies, public funding when coupled with **enforceable** disclosure of private donations and political expenditure assists in making the political process more accountable.*

As should be evident from the Federal and NSW situation, public funding has certainly not ended the era of huge, secret political donations to the bigger parties and to the National Party. We believe that this is due to the loopholes which exist in this area, as has already been detailed in the Issues Paper. Hopefully, the matter of full disclosure of political donations on the Federal level will have been resolved by the time the Commission considers these issues, and may even provide a good model for Queensland to adopt.

One of the more obvious requirements for a healthy democracy is viable alternatives for the electorate to choose from. The provision of public funding gives political parties, groups and independents access to funds that would not otherwise be available unless they had very wealthy benefactors. As should be obvious there are very few benefactors who provide large funds for purely philanthropic reasons. Without access to the moderate funding that is available through public funding, it is impossible for any group or individual to present a viable alternative to those parties in receipt of sizeable donations. As indicated in the Issues Paper, too great a reliance on such sources of revenue might lead to corruption, or at the very least a strong suspicion of corruption.

We do not believe the arguments against public funding are particularly strong. The suggestion in paragraph 4.8 of the Issues Paper that the public may be alienated if taxpayer's funds are used to prop up parties which have lost public confidence is not tenable. As public funding is linked to the number of votes received, if a party does not have the confidence of the public, it will receive few votes, and therefore will receive little funding.

We also reject other objections, such as those outlined in paragraph 4.14 [of the Issues Paper]. In relation to point (b) of the paragraph, it is certainly untrue that public funding undermines volunteerism and membership participation. On the contrary, it is vital to have access to some resources in order to enable adequate participation. In relation to point (d) it is hard to see how public funding might unfairly assist incumbent parties, when the amount received relates to the amount of votes received. In relation to point (c), we believe that people can register their disapproval with parties through the ballot box or through other means between elections. There is a need to balance the morality of taxpayers' supporting political candidates against that of taxpayers being subject to political parties who owe their strength to wealthy and often secret donors. Points (a) and (e) are matters relating to expenditure of public monies. If it is accepted that public funding assist the accountability and effectiveness of political activity, then it is a small amount to pay." (Australian Democrats (S18)).

- (f) "The Labor Party supports public funding of election campaigns. The Party believes that the rationale for public funding has been well argued in the issues paper, and supports fully the arguments developed in Paragraphs 4.2 to 4.5 inclusive and 4.9 to 4.13 inclusive. It would emphasise in particular the purposes of public funding stated by the JSCER (September 1983) and set out in Paragraph 4.9, namely:

to remove the necessity or temptation for political parties and candidates to seek funds that have conditions attached;

to ensure that different political parties have equal opportunities to present their policies to the electorate during an election campaign; and

to help counter the problem created by the mounting costs of electioneering, particularly due to increased use of television." (ALP (S21)).

"... you cannot have disclosure of campaign donations unless you have accompanying it, public funding of election campaigns.

...

There has to be some legitimate form of [public] funding for political parties once you go down the road of disclosure of campaign donations." (ALP (T36)).

- (g) The Queensland Watchdog Committee (S24) stated in their initial submission:

"The Queensland Watchdog Committee does NOT support the public funding of election campaigns.

We DO support the provision of transport and communications facilities for candidates in remoter electorates during the election period so they can effectively compete with incumbents who have those facilities. Facilities should be available to candidates, not to parties."

- (h) In a later submission (S27) the Queensland Watchdog Committee elaborated its views:

"The Queensland Watchdog Committee does NOT support the public funding of election campaigns by political parties, for example the 'Central Fund' concept currently operating in New South Wales and the Commonwealth model which allocates money directly to registered parties.

However the group supports the idea of the New South Wales 'Constituency Fund', which would on EARC's calculation allow around \$11,000 to be distributed in each electoral district among candidates.

The group recommends the provision of transport and communications facilities for candidates in remoter electorates during the election period so non-incumbents can effectively compete with incumbents who have those facilities. Again facilities should be available to candidates, not to parties.

The group submits there is no need for political parties to raid the public purse for the purpose of telling us why we should vote for them. For a start, there is nothing to guarantee that what they tell us is the truth, so why should they spend our money to supply us with possible misinformation. Secondly, most central funds appear to be spent on advertising and party research. A ceiling on these would relieve the pressure for the major parties requiring public funds to pay for exorbitant advertising costs. A sensible advertising ceiling would allow parties to rely comfortably on donations to fund their campaigns, and possibly those of their candidates. This would also reduce reliance on the corporate sector for funds. We stress that recent research shows, while many voters associate themselves with political parties, they do so to a far lesser extent than 30 years ago. Further, membership of political parties has strongly declined over the last three decades, and all major parties are being attacked for being vehicles for the views of their leaders rather than representative of their members. These developments strengthen the argument that taxpayers should not be subsidising parties."

- (i) *"... candidates whose vote is significant should be eligible for a refund of their election expenses (or a portion of them) up to some maximum amount. This amount should be proportional to the vote they obtained." (G Jamieson (S1)).*
- (j) *"I submit that a system of public funding modelled on federal system should also be established in the Queensland parliament." (Senator M Macklin (S1)).*
- (k) Messrs L Greenhill, S Elson, L Nightingale and V Englart (S1) supported the introduction of a public funding scheme in Queensland.
- (l) *"The fact is, there needs to be reform on both sides of the ledger. You cannot have one without the other. There has to be some legitimate form of funding for political parties once you go down the road of disclosure of campaign donations. You can't have one without the other. That's really on the income side, but I also acknowledge that there needs to be major reform on the expenditure side, in terms of election campaigns and, of course, I realise that many of those reforms do not necessarily lie in the hands of EARC or any state based body. There has been a national debate in this area over the last six months, which has not necessarily, at this stage, produced substantial reform." (ALP (T36)).*

Submissions and Transcript Evidence Against Public Funding

4.33 The following submissions were against the introduction of public funding:

- (a) *"As all expenditure by all Governments is funded by the public through taxes and various charges this item is again, in need of definition.*

Under no circumstances should any vote seeking by any individual and/or Political Party, be funded through allocation or subvention from Treasury sources or any other Government funds.

The true democratic principle must be emphasised in that all Members of Parliament are supposed to represent the people of Electorates.

This principle has been long subverted by Party Politics to such an extent that democracy applied to our present forms of Parliamentary government is hypocrisy.

To give an alcoholic the key to the wine cellar is an invitation to eliminate the stock and possibly destroy the alcoholic.

Public Funding by allocating taxpayer funds for election campaigns is definitely an abuse and misuse of taxpayer funds. Any such project would be detrimental to the very fragile evolution towards genuine democracy and inevitably would be a path to a Dictatorship by the powers behind political parties. It would result in elimination of competition." (J Russell (S10)).

- (b) *"It is considered that there should be no public funding of election campaigns. Public funds are for the provision of services and facilities for the citizens of the particular area concerned and the use of public funds should not be utilized for the funding of election campaigns."* (Rockhampton City Council (S33)).
- (c) J Russell and K Bell (S1) did not support the introduction of a public funding scheme in Queensland.
- (d) *"I would strongly reject and object to proposed ... laws that would cause the public funding of election campaigns for political parties from the State Treasury."* (R Sargent (S20)).
- (e) *"The reality of disclosure laws would be a substantial reduction in monies raised by political parties by way of donations.*
The disclosure requirements would impact unevenly across the political parties depending on the nature of their donor base.
Accordingly the Liberal Party takes the view that if disclosure of the sources of donations is introduced then public funding of election campaigns and maintenance must be introduced.
This is an inescapable result of disclosure laws and it represents the real cost to the community of the establishment of a disclosure system. This cost should be taken into account when assessing the appropriateness or otherwise of public disclosure." (Liberal Party of Australia (S25)).
- (f) The National Party (S23) was of the opinion that there should be no public funding for election campaigns in Queensland. However, it did present opinions on how a funding scheme should be structured if one were to be introduced - these views are dealt with later.
- (g) At the Public Hearings the following exchange occurred between Commissioner Hunter and Mr D Russell QC for the National Party (T70-1).

Commissioner Hunter:

"You support partial public funding in combination with a continuation of political donations. In your view, what's the overall effect in the total expenditure by the community in this area? Do you think it would go up, or do you think there is a set-off between the two?"

Mr Russell:

"If we've given that impression in our submission, I'm afraid we haven't expressed ourselves very well. Our view is that it's quite disgraceful for politicians to attempt to use legislative powers to help themselves to public money, and we oppose, and oppose absolutely, the suggestion that the activities of political parties should be funded by the public, except by way of voluntary donation. And the reality is, if one walked out of this building, by the time one got to the end of George Street, if one had asked everybody whether or not they thought taxpayers' money should be given to politicians or political parties, I doubt that you'd find one person who thought it was a good way to spend money.

We would see the use of the legislative process to achieve something which would be so fundamentally resisted by the public as inappropriate. We've got to persuade people that we're providing a worthwhile public service. We are in a sense a service industry, and we've got to earn the support from the public directly."

Other Information Before the Commission

- 4.34 In investigating this general issue the Commission has examined information from a considerable number of other sources. These include:
- (a) reports on the operation of the Commonwealth Election Funding Scheme;
 - (b) reports on the operation of the NSW EF Authority;
 - (c) evidence before the WA Inc Royal Commission and the CJC investigations of donations made to Gold Coast aldermen;
 - (d) published material on the nature of public funding schemes in jurisdictions outside Australia;
 - (e) journal articles and other research publications;
 - (f) newspaper articles;
 - (g) evidence given to the Commission at the Public Hearings on 21 October 1991 in Brisbane; and
 - (h) evidence given to the SSCBPBD at Hearings between 24 September and 7 November 1991.

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 4.35 The major political parties were divided in their support for public funding. The ALP and the Democrats argued for public funding, while the Nationals and Liberals were opposed.
- 4.36 The reasons given by the parties for funding include:
- (a) assisting with the costs of advertising;
 - (b) compensating for an anticipated reduction in donations to political parties likely to be caused by the public disclosure of donations;
 - (c) eliminating perennial accusations of corruption and influence that result from obtaining funds from the corporate and other sectors of society; and
 - (d) providing financial assistance to all serious political parties and candidates thus enabling a fairer, more equitable contest for all participants. This is the "levelling the playing field" argument.
- 4.37 Most of the arguments against the introduction of public funding start with a philosophical opposition to the idea of dispensing public moneys to political parties and candidates, and go on to more practical concerns. E A Chaples (1989, p.78) summarised these arguments as follows:

"... public funding would:

outrage voters who have strong moral objections to the philosophy and policies of a particular party;

entrench existing parties to the detriment of new and small parties;
weaken the links between politicians and the rank-and-file party members;
not necessarily prevent the continued occurrence of illegal contributions;
encourage more frequent elections ... ;
lead to onerous bureaucratic controls over parties;
open up election finance to the future manipulation of successive governments."

4.38 The Commission also noted the statement by Senator W Parer on behalf of the Liberal Party before the SSCBPDP on 24 September 1991:

Political parties, we believe, are or should be volunteer organisations made up of individuals who support a particular political philosophy. It is quite wrong that taxpayers of Australia should be forced to subsidise political parties. Financial support should be a voluntary act. While the [Federal] Government has made great play about the increase in election costs, the question must be asked: would those increases have occurred in the absence of public funding?" (SSCPBPD 1991a, p.25).

4.39 To analyse the arguments in support of or opposing public funding of election campaigns, a number of issues need to be addressed:

- (a) equity;
- (b) undue influence over candidates and parties;
- (c) increasing costs of election campaigns;
- (d) offsetting the costs of disclosure requirements;
- (e) reduction in donations;
- (f) use of taxes to fund politicians;
- (g) better utilization of funds elsewhere;
- (h) loss of contact with the electorate;
- (i) public opinion; and
- (j) effects of public funding on the party system.

Equity Issues

4.40 It has been put to the Commission and argued elsewhere that public funding would make campaigning more equitable as the minor parties and independent candidates would then have access to increased funds and their campaigns would thus be more competitive. The public would therefore have a wider choice of candidates and be better able to compare alternative policies and programs on offer at election time. This argument was supported by both the Australian Democrats (S18) and the ALP (S21). The Labor Party argued for public funding on the grounds that it would serve to ensure that the different political parties would have more " ... equal opportunities to present their policies ... ".

- 4.41 The Commission is not persuaded by the main thrust of this argument. Several significant groups have established themselves on the political landscape without public funding, eg. the Green Independents in Tasmania and independent members in the House of Assembly in South Australia. Also, the Australian Democrats achieved their initial successes federally in the 1970s without the assistance of public funding, just as the Democratic Labor Party had done in the 1950s.
- 4.42 Lack of public funding may not be the barrier it is claimed to be. Any new group would have to achieve electoral success in order to gain any significant levels of public funding. This suggests that the established political parties are likely to be the major beneficiaries of any public funding regime.

Undue Influence over Candidates and Parties

- 4.43 The possibility of donations being made to candidates and parties to gain influence over policies has been raised consistently in evidence before the Commission. This problem is, of course, not unique to Queensland. As indicated earlier in the Report, other jurisdictions have faced similar problems and rising campaign costs have intensified this dilemma.
- 4.44 It has been argued that provision of public funding would be useful in reducing the necessity for parties and candidates to seek and accept donations from outside sources. For example, the First Report of the JSCER (1983, p.153) commented that public funding could reduce the necessity or temptation of political parties and candidates to seek funds that have "strings" attached. Submissions to the Commission which argued in these terms included those of P Beattie MLA (S3 and T7), A Conway-Jones (S13 and T17-8) and the ALP (S21).
- 4.45 It must be repeated that many donations are made in good faith by genuine supporters who wish to manifest their support in financial assistance. Their donations are not made to purchase influence. However, in an environment of rapidly increasing costs, the possibility of donations being accepted which have "strings attached" cannot be ignored.
- 4.46 The data given earlier in Table 2.1 suggest that although parties are receiving increasing amounts of public funding at the federal level, the level of disclosed donations has remained steady. Therefore, it could be argued that public funding has not decreased the possibility of undue influence, at least at the federal level. However, it is likely that advocates of public funding would say that this has occurred only because the system of disclosure has been so defective.

Increasing Costs of Election Campaigns.

- 4.47 The spiralling costs of election campaigns have been well documented (see Table 2.1) and further evidence to that effect does not need to be presented here. One of the consequences of increased costs is that as parties and candidates struggle to find financial resources to apply to the advertising budget, other valuable activities may suffer.

- 4.48 The major argument in regard to election expenses concerns costs associated with electronic advertising. Unless the PB & PD Act, which bans electronic advertising during election periods, is declared invalid by the High Court or repealed by the Federal government, the cost of electronic media advertising during the election period has been eliminated. To the extent that political parties do not redirect their electronic advertising during the election period budget to other forms of advertising, there should generally be a significant reduction in their overall costs. As electronic advertising was not usually an option available to independent candidates for their local campaigns, the absence of this form of publicity should mean more equal opportunities for all candidates in less costly forms of advertising.
- 4.49 Table 2.1 shows that there is a widening gap between expenditure by the parties, and the sum of the disclosed donations and public funding. Public funding at the federal level, therefore, does not appear to have alleviated the problem of the parties' expenditure exceeding their income.
- 4.50 At the recent by-election for the NSW State electoral district of The Entrance, the first election at which the ban on electronic advertising came into effect, it has been estimated by some observers that the two major parties still spent in the order of \$250,000 each.

Public Funding will Offset the Cost of Disclosure Requirements.

- 4.51 Public funding was introduced federally and in NSW as part of a broad package concerned with election financing, including disclosure of donations and electoral expenditure. Both of these systems have administrative costs associated with them. In some cases these costs may be significant, especially for smaller, less well organised parties.
- 4.52 In Chapters Two and Three the Commission argued strongly that because of the demand for an open and accountable political process, there ought to be full disclosure of donations, income and political expenditure by parties and candidates. The arguments for disclosure are valid, independent of any arguments for public funding, and the Commission does not accept the argument that funding and disclosure are necessarily linked, as was argued by P Beattie MLA (S3), the ALP (S21 and T36), and the Liberal Party (S25).

Reduction in Donations

- 4.53 It has been put to the Commission that if a scheme for public registration of political donations is introduced then there will be a reduction in the number of donations made to parties and candidates. It was argued that this would be because donors do not wish to have their identities made public or because they believe that there is no longer any need to support the party of their choice or parties generally because they will receive public funding. It was argued that the introduction of a public funding scheme would go part of the way towards replacing the lost donations. In particular P Beattie MLA (S3) and (T6-7) made reference to lost donations as the result of public registration of political donations:

"It was a significant drop-off, and a lot of it was due to the fact that Queensland companies, at that stage, were terrified to be seen donating to the Labor Party because there was a National Party state government here. ... Some of them could have sent their money nationally, but I understand quite a number, because of the disclosure rules, didn't donate at all.

... I know our money dropped off quite dramatically from the private sector, and some of that, I'm sure, was also due to the fact that people thought well, there is public funding, why should we continue to put money in?" (P Beattie MLA (T6-7)).

- 4.54 It was similarly put to the SSCPBPD that there would be a substantial diminution in donations. While giving evidence on behalf of the ALP on 24 September 1991, Gary Gray anticipated a massive reduction:

"It is hard to measure because of the ways in which companies make their contributions and the timing of that. I would estimate a 50 percent drop at the very least." (SSCPBPD 1991a, p.11).

- 4.55 At the public hearings D Russell QC for the National Party was questioned on a likely steady and inevitable decline in donations if disclosure of donations was introduced. He commented (T71): *"Well, if that's so, that's just too bad. We have to live with it."* He also commented (T72) that he did not believe that the decline in donations would threaten the financial viability of political parties.

- 4.56 Most recently there have been renewed claims that new disclosure requirements were already biting into party revenues:

"Corporate donations to the two major political parties have more than halved as a result of the new disclosure laws, raising serious questions about the ability of the parties to pay for the next Federal election campaign.

The Federal director of the Liberal Party, Mr Andrew Robb, said yesterday that company donations to the party had fallen at both State and Federal levels by 'well over 50 per cent' since the laws took effect on December 19 last year.

The collapse in corporate donations to the Labor party has occurred on a similar scale, falling by 70 per cent in the same period, according to party sources.

"The money hasn't dried up completely, but it's pretty close", a Labor figure said.

Both the Labor and Liberal parties report that the new law, which requires public disclosure of any donor giving \$1,500 or more a year, has deterred many companies from making any donations.

Company donations are the long-standing mainstay of party revenue. If the funding shortfall persists, it will cost each of the main parties about \$1 million by the next election, due before June 1993, based on past election funding patterns." (Sydney Morning Herald, 9 March 1992).

- 4.57 However, Mr Robb also said it might be a transitional matter until companies *"... work out what they want to do"*, but in any event *"... it's going to make it more difficult for us to make money."*

- 4.58 The Commission remains sceptical whether the long term reduction in donations will be as substantial as has been feared. The recent introduction of public funding in Australia federally and in NSW have coincided with growing dissatisfaction with a number of aspects of the political process, and with widespread economic difficulties. The cause-and-effect relationship of reduced donations is far from obvious. The Commission is of the view that public funding of election campaigns is not intended to compensate for a loss of income from supporters who wish to remain anonymous. Rather, as has been argued elsewhere in this Report, the Commission believes that it is essential that the public have full knowledge of the identities of persons and organisations backing political parties and candidates in this State. Equally, donors should be protected against discrimination, and the Commission is recommending accordingly (see Chapter Six, Offences and Penalties).

- 4.59 The Commission has also examined the arguments which have been put forward in opposition to public funding.

Use of Taxes to Fund Politicians not Supported by the Taxpayer

- 4.60 It is sometimes argued that provision of public funding would mean that taxpayers would be funding some politicians whom they do not support. R Sargent of the Republican Party (S20) listed this argument as one of the criticisms of public funding schemes.
- 4.61 An underlying motive evident in submissions from private individuals and in general community debate is that because the political system has been abused by various governments over the years, no public funding should go into the political process. On the other hand, tax funds generally are dispersed in various programs and activities which individual taxpayers may well disapprove of.
- 4.62 This issue revolves around the basic philosophic argument about what constitutes the proper expenditure of public funds. The Commission is not convinced either way on this issue by the arguments presented to it in submissions and at the Public Hearings.

Funds Could be Better Utilised Elsewhere

- 4.63 Among the supporters of this view were the Rockhampton City Council (S33) and R Sargent of the Republican Party (S20). The argument proposes that higher priority areas of government activity should receive the funds rather than candidates or political parties. The supporters of this argument point to the current economic difficulties and the numerous instances of unmet need in the community at large.
- 4.64 Clearly there are many competing priorities on public finances. The JSCER stated:
- " ... the concept of public funding centres on the essence of legitimate political decision-making, that is, ensuring that no element in the political process should be hindered in its appeal to electors nor influenced in its subsequent actions by lack of access to adequate finance." (1983, p.155).*
- 4.65 The argument proposed by the JSCER is not entirely convincing. The political systems in Australian States without public funding appear equally as healthy (or not) as those in jurisdictions such as NSW and the Commonwealth where public funding exists.

Loss of Contact with the Electorate

- 4.66 The Liberal Party (S25) stressed that local fundraising was an important element of a candidate's contact with electors. The inference to be taken from their statement is that public funding may reduce the degree of contact between candidates and their potential supporters.
- 4.67 A further concern was raised by R Sargent of the Republican Party (S20) who stated that public funding may also have the undesirable side effect of leading to an overall reduction in participation in party activities because there would be less need for volunteer labour. It may be too that the influence of relatively few fund-raisers within the party is enhanced at the expense of the larger number who undertook campaign activities on its behalf.

- 4.68 The Commission is concerned at the perceived decline of political parties, for there have been many public statements that falling memberships and rank-and-file dissatisfaction reveal serious problems in the political system. However, the Commission believes that parties and candidates could seek to generate support in the community in a number of ways which do not need to be centred on fund raising. Public funding does not necessarily eliminate the need for fund raising or other activities.

Public Opinion is Strongly Against Public Funding

- 4.69 It is clear that the events of recent years have led to public dissatisfaction with political parties and candidates in Queensland. The Commission believes that it is likely to be some years before public confidence in the democratic processes of this State is wholly restored.
- 4.70 However, the Commission does not believe that public opinion should be the only criterion on which a decision about public funding should be based.

Effects of Public Funding on the Party System

- 4.71 R Sargent (S20) of the Republican Party suggested that funding would serve to reinforce the position of the major parties at the expense of minor parties and candidates. If the political process stagnates because parties no longer have to solicit support in the form of funds from the community, then the "*... natural growth and decline of political parties may be inhibited*".
- 4.72 The Commission does not accept this argument. The level of public funding which could be provided is never likely to wholly eliminate the need to seek support in the form of donations from the community.
- 4.73 Membership of political parties and general participation in the political process appear to be in decline across Australia, irrespective of public funding. The level of cynicism in the electorate and apparent malaise within the political parties are therefore not problems that will be resolved by introducing public funding or withholding it. Rather, they may be an indication to political parties that they need to address their own internal arrangements and approach to the electorate.

The Future of the *Political Broadcasts and Political Disclosure Act 1991*.

- 4.74 The future of the PB & PD Act is uncertain for two reasons. As mentioned previously, the PB & PD Act is currently being challenged in the High Court, with a Full Bench hearing having taken place 17-19 March 1992. Also, there have been recent media reports suggesting the Federal Government might re-consider the Act in any event. The main thrust of these reports is that the bans on electronic advertising might be revoked. There has already been a decision announced that in future the bans will not apply in cases of by-elections in Local Authorities. Therefore, even if the High Court decides that the Act is valid, there is still a chance that it will be amended or totally abandoned by the Federal Government.
- 4.75 If the challenge fails, the arguments and recommendations set out previously are not affected, and there will be no impact on this Report. However, if the challenge is successful, there will be consequential effects on this Report.

- 4.76 The most significant effect of the striking down of the PB & PD Act would be that electronic advertising of political campaigns will recommence.
- 4.77 The Commission strongly believes that the disclosure of donations, other income and expenditure should continue, irrespective of the fate of the PB & PD Act. This is to ensure that the political process is as open and accountable as possible.
- 4.78 In the event that electronic advertising is reintroduced as a result of either the High Court declaring the Act invalid or the Federal Government changing the legislation, campaigns are again likely to be dominated by political parties advertising in the electronic media.
- 4.79 The Commission is concerned that if electronic advertising is reinstated, candidates' local campaigns would again be swamped by the volume of television and radio advertising by the major political parties, and the parties will be hard pressed to raise the funds to cover their bills for such advertising.

Conclusion

- 4.80 In the event that the PB & PD Act remains in force, the Commission, having considered the arguments in support of and opposing the introduction of some form of public assistance for election campaigns in Queensland, is not convinced that the arguments in favour of public funding outweigh those against.
- 4.81 Comparable problems exist in all Australian jurisdictions whether or not public funding is provided. There are problems of public confidence in the political processes in most States, including Queensland. However, these problems would not be resolved merely by the introduction of public funding regimes.
- 4.82 On the other hand, if the PB & PD Act is declared invalid or the bans on electronic advertising are repealed, the Commission considers that a limited amount of public funding should be introduced. A recommendation to that effect appears at para. 4.104.

RECOMMENDATIONS

- 4.83 **The Commission recommends that:**
- (a) **Irrespective of the future of the *Political Broadcasts and Political Disclosures Act 1991*, the Commission's recommendations on disclosure of political donations, other income and electoral expenditure should stand.**
 - (b) **If the *Political Broadcasts and Political Disclosures Act 1991* remains in force, public funding for political parties or candidates should not be introduced in Queensland.**
- 4.84 Should electronic advertising of electoral matter recommence, the issue of who should be eligible for public funding arises, and this is discussed in the next section.

Eligibility for Public Funding

Issue 1 If public funding is introduced who should be eligible to receive payments - Political parties? Candidates? or both? (Issues Paper, p.41).

EVIDENCE AND ARGUMENTS

4.85 The Commission received a number of suggestions as to who should receive public funding. The two main options advanced were: either political parties and independent candidates; or candidates only (both party endorsed and independent).

(a) M Passmore (S9) supported funding for candidates only. He stated that:

"Public funding should only be available to the candidate who may then elect to pass a maximum 25% to joint party activities."

(b) A Conway-Jones (S13) also suggested that only candidates be eligible for public funding.

(c) The National Party (S23) did not support public funding but said that, in the event that public funding were to be introduced, political parties and independent candidates should receive public funding.

(d) The Liberal Party (S25) was not in support of public funds being paid directly to endorsed candidates:

"... [the Party] does not believe that endorsed candidates should be given direct access to public funds.

Local fundraising is a significant part of a candidate's and member's contact with the electorate. If nothing else, it forces a communication and an involvement in the affairs of the political party to which he belongs.

It is at electorate level that public funding could have its most detrimental impact as the lack of a need to raise funds could also reduce the need for a local member or candidate to canvass and/or participate in his local community and/or organisation."

(e) *"... the money should all be allocated to the registered party, and direct to independent candidates. In the case of parties, it is important to avoid allocations to constituencies which may force unnecessary expenditure in 'safe' districts. The vast bulk of expenditure is incurred centrally (on election advertising) or takes place in the perceived marginal districts. There is no basis for a scheme which would distort party expenditure." (ALP (S21)).*

(f) *"We believe that it is more appropriate for public funding to be received by political parties, via the party agents, rather than to their individual candidates. This is administratively simpler for parties and for the candidates as well. Those candidates who are not endorsed by registered parties would obviously receive the funding directly." (Australian Democrats (S18)).*

(g) *"This submission recommends that political parties and independent candidates be eligible.*

It is against funding being granted to an endorsed candidate. The party receives the full amount covering all its candidates. It then can use the money to the best advantage in winning an election. An endorsed candidate in a 'safe seat' may not require his full allocation to win. His surplus can be re-directed to an area of greater need.

Independent candidates will receive their funds direct." (A Sandell (S11)).

- (h) The Queensland Watchdog Committee (S27) did not support public funding of political parties but did support funding for candidates:

"The Queensland Watchdog Committee does NOT support the public funding of election campaigns by political parties, for example the 'Central Fund' concept currently operating in New South Wales and the Commonwealth model which allocates money directly to registered parties.

*However the group supports the idea of the New South Wales 'Constituency Fund'
...*

The group submits there is no need for political parties to raid the public purse for the purpose of telling us why we should vote for them. For a start, there is nothing to guarantee that what they tell us is the truth, so why should they spend our money to supply us with possible misinformation. Secondly, most central funds appear to be spent on advertising and party research."

- (i) In commenting on whether public funds should be paid to the parties or to their candidates, P Beattie MLA (T15) stated at the public hearings:

"This is a perennial war ... between whether the party should get it or whether it should go to the candidates. The reality is that if you don't give it to the party, they will find a means of giving it to themselves."

- (j) T Walters for the Australian Democrats (T33) argued that public funding should be paid to parties rather than their endorsed candidates because:

" ... a lot of your campaign expenses are actually organised in a central kind of way; like if you are looking at advertising or how to vote cards, then they're often not actually carried out by the individual candidate anyway. So, it would just make it a lot easier."

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 4.86 Overall the Commission received relatively little guidance on this matter. The statements of support it received for the alternative propositions that parties and independent candidates should receive funding or candidates only should receive funding were generally declarations of belief. Detailed analysis of where money was needed and why was lacking.
- 4.87 The ALP (S21) proposed that funding should go directly to the parties to avoid unnecessary expenditure in "safe" districts, and because the vast bulk of electoral expenditure (advertising costs) is incurred centrally by the parties rather than by individual candidates. Whilst the Commission understands any party's concern about the most effective allocation of its resources in the effort to win office, it does not believe that legislation should be determined by these considerations alone. Public funding is intended to assist with the unavoidable costs of election campaigns and to be a partial substitute for donations from persons seeking to influence political decisions. Further, public funding is intended to assist by informing all electors about alternative policies on offer.
- 4.88 The Commission believes that the substantial advertising budgets of political parties can be controlled. For example, parties are able to restrict the frequency and size of advertisements they choose to place.

- 4.89 The Commission does not accept the Australian Democrats' (S18) argument that funding should go to parties rather than their endorsed candidates because this is " ... *administratively simpler for [the political] parties and for the candidates ...* " A balance should be struck between local and Statewide issues. This is more likely to be achieved by the payment of funding to candidates rather than to parties, although the Commission recognises that the political reality is that any party's central organisation may require their candidates to re-direct a part or all of their entitlement into centrally-controlled funds.
- 4.90 There may also be the exceptional case when a candidate subsequently breaks with their party, and a dispute arises about who is entitled to the funding. This happened recently in NSW (*Sydney Morning Herald*, 31 January 1992, 1 February 1992 and 7 February 1992). There, Dr Terry Metherell became involved in a dispute with the Liberal Party regarding the payment of a public funding cheque of \$11,151. Dr Metherell was elected in May 1991 as a Liberal Party representative; however, he left the party four months later to sit as an Independent.
- 4.91 The Liberal Party's (S25) suggestion that funding should be provided to parties appeared to be based on the assumption that " ... *the lack of a need to raise funds could also reduce the need for a local member or candidate to canvass and/or participate in his local community and/or organisation.*" Local fundraising " ... *forces a communication ...* " (S25). If, in the event that funding were made available to a candidate, that candidate chose to scale down their level of involvement in community affairs, then the candidate deserves any loss of electoral support which may result.
- 4.92 Public funding, which may assist with the administrative costs of the proposed disclosure requirements outlined elsewhere in this Report, should not be withheld lest it affect the effort made to win election. It is probable that centralised advertising campaigns, such as Queensland has seen in recent years, have contributed to reducing the need for local involvement with consequent adverse effects on membership and community involvement.
- 4.93 The National Party submission (S23) contained views similar to the Liberal Party's. It stated:
- " ... the provision of substantial amounts of public funding to political parties necessarily must enable them to become less dependent upon their membership and/or other supporters for resources. Any development which allows political parties to become less responsible to their support base is, in the view of the National Party, not to be encouraged because it will contribute to increasing remoteness of political parties and Parliamentary members from the public generally."*
- 4.94 The Commission agrees with this argument to a large extent, but believes that there are other considerations as well. Providing public funds directly to candidates ought to make available more time for dealing with the concerns of the local community with less time committed to fund raising activities. But as to the electoral backlash which could follow if a party becomes " ... *less responsible to their support base ...* ", that is a matter for the party to assess (S23).
- 4.95 The Commission is not convinced by the arguments put forward in support of funding being paid directly to political parties. Instead, the Commission has concluded that funding should be provided directly to candidates, both endorsed and independent. The eligibility criteria for the receipt of these funds are discussed later in this chapter.

- 4.96 Funding should be provided directly to candidates rather than to parties for a number of reasons:
- (a) It is important that endorsed and independent candidates should be treated equally by the electoral system.
 - (b) It would be marginally more difficult for the ECQ to administer a scheme which funds both parties and independent candidates; the greater complexities of the NSW scheme testify to this. One set of rules can apply to all candidates under the Commission's proposed scheme.
 - (c) Candidates still incur some electoral expenditure in their own districts. Moreover, the Commission notes the possibility that any reduction in expenditure on electronic media broadcast time and production costs may be immediately replaced with greater use of personalised mail advertising driven by computer and phone bank facilities. This relatively new development has the potential to either produce more locally focussed campaigns or to centralise campaign management just as much as broadcast advertising has done.
 - (d) Another consideration supporting provision of public funding to candidates at the electoral district level is the Commission's objective that electors should have access to information to assist them in selecting candidates. The Commission believes that funds provided at the local level would enable a more informed choice for electors between candidates who are best placed to expound issues facing the local community.
 - (e) It might be said of the Commission's proposal that if funding is not provided to parties directly then the incentive to accept donations will remain or even be increased. The Commission has two comments in this regard. First, the disclosure of donation requirements which are discussed in Chapter Two will make it very difficult for parties to accept donations from persons seeking special treatment as a result of their donations and it will also discourage such persons from attempting to influence politicians through donations. The second comment is that assistance to endorsed candidates is, in fact, assistance for their party. Money provided to candidates for their local campaign will enable the parties to transfer resources to other activities.
- 4.97 Whilst the idea of public funding of election campaigns is unlikely to be popular with the general public, a scheme whereby candidates only and not political parties would receive funds could be a marginally more acceptable alternative.
- 4.98 For example, the last Queensland State election in 1989 was contested by 334 candidates. Had partial public funding of campaign costs of candidates only been available with a qualification threshold of 4% of the total valid (formal) first preference votes cast per electoral district (as is the case in federal elections) 290 candidates would have been eligible to receive some level of public funding.

- 4.99 Of these, 89 candidates endorsed by the ALP, 85 by the National Party, 77 by the Liberal Party, 4 by the Australian Democrats and 35 Independent candidates would have qualified. Only 44 candidates (comprising 1 Liberal Party candidate, 3 Australian Democrat candidates and 40 Independent candidates) did not reach the 4% threshold and would not have received public funding.
- 4.100 At \$1.00 per vote, approximately \$1.57 million or an average \$17,695 for each of the 89 electoral districts, would have been available for distribution.
- 4.101 In Chapter Two of this Report the Commission has recommended that the only control which should be imposed on political donations is that they should be made public. The traditional means of fundraising as practised by political parties and candidates can be maintained, even if a scheme of public funding is introduced.
- 4.102 The Commission believes that its proposal for a candidate funding scheme will go some way towards reducing the need for people involved in the political process to approach or be approached by special interests to receive campaign funds. Candidates will be better placed to refuse to accept funds which have strings attached or come from sources whose motivations are suspect.
- 4.103 As the title of the JSCEM Report *Who Pays The Piper Calls the Tune* implies, there is always the possibility that benefactors may try to exert influence over politicians if their donations are accepted to bolster shortfalls in campaign budgets.

RECOMMENDATION

- 4.104 **The Commission recommends that if the *Political Broadcasts and Political Disclosures Act 1991* is declared invalid, or the ban on political advertisements in the electronic media is repealed, then a public funding scheme which applies only to the election campaigns of candidates, whether endorsed by political parties or standing as independents, should be introduced. The Commission does not recommend public funding being paid directly to political parties.**
- 4.105 It should be noted that subsequent recommendations in this chapter are made subject to any decision made in respect of para.4.104. In the event that a public funding scheme is to be introduced, the details of how the Commission believes such a scheme should operate in Queensland are presented in the following sections.

Further Matters for Consideration

- 4.106 Were a scheme for public funding of candidates to be introduced, then a number of associated questions will need to be addressed. These questions, considered in detail below, are:
- (a) What should be the extent of public funding? What formula should be used to determine the amount of money available for funding and how should it be distributed among claimants?
 - (b) Should a minimal level of electoral support be obtained before eligibility for funds is achieved? Alternatively should payment of public funds be made as a direct reimbursement of electoral expenditure?

- (c) Should payment of public funds be conditional on lodgement of disclosures of donations received and electoral expenditure made?
- (d) Should there be provision for the making of payments in advance of the campaign in question?
- (e) Should public funding be available for by-elections?

Extent of Public Funding

Issue 2 Should there be full or partial public funding? Should political donations be banned if a public funding scheme is introduced? What should be the level of public funding? (Issues Paper, p.39).

4.107 A major concern in any public administration program is the need to ensure that its costs are contained and predictable. It is equally important to ensure that the funds available are sufficient to achieve the funding objectives. This is especially true and important in an area where public opinion may not be supportive initially of the funding program. In developing its proposed scheme the Commission has endeavoured to ensure that the quantum of funds involved will be relatively modest and that administrative costs are minimised.

EVIDENCE AND ARGUMENTS

4.108 These questions are concerned with the proportion of campaign funds which should be made available through the funding scheme: whether public funds should be provided to replace private funds entirely (full funding); or whether they should supplement private funds (partial funding). None of the submissions made to the Commission was in support of full funding.

- (a) *"The extent of public funding is dependent on what restrictions are placed on income and/or expenditure. We believe that a level of public funding similar to that provided for in Federal elections is suitable. It is simpler to follow the Federal example of paying a certain amount per vote, rather than using a complex formula such as that used in NSW. It would also be simpler for the amount to be automatically indexed. If the Parliament (i.e. the Government) were to set the amount before each election, it creates the potential for controversy each time, with obvious opportunity for charges of Government manipulating amounts for their own advantage, and to the disadvantage of their opponents." (Australian Democrats (S18).*
- (b) The National Party (S23) proposed that political donations should not be banned in the event of the introduction of a public funding scheme, and the level of such funding should be an indexed amount per vote equivalent to the Commonwealth public funding levels.
- (c) *"The Liberal Party believes there should be partial public funding and that it would be unrealistic to attempt to provide for full public funding. The cost of full public funding would be substantial and in any case without some limitation on expenditure would merely provide an invitation to the participants in the political process to spend extravagantly." (The Liberal Party (S25)).*

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 4.109 In the Issues Paper the Commission suggested that it is probably more realistic to consider partial public funding as a supplement to other sources of funds. In that event it would be more likely to gain public acceptance of the program and limit the demands which would be placed on the public purse.
- 4.110 Partial, rather than full, funding of election campaigns has been generally adopted wherever public funding schemes have been introduced. It seems also that no jurisdiction has sought to completely ban political donations when public funding of election campaigns has been implemented, though introduction of public funding has often been the occasion to impose restrictions on some aspects of raising donations.
- 4.111 The impact that funding has on the overall level of electoral expenditure appears to vary somewhat. The level of public funding at the 1990 Federal election was estimated to be 46% of reported electoral expenditure, whereas in NSW public funds from the Constituency Fund for candidates in the 1988 election provided 35% of the total election campaign expenditure reported for that election.
- 4.112 In some other jurisdictions a limit has been placed on the level of electoral expenditure by parties and/or candidates, and public funding has then been made a fixed proportion of the total. For example, the level of public funding in Canada is tied to parties' and candidates' permitted election expenditure limits. The maximum amount a political party can be reimbursed from public funds is 22.5% of its expenditure limit. For a candidate, 50% is the permitted reimbursement limit.
- 4.113 The November 1980 *Report of the NSW Joint Committee of the Legislative Council and Legislative Assembly Upon Public Funding of Election Campaigns* expressed its preference for a scheme which would:
- " ... make a significant impact upon the strains of fund-raising involved for the political parties without replacing the need for fund raising from private and traditional sources."* (Parliament of NSW 1980, para.4.6.2 p.xxv).
- 4.114 Submissions showed partial funding of campaigns as the favoured option. Public funds should supplement, rather than replace, private donations and other sources of income. Other options available include:
- (a) A total ban on political donations and their replacement with full public funding. The Commission does not support this option because of the impact it would have on the traditional support processes of political parties. It would also make additional demands on Consolidated Revenue which could not be justified.
 - (b) Introducing partial public funding and allowing parties and candidates to receive donations without restriction but at the same time placing a limit on permissible electoral expenditure. The question of whether there should be a limit on electoral expenditure was dealt with in Chapter Two, Disclosure of Electoral Expenditure.

- 4.115 In this section the Commission has concluded that public funding should not fully replace funds from other sources, including donations. It should be a supplement to assist candidates in their local election campaigns.

RECOMMENDATION

- 4.116 **The Commission recommends that the proposed system of public funding should provide partial funding only. Public funding should be available only as a supplement to other sources for electoral expenditure by candidates.**

Formula Used to Determine Money Available for Funding

- 4.117 In other jurisdictions formulae have been developed for determining each party and/or candidate's share of the available funds. Queensland would require a procedure for fund allocation. Issues which have to be determined are: should funds be distributed on a Statewide basis or should each electoral district have separate allocations; and whether limits should be placed on the amount any one candidate can receive.

Issue 3 What formula should be used to determine the amount of money available under public funding? Should there be a central statewide pool of funds from which payments are made? Alternatively, should there be an amount allocated per vote? Should this amount be indexed or should it be reset each election by the Parliament? (Issues Paper, p.40).

Issue 4 How are entitlements to be calculated? Should a ceiling be imposed on the amount of money which is able to be claimed by eligible political parties (eg. no more than 50% of the available amount)? (Issues Paper, p.43).

EVIDENCE AND ARGUMENTS

- 4.118 (a) *"The Liberal Party would support the introduction of the modified form of the New South Wales model set out in paragraph 4.28 of the Issues Paper No 12.*

Of course the real difficulty is in ascertaining the value of the 'monetary unit' or in reality of the total sum to be initially provided." (Liberal Party (S25)).

In relation to calculations the Liberal Party (S25) stated:

"The Liberal Party believes that a political party's entitlement to public funding should be calculated on the basis of the ratio of first preference votes polled by each endorsed candidate to the total of first preference votes of all eligible groups and candidates in a Legislative Assembly election.

The Liberal Party also believes that no one party should be entitled to claim more than 50% of the available amount and any balance sum should be distributed proportionately between the parties."

- (b) *"The extent of public fundings is dependent on what restrictions are placed on income and/or expenditure. We believe that a level of public funding similar to that provided for in Federal elections is suitable. It is simpler to follow the Federal example of paying a certain amount per vote, rather than using a complex formula such as that used in NSW. It would also be simpler for the amount to be automatically indexed. If the Parliament (i.e. the Government) were to set the amount before each election, it creates the potential for controversy each time, with obvious opportunity for charges of Government to manipulating amounts for their own advantage, and to the disadvantage of their opponents." (Australian Democrats (S18)).*

In a later submission (S29) the Democrats commented:

"We also draw the Commission's attention to the issue of how public funding is disbursed. It is our view, as stated in our original submission, that public funding entitlements should be paid as a direct calculation of x cents per vote, rather than as a reimbursement of electoral expenditure. We note that the National Party (p.12) and the ALP (p.9) also express this view, and the Liberal Party suggests funds be split between party maintenance and electoral expenditure. We believe these views recognise the fact that electoral activity is, in effect, a continual process which is simply a component of the broader political process. We believe this view is consistent with the need to disclose all Party income and donations, not just those relating to electoral expenditure, an issue we will follow up next."

- (c) *"The Commonwealth reimbursement scheme based on votes received would in Queensland disadvantage rural areas where the new 'phantom voter' scheme is set to operating. This is because there are fewer voters (and hence votes) in western seats than elsewhere, yet candidates would be expected to travel longer distances when campaigning.*

On the other hand a 'Constituency Fund' of a certain amount per electorate would allow money to be reimbursed to candidates in a more even-handed fashion. In forming its view the Committee believes it would be best to divide the amount evenly between all candidates, but realises some bogus candidates attached to other candidates might stand simply to divert funds their way." (Queensland Watchdog Committee (S27)).

- (d) The National Party (S23) was of the opinion that the Commonwealth formula should be used to determine the amount of money available for public funding. It recommended that there should not be a central state-wide pool of funds, but instead an amount allocated per vote. It considered that this amount per vote should be indexed rather than reset each election by the Parliament.
- (e) *"The Labor Party submits that an amount per vote of \$2.00 per vote could be adopted for Queensland, with the rate indexed by the CPI."*

...

"It is submitted that there is no need to impose a ceiling on the proportion of the funds received by any eligible party. In any event it is extremely rare for any party to receive 50% or more of first preference votes. If votes less than 4% are excluded and a ceiling of 50% imposed, a party could be penalised if it achieved between 48% and 50% of first preferences. On those occasions in Australia when a Party receives 48% or more of first preferences, it is a reflection of dominant public attitudes which have every right to be expressed fully in the extent to which public funding is provided." (ALP (S21)).

- (f) At the public hearings in response to a question concerning whether public funding should be calculated on the number of votes received, W Swan for the ALP (T47) said: *"Very, very definitely."*
- (g) A Conway-Jones (S13) suggested that political funding be:

"Based on feasibility study. Possibly allocation per vote reset each election to the CPI."

and in relation to calculation of entitlement said:

"Investigate procedures in Canada, NSW, Federal and note problems if any with their systems. A ceiling should be imposed. Trial period 1 election to evaluate."

- (h) *"This submission would lean towards a set amount per vote.*

This would be indexed with the C.P.I. To allow Governments to reset the figure for each election is fraught with adverse possibilities.

It would be expected that both political parties and independent candidates would have a major input into this area." (A Sandell (S11)).

In relation to calculation Mr Sandell suggested the Commonwealth model would be appropriate.

- (i) *"Limited expenditure based on [ECQ] recommendation with public input and scrutiny. Indexation better than Parliamentary decision, which could work to disadvantage small parties." (R MacKinnon (S16)).*

Mr MacKinnon also suggested that:

"All parties deemed worthy of registration should be entitled to full and fair presentation of case".

- (j) *"Candidates whose vote is significant should be eligible for a refund of their election expenses (or a portion of them) up to some maximum amount. This amount should be proportional to the vote they obtained." (G Jamieson (S1)).*
- (k) *"The measure of support for a party or individual at the previous election shall determine the amount of funding offered to that candidate. In the case of an independent candidate, a base amount shall be allocated. No candidate shall spend more than three times the financial support given to any other candidate." (L Greenhill (S1)).*

ANALYSIS OF EVIDENCE AND ARGUMENTS

4.119 Submissions differed on the appropriate model to be followed. There was support for both the Commonwealth and the NSW models.

- (a) The Commonwealth Model - the amount of public funding available for distribution is based on a sum of money per vote. The maximum amount available for distribution is equal to the total number of formal first preference votes polled by all eligible candidates (in the election(s) held on the particular polling-day) multiplied by the "relevant amount of money" for the election(s) (CE Act s.321) The "relevant amount of money" was initially set at 60 cents per vote in a House of Representatives election and 30 cents per vote in a concurrent Senate election. It is indexed to increases in the Consumer Price Index (CPI) (CE Act s.321) and for the period 1 July - 31 December 1990 was 94.507 cents per House of Representatives vote and 47.253 cents per Senate vote (concurrent election).
- (b) New South Wales - in NSW a formula (based on total enrolment, the life of the previous Parliament and an indexed monetary unit) is used to establish the total amount available for public funding. The total amount is then split between two funds - a Central Fund, comprising 2/3 of the total funds, for parties, independent candidates and groups contesting Legislative Councils elections; and a Constituency Fund, comprising 1/3 of the total amount, for candidates contesting Legislative Assembly elections. The monetary unit at the time of the establishment of the scheme in 1981 was 22 cents which was then the cost of a postage stamp. The monetary unit is reviewed quarterly and adjusted in line with increases in the CPI for Sydney. For the quarter ending 30 September 1991 the monetary unit was 44 cents.

- 4.120 The common denominator of these schemes is that they are based on a monetary unit to be paid to eligible candidates in proportion to the share of the valid vote received. The main variations are that:
- (a) Some place a limit of 50% of available funds as the maximum any one candidate can receive. In other words, any candidate receiving more than 50% of the first preference vote cannot receive public funding in excess of 50% for their jurisdiction.
 - (b) Most schemes do not allow a candidate or party to receive funds in excess of the amount which was actually expended by that candidate or party.
 - (c) The schemes differ in their calculation of the total funds available for disbursement. Some depend on a complicated formula which takes into account a number of factors, others apply a simple monetary value to each vote received.
- 4.121 A public funding scheme for candidates in Queensland should be as simple and straightforward as possible. Therefore it would be preferable to use a system that pays a set amount per vote gained at an election rather than a complex formula such as in the NSW model. The monetary value of each vote received should be indexed to increases in the CPI.
- 4.122 Another possibility is that candidates could be assisted in a material way, eg. with the production and postage of information leaflets as advocated by R McKinnon (S16). Section 30 of the PB & PD Act makes such a provision, but only for the next federal general election.

"Particulars of candidates"

386A. (1) *The Commission must, within the prescribed period in relation to the next general election held after the commencement of this section, cause documents to be prepared in accordance with the regulations and delivered to each household in Australia.*

(2) *Each document must as far as practicable, be printed on recycled paper.*

(3) *A document delivered to a household under this section must contain relevant information about:*

(a) *each nominated House of Representatives candidate in the Division where the household is situated; and*

(b) *each nominated Senate candidate in the State or Territory where the household is situated;*

together with such policy statements as are prescribed.

(4) *For the purposes of subsection (3), the following information is relevant information about a candidate:*

(a) *the candidate's full name;*

(b) *the name of the registered political party (if any) which is to be printed adjacent to the candidate's name on the ballot paper for the forthcoming election under section 214;*

(c) *prescribed information (if any) about the candidate's qualifications, career, occupation and interests, being information supplied by the candidate to the Commission.*

(5) *A document under this section must also contain:*

(a) *if a candidate to which it relates supplies the Commission with a photograph of the candidate - a black and white reproduction of the photograph in the prescribed form; or*

(b) *if no such photograph is supplied by a candidate, but the candidate supplies instead what purports to be depiction of the logo of the registered political party which is to be printed adjacent to the candidate's name on the ballot paper for the forthcoming election under section 214 - a black and white reproduction of that depiction in the prescribed form."*

- 4.123 The Commission does not consider such assistance is appropriate, as parties and candidates should be allowed to select their campaign techniques as freely as possible.
- 4.124 The Commission proposes that candidates should receive funding in direct proportion to the number of first preference votes they receive. The Commission acknowledges that in the five districts of over 100,000 sq kms in area the total pool of funds will be slightly less because of the modified operation of the 10% tolerance rule applied during redistributions. Application of the formula to this situation could readily be met by applying the formula to the additional 2% enrolment numbers allocated to each of these districts. For example, in Gregory an additional 6,871 (ie. 2% of 343,571 sq kms) votes would be allocated proportionately to the first preference vote outcomes, and the respective candidates reimbursed accordingly.
- 4.125 The Commission has examined the question of whether any one candidate should be eligible for more than 50% of the pool of money in any electoral district. The ALP suggested that there should not be a ceiling; other submissions advocated such a ceiling. However, the Commission does not believe a ceiling should apply as it would penalise party activities in safe seats where there is just as much reason to inform the electorate about campaign issues as in marginal seats.
- 4.126 A monetary value will have to be fixed to each vote for the scheme to operate. The Commission has looked at the value assigned to votes in other jurisdictions. It has concluded that initially a value of \$1.00 per valid vote should be applied. This will bring the value per vote in Queensland roughly in line with the value in the Commonwealth system. The Commission further recommends that this amount be indexed to the CPI to maintain its real value. Whilst it is recognised that movement in the cost of goods and services used in election campaigns does not necessarily compare to movement in the CPI, and may well rise more rapidly if recent experience is typical, construction of a Special Index for the purpose would be difficult and arbitrary.
- 4.127 An initial value of \$1.00 per vote will provide an average of about \$20,000 to each electoral district - a total of approximately \$1,780,000 for the whole State. However it is unlikely that the total amount will be required because of informal votes which will not attract public funds. There will be a further reduction in respect of first preference votes for those candidates who poll less than 4% of the vote.
- 4.128 There may be a few candidates who actually spend less than their level of electoral support (votes received) entitles them to receive - the smaller total will be paid to them (see later in this chapter for discussion and recommendation on this question).

- 4.129 The final issue is concerned with the proposal that there should be a threshold of votes below which no public funding may be paid to a candidate. This matter is dealt with below under the heading "*Minimum Electoral Support Required*".
- 4.130 The Queensland Watchdog Committee (S27) provided an alternative suggestion for the disbursement of funds among eligible candidates (with a 10% threshold). They proposed that public funding for a district should be shared equally by all eligible candidates. This proposal would assist the less successful candidates but the principle adopted elsewhere has been to compensate candidates on the basis of the level of electoral support obtained. The Commission can see no particularly strong argument to depart from an arrangement that has been accepted for both Federal and NSW elections whereby political parties and candidates alike are paid public funding based on the level of electoral support received.

RECOMMENDATION

4.131 **The Commission recommends that:**

- (a) **The amount of public funding to be received by each eligible candidate should be in direct proportion to the number of valid first preference votes received by the candidate in the electoral district.**
- (b) **Provision should be made to allow for the weighting of electoral districts of over 100,000 sq kms by adding 2% of the area to the valid first preference votes.**
- (c) **The monetary amount to be paid per vote should be \$1.00 at the next election. The amount thereafter should be indexed to increases in the Consumer Price Index.**
- (d) **There should be no ceiling placed on the share of the money payable to any one candidate.**

Registration of Candidates for Public Funding

Issue 5 Is there a need to register political parties and candidates as a part of the operation of the scheme? (Issues Paper, p.42).

EVIDENCE AND ARGUMENTS

- 4.132 The following submissions were received regarding registration of political parties and candidates as part of the operation of any funding scheme.
- (a) R MacKinnon (S16), A Conway-Jones (S13) and the National Party (S23) were of the opinion that there is a need to register political parties and candidates for public funding.
 - (b) M Passmore (S9) did not see a need to register political parties and candidates as part of a funding scheme stating that:

"Candidates will make their party allegiances known."

- (c) *"With the present system in Queensland where party registration is not mandatory a different system is necessary.*

Along with a candidate nomination, which will include a party if applicable, the party will submit a list of all its endorsed candidates. Independent candidates will register for funding along with their nomination.

Should registration of political parties become mandatory as normal procedures, this section may have to be re-written." (A Sandell (S11)).

- (d) *"The registration of political parties is necessary to enable a public funding scheme to operate effectively." (Australian Democrats (S18)).*

- (e) *"The Labor Party supports the view that political parties and candidates must be registered in order to participate in the scheme, and that registration should be required by the day on which nominations close." (ALP (S21)).*

- (f) *"The Liberal Party is not satisfied that there is a need to register parties or candidates and is of the view that a public funding scheme can operate satisfactorily without the need for registration" (Liberal Party (S25)).*

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 4.133 With the exception of the Liberal Party, submissions received have indicated support for the registration of political parties and candidates as part of the operation of public funding.
- 4.134 The public funding system proposed for Queensland involves funding of candidates only. There would therefore be no requirement for political parties to be registered for funding purposes. However, Chapter Four of the Commission's *Report on the Review of the Elections Act 1983-1991 and Related Matters* deals with Registration of Political Parties and Candidates, and highlights other relevant reasons why political parties should be registered. The Electoral Act now provides for the registration of parties and candidates in Queensland.
- 4.135 The two major funding schemes in operation in Australia differ on this issue. New South Wales legislation requires that both political parties and individual candidates register in order to receive public funds; the Commonwealth legislation requires only that political parties be registered.
- 4.136 The Commission has concluded that candidates at Queensland State elections and by-elections should be required to register to be eligible for public funding. Such registration should occur at the time of nomination as a candidate at the election and be part of the basic documentation of the nomination process.

RECOMMENDATION

- 4.137 **The Commission recommends that candidates should be required to register at the time of nomination to be eligible for public funding.**

Minimum Electoral Support Required

Issue 6 Should public funding be made subject to parties and candidates receiving a minimum level of electoral support? (Issues Paper, p.42).

EVIDENCE AND ARGUMENTS

- 4.138 (a) M Passmore (S9), A Conway-Jones (S13) and R MacKinnon (S16) were in favour of public funding to political parties and candidates being subject to a minimum level of electoral support.
- (b) *"To be successful, and to be accepted by the public, public funding must be tied to some form of minimum electoral support. This submission recommends the NSW system - 20% of formal primary vote of the successful candidate."* (A Sandell (S11)).
- (c) *"The Democrats strongly support a requirement that public funding should be paid only when a minimum level of electoral support has been achieved. We suggest that parity with the current Federal threshold of 4% would be appropriate. As the Issues Paper suggests, it is inequitable to use a threshold which relates to a candidate having to achieve a certain percentage of the winning vote, as this makes it harder for those candidates standing in safe seats to receive funding. We suggest that the calculation procedure used at Federal level would also be appropriate."* (Australian Democrats (S18)).
- (d) *"... a minimum level of support - 4% of the formal vote in constituency - should be necessary before anyone can qualify for public funding. The Commonwealth system is preferable to that of NSW for the reasons adduced in the issues paper."* (ALP (S21)).
- (e) The National Party (S23) supported the idea of a minimum level of support. They suggested 4% of the primary vote in the relevant election.
- (f) *"The Liberal Party believes that public funding should be subject to parties and/or candidates receiving a minimum level of electoral support.*
The Liberal Party believes that the required threshold of support should be not less than 10% of the total vote cast or alternatively the party be eligible for public funding if it has at least one representative in the State Parliament." (Liberal Party (S25)).
- (g) *"One way round this would be to impose a threshold of say, 10 per cent of the vote for any reimbursement. All candidates who achieve this should then be evenly reimbursed. The group opposes the allocation of funds calculated on the number of votes received as this favours incumbents and can work to entrench a status quo."* (Queensland Watchdog Committee (S27)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 4.139 All submissions received on this question were in favour of a minimum level of electoral support as a qualification for public funding. Other jurisdictions with public funding also impose thresholds to ensure that only those candidates receive funds who obtain a significant amount of elector support at the poll.

- 4.140 The submissions were generally in support of a threshold requirement. Most support was for the adoption of a model like the Commonwealth legislation which requires a candidate to attain a minimum of 4% of formal first preference votes lodged in the electoral district at the election.
- 4.141 A number of submissions were of the opinion that the Commonwealth model was the best model for Queensland to follow. The NSW system is more complex to administer because it requires that before candidates qualify for funding, they receive not less than one fifth of the total number of first preference votes polled by the successful candidate. This formula determines entitlement to receive funding which is not based on the candidate's own efforts and the amount of support achieved but on the fortunes of another candidate; presumably it was modelled on older provisions relating to return of unsuccessful candidates' deposits.
- 4.142 The Commission has concluded that only candidates who receive more than 4% of the valid first preference votes at Queensland elections should be eligible for funding. This will bring the Queensland scheme into line with the Commonwealth's. This figure is an appropriate lower limit - with an average electoral district enrolment of about 20,000 electors 4% represents \$800 at \$1.00 per vote if 20,000 valid votes are cast. Four percent is also the recommended threshold for loss of the candidate's nomination deposit (see para.7.255, p.131 of the Commission's *Report on the Review of Elections Act 1983-1991 and Related Matters*).

RECOMMENDATION

- 4.143 **The Commission recommends that to be eligible for any public funding a candidate must achieve the threshold figure of 4% of the valid first preference vote in an electoral district.**

Payment of Public Funding as a Reimbursement of Electoral Expenditure

Issue 7 Should payments of public funds be made in reimbursement of electoral expenditure incurred so that a payment does not exceed the amount expended? If a public funding scheme is based on the reimbursement principle, should only specific categories of electoral expenditure qualify for reimbursement or should there be no restrictions? What vouching and auditing requirements should apply to claims for public funding? (Issues Paper, p.44).

- 4.144 The first question concerns the problem that, if the funding system is based solely on the number of votes received at an election, then some candidates may be entitled to receive more funds than they had actually expended.
- 4.145 The second question follows from the first. If candidates are reimbursed up to the amount they expend in their campaign, what categories of expenditure should qualify for public funding?
- 4.146 The last question is concerned with the certification which must be provided by candidates to prove that their claim is valid. Should a qualified auditor be required to audit the candidate's claim?

EVIDENCE AND ARGUMENTS

- 4.147 (a) *"Only specific categories should qualify."* (R MacKinnon (S16)).
- (b) *"The provisions in paragraph 4.50 of the Issues Paper whereby a party's or candidate's entitlement exceeds the amount of electoral expenditure incurred, the excess amount is paid have obviously been tried and found successful. It is recommended for Queensland.*
- Whatever system is finally adopted the most important aspect is described in paragraph 4.56 of the Issues Paper. That is that the controlling authority is empowered to undertake all necessary investigation before parting with public money."* (A Sandell (S11)).
- (c) A Conway-Jones (S13) supported payments of public funds in reimbursement of proven electoral expenditure incurred:
- "Only specific categories of expenditure should apply. Official audit and verification necessary for proof."*
- (d) *"Whilst both Federally and in NSW reimbursement is tied to actual electoral expenditure, we believe that public funding should be linked directly to votes gained, not to expenditure. Linking payment to expenditure simply encourages excessive spending on electoral outlays. The Issues Paper argues for public funding not solely on the grounds of assisting parties with campaign expenditure, but with assisting them to operate more effectively overall, which includes important matters such as 'development of public policy, public education, representation of constituents' concerns and encouragement of public participation in the democratic process.'" (Australian Democrats (S18)).*
- (e) *"It is not necessary to regard public funding as reimbursement of electoral expenditure. All the evidence suggests that the occasions when public funding will exceed expenditure will be rare and confined to occasional independent candidates. If the fee for nomination is raised to \$1,000 and that fee is treated as an electoral expense the likelihood of funding exceeding expenses is minimal. The additional administrative costs imposed by making public funding a payment towards actual electoral expenses are not worth incurring."* (ALP (S21)).
- (f) The National Party (S23) only stated that it did not support the payment of public funds being made in reimbursement of electoral expenditure incurred and offered no reasons for this opposition other than their general position that it is inappropriate that government resources are made available for partisan purposes.
- (g) *"That the payment of public funds should be made in reimbursement of electoral expenditure and further that there should be no restriction on the categories of electoral expenditure which should be able to be reimbursed."* (Liberal Party (S25)).
- (h) When commenting on submissions the Australian Democrats (S29) stated:

"We also draw the Commission's attention to the issue of how public funding is disbursed. It is our view, as stated in our original submission that public funding entitlements should be paid as a direct calculation of X cents per vote, rather than as a reimbursement of electoral expenditure. We note that the National Party (p12) and the ALP (p9) also express this view, and the Liberal Party suggests funds be split between party maintenance and electoral expenditure. We believe these views recognise the fact that electoral activity is, in effect, a continual process which is simply a component of the broader political process. We believe this view is consistent with the need to disclose all party income and donations, not just those relating to electoral expenditure ..."

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 4.148 The majority of submissions on this issue agreed that a public funding scheme should only reimburse candidates for money legitimately and actually expended on their election campaigns. The Australian Democrats considered that the funding payable should be linked directly to votes gained, not expenditure. Notwithstanding the Australian Democrats' view, the Commission believes that, as a matter of principle, no candidate should be able to receive more money than they actually spent as electoral expenditure. This situation could conceivably arise in "safe" seats where the campaigning effort may not be so great or expensive as in marginal districts or in the seats where a party minimised its campaign effort for one reason or another.
- 4.149 The Commission therefore proposes that if a candidate's entitlement, based on the number of votes received, is greater than the amount actually expended, the lesser amount should be paid to the candidate.
- 4.150 Neither the NSW or Commonwealth public funding legislation specifies the types of expenses which qualify for reimbursement under their public funding schemes. The Commission believes this to be a defect in each scheme. The onus would appear to be on the candidate to decide what should legitimately be claimed; the common element should be that any expenses claimed must relate to the election.
- 4.151 A definition of "electoral expenditure" is outlined in Chapter Two and designates expenses for disclosure purposes. The Commission believes it would be consistent and appropriate that the list also apply to qualifying expenses in relation to public funding. Neither the NSW nor the Commonwealth Acts establish this link between their funding and disclosure schemes. However, if the Queensland system is to ensure that only eligible expenses qualify for public funds, then it is desirable that the same definition be used for the two schemes. This will also have the effect of rejecting suggestions that the candidate's deposit should be refundable. The purpose of providing funding is to enable candidates to communicate with electors, not to encourage them to stand in the first place.
- 4.152 In relation to the vouching and auditing requirements, it is recommended that no separate claim for public funding be required. Lodgement of the disclosure returns by candidates should be the automatic triggering device for payments of public funding to candidates.

- 4.153 However, the Commission suggests that for simplicity candidates should previously have been required to indicate on their nomination form whether they wished to receive public funds if they achieve the 4% of votes threshold. If they do not so indicate, payments should not be made.
- 4.154 The auditing requirements for disclosure returns have been dealt with in Chapters Two and Three of this Report.

RECOMMENDATION

- 4.155 **The Commission recommends that:**
- (a) **No candidate should be able to receive public funding which is greater than the amount of eligible electoral expenditure actually spent by that candidate.**
 - (b) **The list of eligible expenses for public funding claims should be the same as the list proposed by the Commission for the disclosure of electoral expenditure.**
 - (c) **No separate claim form should be required for public funding. The disclosure return form should serve both purposes.**
 - (d) **Candidates who wish to be eligible for public funding should be required to indicate on their nomination form whether they wish to receive public funding if they subsequently qualify.**

Public Funding as a Condition of Disclosure

Issue 8 Should a payment of public funds be conditional upon compliance with the disclosure requirements? (Issues Paper, p.44).

EVIDENCE AND ARGUMENTS

- 4.156 The Issues Paper asked whether payment of funds should be conditional upon compliance with disclosure provisions. The major argument in favour of this proposal is that it may encourage earlier disclosure of donations and expenditure returns if funding cannot be paid until disclosure requirements are complied with. The main argument against the proposition is that payment to candidates, some of whom may have borrowed money to mount their campaigns, may be delayed.
- 4.157 In NSW, compliance with the disclosure requirements is a prerequisite for public funding. The Commonwealth places no such requirement on applicants for funding. In both jurisdictions there are specific penalties for breaches of the disclosure provisions.
- 4.158 (a) *"Non-compliance with disclosure of all donations should be penalised by fine of full public funding." (R MacKinnon (S16)).*
- (b) *"The disbursement of public funds should not be dependent on disclosure. This would a retrograde step." (A Sandell (S11)).*

- (c) A Conway-Jones (S13) and the National Party (S23), however, supported the idea of payment of public funds being conditional upon compliance with disclosure requirements.
- (d) *"In order to ensure the strongest possible compliance with disclosure requirements, it may be advisable to make payment conditional upon compliance with the disclosure requirements."* (Australian Democrats (S18)).
- (e) *"The Liberal Party believes that the payment of public funds should be conditional upon compliance with the disclosure requirements in the previous relevant period."*

As political parties commit themselves to election expenditure during a particular campaign and disclosure is not required until some time after that campaign it is proposed that a significant breach of the disclosure requirements should prevent a party from obtaining funding in and at the subsequent maintenance year and election.

The one concern that we have with respect to such an approach is that it places in the hands of the administering body a power to effectively remove a political party from the political process." (Liberal Party (S25)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 4.159 The Issues Paper pointed out that Commonwealth experience does not suggest that political parties take their disclosure obligations any less seriously if disclosure is not a precondition for the receipt of public funds. However, the proposed Queensland scheme does not propose funding for political parties and the Commission is uncertain of the extent to which the Commonwealth experience can be validly applied to a different regime.
- 4.160 Most of the submissions felt that compliance with disclosure requirements should not be a precondition for the receipt of public funds. This is generally the case in those jurisdictions that fund parties as well as candidates and, in some instances, permit the payment of funds in advance.
- 4.161 However, there is a substantial argument in support of the above proposal. The amount payable to each candidate is either a monetary amount calculated on the number of votes received or the amount actually expended by that candidate, whichever is the lesser amount. This provision means that the receipt of a return itemizing electoral expenditure could become an important check in the payment process. If payments are made initially purely on the number of votes received then if the disclosure comes in later and shows a lower figure, then a refund will have to be sought from the candidate. This eventuality should be avoided so far as possible, not least because of the practical difficulties in recovering monies from individual candidates.
- 4.162 The Commission has noted the arguments in the submissions but has come to the conclusion that compliance with disclosure requirements should be a pre-condition for the receipt of public funds. The main argument in support of this conclusion is that candidates will be more likely to submit their expenditure disclosure returns on time if payment depends on this. The system will also be easier to administer for the funding authority.
- 4.163 The proposed method will ensure that reimbursement claims can be assessed accurately. The onus is placed on the candidate to ensure that returns are submitted properly and on time if they are to receive their public funding as soon as possible.

RECOMMENDATION

- 4.164 **The Commission recommends that disclosure of electoral expenditure should be a precondition for the payment of public funds to candidates.**

Advance Payments

Issue 9 Should advance payments be able to be made to political parties? If so, what amounts and when? (Issues Paper, p.45).

EVIDENCE AND ARGUMENTS

- 4.165 The question here is whether there should be any provision for making advance payments of public funds. The advantage of this proposition is that candidates who have limited resources could "borrow" on their entitlement so that they could pay for their campaign. The disadvantage is that it would be impossible to assess accurately how much an individual candidate would be entitled to. The possibility could arise that candidates would have to pay back some money to the ECQ if their performance was less than expected. This could leave some candidates in debt to the ECQ.
- 4.166 (a) The National Party (S23) did not advocate the introduction of advance payments of public funding to political parties.
- (b) *"It is submitted that a system of advance payments similar to NSW for general elections could be adopted and that the limit of 30% of the party's entitlement at the previous general election is an appropriate restriction."* (ALP (S21)).
- (c) *"Whilst advance payments could be of assistance to parties and candidates, we accept that potential difficulties might arise for the body which administers the funds."* (Australian Democrats (S18)).
- (d) *"In the case of Independent candidates yes, six weeks prior to election an advance of funds. \$5,000 State Elections not Local Government."* (A Conway-Jones (S13)).
- (e) *"Advance payments are not recommended. To assist parties a portion of the agreed amount per vote could be paid immediately after an election."* (A Sandell (S11)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 4.167 The public funding scheme recommended for introduction in Queensland is for individual candidates only and does not extend to political parties. Other jurisdictions have introduced public funding for political parties. Level of party support at elections is more predictable, making advance payments easier to forecast on the basis of previous election results.
- 4.168 Although it is recognised that the need to advance funds to candidates (especially independent candidates) may be greater than it is for parties, it may not be administratively practical.

- 4.169 The Commission believes that the difficulties associated with the administration of an advance payment scheme for candidates outweigh its advantages for the candidates. It recommends that every effort should be made by the ECQ to ensure processing of entitlements as expeditiously as possible after each election and, should delay be anticipated, to make a partial payment to such extent as is possible.

RECOMMENDATION

- 4.170 **The Commission recommends that no advance payments of public funding should be available for candidates contesting Queensland elections. However, every effort should be made administratively to provide an early payment of any such funding after polling day.**

Application to By-Elections

Issue 10 Should public funding apply to the conduct of by-elections? If so, should the operation of the scheme be the same as that which operates at a general election? (Issues Paper, p.46).

EVIDENCE AND ARGUMENTS

- 4.171 The Issues Paper asked whether public funding should apply to the conduct of by-elections.
- (a) *"Elections are elections. Candidates in a by-election are no different."* (M Passmore (S9)).
 - (b) *"It is not possible to find argument which would make by-elections any different from a full State election."*
This submission recommends that whatever is decided on for full elections apply equally to by-elections." (A Sandell (S11)).
 - (c) The National Party (S23) and A Conway-Jones (S13) were in favour of public funding applying to the conduct of by-elections, and that the operation of the scheme should be the same as that applying to a general election.
 - (d) *"As the Issues Paper states, there seems no good reason why public funding should not also apply to by-elections."* (Australian Democrats (S18)).
 - (e) *"... that the scheme should be extended to by-elections using the same formula that applies to a general election."* (ALP (S21)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 4.172 Submissions received generally supported the proposal that public funding also extend to by-elections.
- 4.173 There would appear to be no convincing argument against extending such a scheme to by-elections. There also appears to be no reason why the basis on which funding is to be calculated should not also be the same as for a general election.

RECOMMENDATION

- 4.174 **The Commission recommends that any public funding scheme introduced for general elections in Queensland should also extend to by-elections. The basis on which funding is to be calculated should also be the same as for a general election.**

Local Government and Aboriginal and Torres Strait Islander Issues

- 4.175 In this chapter so far the Commission has been discussing public funding in the context of elections for the Queensland Legislative Assembly. It is necessary also to consider whether it is appropriate to apply the recommendations to Local Government and ATSI Community Council elections.
- 4.176 The Commission has identified a number of problems which make it difficult for the scheme as proposed above to be applied to these other types of election:
- (a) The inequalities in numbers of electors enrolled in Cities, Towns, Shires and Communities. Numbers of enrolled electors range from over 500,000 in the Brisbane City Council area to less than 30 on Stephen Island in Torres Strait. Any funding scheme based on a monetary value per vote would result in enormous disparities in the election campaigns which might be financed thereby.
 - (b) Some Local Authorities are undivided for electoral purposes whilst others have a number of divisions within the Local Authority area. This would result in considerable differences in the number of votes cast for individual councillors and hence the sums of money to which they would be entitled.
 - (c) The election of a Chairman/Mayor run simultaneously with elections for Councillors. Election of the Chairman or Mayor would result in much larger payments for their campaigns if the same monetary value per vote was applied.
 - (d) Uncontested elections are relatively common in Local Authority elections. Monies could reasonably have been expended by candidates before knowing that their election was to be uncontested.
 - (e) Some elections in Local Authorities involve the local mass media with the consequent high costs of electronic advertising. Levels of expenditure vary greatly depending on the size and character of the Local Authority and the normal style of campaigning in it.
- 4.177 These problems are not insurmountable but do impose complexities which do not arise in the scheme proposed for Legislative Assembly elections.
- 4.178 The Commission has concluded that at this stage it should not recommend that a public funding scheme should include candidates for election at Local Authority or Community Council elections. It believes that the introduction of public funding out of their own funds should be a matter for discussion and resolution and, if necessary reference to the relevant Ministers, by individual Local Authorities (including ATSI Community Council elections).
- 4.179 Amendments to the Local Government Act and other relevant legislation would be required in order to introduce any scheme of public funding for Local Authority and Community Council elections.

CHAPTER FIVE

POLITICAL ADVERTISING

Introduction

- 5.1 In Chapter Eleven, (Political Advertising) of its *Report on the Review of the Elections Act 1983-1991 and Related Matters*, the Commission made a number of recommendations on political advertising by parties, candidates, interested persons and government agencies. These recommendations addressed the following issues:
- (a) whether there should be controls over political advertising and whether control should extend to government agencies;
 - (b) definition of political advertising;
 - (c) whether editorial comment should be included in the definition of political advertising;
 - (d) restrictions on printed political advertising;
 - (e) authorisation of political advertisements;
 - (f) third party advertising;
 - (g) misleading advertising; and
 - (h) whether recommendations should extend to Local Authorities and Community Councils.
- 5.2 Because of the passage of the PB & PD Act at about the same time as the release of the *Report on the Review of the Elections Act 1983-1991 and Related Matters*, the Commission was unable to fully address some of these issues and instruct Parliamentary Counsel accordingly. This chapter seeks to address the remaining matters.

Matters For Consideration

- 5.3 The following issues from the Commission's *Report on the Review of the Elections Act 1983-1991 and Related Matters* need to be further addressed in this Report:
- (a) definition of "political advertisements" (para.11.47(b));
 - (b) exclusions from the definition of "political advertisements" (para.11.57(b)); and
 - (c) bans on advertising by government agencies, and exemptions from those bans (para.11.33(b)).

Definition of Political Advertising and Exclusions from the Definition

CURRENT SITUATION

- 5.4 The Commission made the following recommendations as to what should constitute definitions of "electoral matter" and "political advertising", in para. 11.47 of its *Report on the Review of the Elections Act 1983-1991 and Related Matters*.

"The Commission recommends that:

- (a) *The definition of 'electoral matter' should include anything able to, or intended to -
 - (i) influence an elector in relation to voting at an election; or
 - (ii) affect the result of an election.*
- (b) *The definition should include a further definition which relates to 'political advertisements.'*"

- 5.5 The Electoral Act does not contain a definition of "political advertising". However, at Part 1 Clause 3 the following definition for "election matter" is provided:

"'election matter' means anything able to, or intended to-

- (a) *influence an elector in relation to voting at an election; or*
- (b) *affect the result of an election;"*

EVIDENCE AND ARGUMENTS

- 5.6 (a) Section 328(5) of the CE Act contains a definition of electoral advertisement:

"(5) In this section, 'electoral advertisement, handbill, pamphlet or notice', means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting."

- (b) The PB & PD Act has a broad definition of political advertisement:

"'political advertisement' means an advertisement containing political matter;

'political matter' means:

- (a) *matter intended or likely to affect voting in the election concerned; or*
- (b) *matter containing prescribed material;*

but does not include exempt matter;

'prescribed material' means material containing an express or implicit reference to, or comment on, any of the following:

- (a) *the election concerned;*
- (b) *a candidate or group of candidates in that election;*
- (c) *an issue submitted or otherwise before electors in that election;*
- (d) *the government, the opposition, or a previous government or opposition, of the State in which that election is held;*

- (e) a member of the Parliament of that State;
- (f) a political party, or a branch or division of a political party."

5.7 The Australian Concise Oxford Dictionary 1987 defines an advertisement as a "public announcement (*esp. in newspapers, or posters, by television.*)"

ANALYSIS OF EVIDENCE AND ARGUMENTS

5.8 As stated at para. 11.43 of the Commission's *Report on the Review of the Elections Act 1983-1991 and Related Matters*, it is necessary to distinguish between "electoral matter" and "political advertising" for the purpose of regulation, because much material published and broadcast in the form of editorials and commentary does contain "electoral matter" but is not an advertisement.

5.9 In the Commission's view it is most important that the freedom of the media to express opinions during election periods ought to be protected in State legislation to the maximum extent possible. This matter was canvassed in the *Report on the Review of the Elections Act 1983-1991 and Related Matters*, paras. 11.49-11.57. In that Report at para. 11.57 the Commission recommended:

"The definition of political advertising adopted for Queensland legislation should expressly exclude editorials and political commentary articles published in newspapers and journals or otherwise."

5.10 The Commission considers that a broad usage of the concept of "political advertising" is required in order to adequately regulate advertising during an election period. Regulation is essential to ensure that partisan political material presented to electors is adequately identified as such, and its contents meet broad rules on accuracy and do not contain material which misrepresents.

RECOMMENDATIONS

5.11 **The Commission recommends that:**

- (a) **The regulation of "political advertising" should cover advertisements that "relate to an election".**
- (b) **A definition of "advertisement" is not required in the legislation, as the dictionary definition is adequate for the purpose.**
- (c) **Editorials and political commentary published in newspapers and journals or otherwise, should be specifically excluded from the definition.**

Recommendation (c) is reflected in the Draft Bill in clause 181B.

Bans on Advertising by Government Agencies and Exemptions from those Bans

CURRENT SITUATION

5.12 At para. 11.33 of its *Report on the Review of the Elections Act 1983-1991 and Related Matters*, the Commission recommended that:

- (a) *Controls over political advertising be established to prevent misleading or false advertising which may adversely affect political parties and individual candidates. These controls should apply to both electronic and printed advertisements.*
- (b) *A ban should be placed on advertising of a political nature by government agencies during the State election period unless such advertising falls within the Commonwealth's exemption categories and was agreed to by the leaders of the Parliamentary parties."*

5.13 Because the PB & PD Act was passed just prior to the release of the above Report, the Commission stated at para. 17.4, p.372:

"The Commission is satisfied that the Draft Bill gives effect to its recommendations. However it will require some further development particularly in the area of restrictions on advertising by government agencies (see para.11.33)."

5.14 The PB & PD Act at Part 2, Amendments of the Broadcasting Act 1942, s.5, contains the following definition of "exempt matter":

*"**exempt matter**' means any of the following:*

- (a) *matter directly relating to warnings of impending natural disasters or military or civil disorders;*
- (b) *matter relating to measures (including relief measures) taken to deal with such disasters or disorders and with their consequences;*
- (c) *matter provided by the authorities responsible for the conduct of an election to a Parliament or a local government authority, or of a referendum, including material relating to the procedures and polling places for the election or referendum and the promotion of participation in the election or referendum;*
- (d) *advertisements of goods and services offered for sale by or on behalf of:*
 - (i) *the government or a government authority, of the Commonwealth; or*
 - (ii) *the government, or a government authority, of a Territory; or*
 - (iii) *the government, or a government authority, of a State;**being advertisements that do not contain a political reference;*
- (e) *advertisements relating to vacant positions or calling for expressions of interest in appointments to public offices;*
- (f) *advertisements calling for tenders;*
- (g) *announcements of the kind mentioned in paragraph 31(2)(a) of the Australian Broadcasting Corporation Act 1983, or announcements carried by the Service relating to any activity or proposed activity of the Service;*
- (h) *announcements relating to any public inquiry or public hearing conducted under a law of the Commonwealth, or of a State or Territory;*
- (i) *any notice or announcement required to be broadcast by or under any law of the Commonwealth or of a State or Territory, other than a prescribed notice or announcement;*

***'government authority'** means:*

- (a) *in relation to the Commonwealth:*
 - (i) *a Department of State of the Commonwealth; or*
 - (ii) *a local government authority or body (whether incorporated or not) that is established for a public purpose by the Commonwealth, regardless of the way in which the authority or body is so established; and*

- (b) *in relation to a State or Territory:*
 - (i) *a Department of State of the State or Territory; or*
 - (ii) *a local government authority of the State or Territory; or*
 - (iii) *any other authority or body (whether incorporated or not) that is established for a public purpose by the State or Territory, regardless of the way in which the authority or body is so established"*

5.15 The PB & PD Act also contains a provision which requires all Commonwealth departments to make annual disclosure of their advertising expenditure. Section 20 of that Act inserts a new s.311A in the CE Act which provides:

"Annual returns of income and expenditure of Commonwealth Departments

"311A. (1) Subject to this section, the principal officer of each Commonwealth Department must attach a statement to its annual report setting out particulars of all amounts paid by, or on behalf of, the Commonwealth Department during the financial year to:

- (a) advertising agencies;*
- (b) market research organisations;*
- (c) polling organisations;*
- (d) direct mail organisations; and*
- (e) media advertising organisations;*

and the persons or organisations to whom those amounts were paid.

"(2) Nothing in subsection (1) requires particulars of a payment made by a Commonwealth Department in a financial year to be included in a return if the value of the payment is less than \$1,500.

"(3) The first return under this section need only contain particulars in relation to the period starting on the commencement of this section and ending on the next 30 June.

"(4) In this section:

'Commonwealth Department' means:

- (a) a Department of State of the Commonwealth; or*
- (b) a Department of the Parliament; or*
- (c) a branch or part of the Australian Public Service in relation to the staff of which a person has, under an Act, the powers of, or exercisable by, a Secretary under the Public Service Act 1922;*

'principal officer' means:

- (a) in relation to a Department - the person holding, or performing the duties of, the office of Secretary of the Department; and*
- (b) in relation to a branch or part of the Australian Public Service referred to in paragraph (c) of the definition of Commonwealth Department, the person who has, under an Act, the powers of, or exercisable by, a Secretary under the Public Service Act 1922."*

ANALYSIS OF CURRENT SITUATION

5.16 The PB & PD Act exemptions to the bans on electronic media advertising also apply to State and Local Authority elections. The Commission considers these exemptions are adequate and therefore there is no need for Queensland legislation to contain similar provisions in relation to electronic media.

- 5.17 There does, however, need to be State legislation which enacts EARC's previous recommendations to ban political advertising by Government departments in the print media during any State or Local Authority election. Restrictions on Government advertising in the print media should also contain the exemption categories of the PB & PD Act.
- 5.18 If the PB & PD Act is declared invalid as a result of the High Court challenge, then the Commission considers that it would be necessary for State legislation to extend provisions banning political advertising in the electronic media by Government agencies.
- 5.19 It is also the Commission's view that the provision in the new s.311A of the CE Act cited above provides a useful check on whether political advertising is being channelled through Government departments and agencies. Similar provisions should therefore be contained in State legislation.

RECOMMENDATIONS

- 5.20 **The Commission recommends that:**
- (a) **State legislation should prohibit political advertising by Government instrumentalities in the print media during the election period but should not create an offence on the part of publishers.**
 - (b) **The exemptions in the *Political Broadcasts and Political Disclosures Act 1991* should be incorporated in State legislation in relation to print media.**
 - (c) **If the *Political Broadcasts and Political Disclosures Act 1991*, is declared invalid the recommendations (a) and (b) above should be extended to electronic media.**
 - (d) **The disclosure provisions in s.311A of the *Commonwealth Electoral Act 1918* (as amended by Rec. 3.82) should be incorporated into State electoral legislation.**
- 5.21 These recommendations are dealt with in clauses s.181A, 4F, 126ZB and the definitions section of the Draft Bill.

Electoral Act Provisions Regulating Political Advertising

CURRENT SITUATION

- 5.22 As previously discussed, the PB & PD Act bans paid electronic political advertising during an election period for Commonwealth, State, Local Government and Territory elections.
- 5.23 The PB & PD Act also requires broadcasters to provide free time for political broadcasts and policy launches. The Act regulates the format of the political broadcasts (eg. two minutes duration, talking head only with static background and no music), but does not seek to control the content of the broadcasts.
- 5.24 The allocation of total time and the timing of broadcasts is determined by the Australian Broadcasting Tribunal.

- 5.25 Clause 163 of the Electoral Act seeks to regulate the content of electoral matter:

"Misleading voters

163. (1) A person must not, during the election period for an election, print, publish, distribute or broadcast anything that is intended or likely to mislead an elector in relation to the way of voting at an election.

(2) A person must not for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact regarding the personal character or conduct of the candidate.

(3) A person must not, during the election period for an election, print, publish, distribute or broadcast by television any representation or purported representation of a ballot-paper for use in the election if it is likely to induce an elector to vote other than in accordance with this Act.

Maximum penalty -

- (a) in the case of an individual - 40 penalty units; or
- (b) in the case of a corporation - 200 penalty units."

ANALYSIS OF CURRENT SITUATION

- 5.26 An opinion was sought from the Crown Solicitor as to the potential conflict which may arise from the provisions of the PB & PD Act and Clause 163 presented above.
- 5.27 The Crown Solicitor advised that there appeared to be " ... no direct inconsistency between the amendments introduced by the Political Broadcasts and Political Disclosures Act 1991 and Clause 163 of the Draft Bill for an Electoral Act." The Crown Solicitor's advice is attached at Appendix D.
- 5.28 Further, the Commonwealth legislation deals only with the presentation of such advertisements and not their content. Therefore, clause 163 would still apply to the contents of electronic political broadcasts during State and Local Authority election periods.
- 5.29 The Commission considers that to adequately regulate all aspects of electronic advertising there is a need for Queensland electoral legislation to contain provisions in regard to the content of political broadcasts in the electronic media.
- 5.30 Clause 162 of the Electoral Act is not consistent with Clauses 161 and 163 in that it is not restricted in its application to election periods only. Clause 162 states that:

"Headline to electoral advertisements

162. The proprietor of a newspaper is guilty of an offence if -

- (a) an article, or a paragraph, containing electoral matter is printed in the newspaper; and
- (b) either -
 - (i) the insertion of the article or paragraph is or is to be paid for; or
 - (ii) any reward or compensation, or promise of reward or compensation, is or is to be made for the insertion of the article or paragraph; and

- (c) *the proprietor does not cause the word 'advertisement' to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer;*

Maximum penalty -

- (a) *in the case of an individual - 9 penalty units; or*
- (b) *in the case of a corporation - 40 penalty units."*

5.31 The Commission considers that this clause should be amended in order to ensure all sections relevant to electoral advertising are applicable to the election period only. This will make it consistent with Commonwealth legislation.

RECOMMENDATIONS

5.32 **The Commission recommends that:**

- (a) **The regulation of the content of electoral matter in Section 163 of the *Electoral Act 1992* should stand whether or not the challenge against the *Political Broadcasts and Political Disclosure Act 1991* is successful; and**
- (b) **Section 162 of the *Electoral Act 1992* should be amended to be consistent with Sections 161 & 163 so that it applies to the election period only.**

CHAPTER SIX

OFFENCES AND PENALTIES

Introduction

- 6.1 In previous chapters of this Report, the Commission has recommended the introduction of regimes for the disclosure of donations and expenditure by registered political parties, candidates, and third parties who incur political expenditure.
- 6.2 In order to ensure that these regimes are complied with, there will need to be suitable offence provisions. Compliance will ensure that the objectives of the legislation will be met.

Issue 1 What acts should constitute offences under any legislation dealing with the registration of political donations? (Issues Paper, p.19).

Issue 2 Should non-compliance with disclosure provisions invalidate a candidate's election? Should a person who is an agent be disqualified from holding office as an agent if he/she is convicted of an offence against the disclosure provisions? (Issues Paper, p.19).

Matters For Consideration

- 6.3 The establishment of effective compliance measures requires consideration of two questions:
- (a) what should constitute offences against the disclosure requirements; and
 - (b) what are the appropriate penalties for these offences.

Current Situation

- 6.4 Both the Commonwealth and NSW disclosure legislation contain provisions for offences and penalties to enforce compliance. Also, the Victorian and Western Australian State governments have introduced Bills regulating disclosure of donations and expenditure. The offence and penalty provisions of these Acts and Bills are presented in Table 6.1 below.

Evidence and Arguments

- 6.5 In relation to offences and penalties generally:
- (a) *"Penalties should be harsh and enforced."* (Professor K Wiltshire (S8)).
 - (b) *"The CE Act set out in s.315 seems to be adequate. The agent should be under the same obligation as an auditor to report what he/she honestly believes to be the case."* (F Short (S14)).
 - (c) *"As contained in Appendix B. With the proviso that the monetary fines be drastically increased and a prison term incorporated. A financial political party could make a mockery of these fines when they can spend 3 million in three days on advertising. The punishment must be a deterrent."* (A Conway-Jones (S13)).

TABLE 6.1

PENALTIES RELATING TO DISCLOSURE

<p>COMMONWEALTH OFFENCE (Commonwealth Electoral Act)</p>	<p>PENALTY</p>
<p>Failure to Furnish a Return [s.315(1)]</p> <p>Submission of an Incomplete Return [s.315(2)]</p> <p>Submission of a False or Misleading Return by an Agent of a Registered Political Party [s.315(3)]</p> <p>Submission of a False or Misleading Return by a Person who is not an Agent or a Registered Political Party [s.315(4)]</p> <p>Furnishing a Person Required to Submit a Disclosure Return with False or Misleading Information [s.315(7)]</p> <p>Failure to Submit a Return Within Prescribed Period [s.315(8)]</p>	<p>\$5,000 Political Party \$1,000 Any other person</p> <p>\$1,000</p> <p>Not Exceeding \$10,000</p> <p>Up to \$5,000</p> <p>\$1,000</p> <p>Not Exceeding \$100 for each day Return is Outstanding</p>
<p>NEW SOUTH WALES OFFENCE (Election Funding Act)</p>	<p>PENALTY</p>
<p>Failure to Submit Return by a Registered Party Agent (s.96)</p> <p>Failure to Submit a Return by a Registered Agent of a Group or Candidate (s.96)</p> <p>False or Misleading Statements in a Return (s.97)</p>	<p>Not exceeding \$10,000 - Agent</p> <p>Not Exceeding \$20,000 - Party</p> <p>Not Exceeding \$10,000</p> <p>Not Exceeding \$10,000</p>

<p>PROPOSED WESTERN AUSTRALIAN OFFENCE (Electoral Amendment (Political Finance) Bill)</p>	<p>PENALTY</p>
<p>Failure to lodge a return [Clause 175U(1)]</p> <p>Submission of a False or Misleading Return by an agent of a Political Party [Clause 175U(3)]</p> <p>Submission of a False or Misleading Return by a Person who is not an agent of a Political Party [Clause 175U(4)]</p> <p>Furnishing a Person Required to Submit a Disclosure Return with False or Misleading Information [Clause 175U]</p> <p>Failure to Submit a Return within the Prescribed Period [Clause 175U(6)]</p>	<p>Political Party Not Exceeding \$7,500 Other cases Not Exceeding \$1,500</p> <p>Not Exceeding \$15,000</p> <p>Not Exceeding \$7,500</p> <p>\$1,500</p> <p>Not Exceeding \$150 for each day return is outstanding</p>
<p>PROPOSED VICTORIAN OFFENCES (Election Donations Disclosure Bill)</p>	<p>PENALTY</p>
<p>Failure to Submit Return [Clause 27(1)]</p> <p>Submission of Incomplete Return [Clause 27(2)]</p> <p>Submission of a False or Misleading Return by an agent of a Political Party [Clause 27(3)]</p> <p>Submission of a False or Misleading Return by a Person who is not an agent of a Political Party [Clause 27(4)]</p> <p>Furnishing a Person required to submit a Disclosure Return with False or Misleading Information [Clause 27(5)]</p> <p>Failure to Submit a Return within a Prescribed Period [Clause 27(6)]</p>	<p>Political Party - \$5,000 Other Cases - \$1,000</p> <p>Not Exceeding \$1,000</p> <p>Not Exceeding \$10,000</p> <p>Not Exceeding \$5,000</p> <p>Not Exceeding \$1,000</p> <p>\$100 for each day Return is outstanding</p>

- (d) *"Equating the offences and penalties with those that apply Federally would also be appropriate." (Australian Democrats (S18)).*
- (e) *"Offences, penalties and enforcement procedures must be set at a level which ensure an effective scheme." (ALP (S21)).*
- (f) *"The Liberal Party believes that the offences and penalties as set out in the Commonwealth legislation are more appropriate and should be adopted." (Liberal Party (S25)).*
- (g) *"The Commonwealth Electoral Act provisions (S.315) should apply. Further, it should be a criminal offence visited by severe sanctions (fines of up to \$500,000 and imprisonment) for a person to seek to in any way to discriminate against a person who has donated to political parties." (National Party (S23)).*
- (h) *"The offences listing in paragraph 2.92 are recommended coupled with the penalties in Appendix B. The N.S.W. offences are not wide enough. This has been realised by I.C.A.C. as per paragraph 2.95." (A Sandell (S11)).*
- (i) *"In order to discourage politicians from receiving donations candidates found to have accepted donations illegally ought to be ineligible to continue in, or to re-seek, public office. Parties receiving funds illegally ought face very substantial fines, and the individual part officers involved also heavily penalised. Equally persons or organisations making financial donations other than through the public collection agency ought face substantial penalties. (Lesser penalties should apply [to] offences which may arise through poor administration rather than an attempt to mislead - for example failing to promptly notify the public collection agency of gifts-in-kind received)." (Dr I Ward (S34)).*

6.6 Submissions were also sought on whether penalties, such as loss of a Legislative Assembly seat or de-registration as an agent, should apply in addition to the usual penalties of a fine and/or imprisonment:

- (a) *The disclosure of impropriety on the part of a candidate would itself be a severe blow to his/her credibility. An agent should be disqualified from holding that office again as he/she is in a greater position of responsibility unless it can be shown that information was deliberately withheld by the candidate." (F Short (S14)).*
- (b) *"The chapter on Offences and Penalties and now non compliance suggest as intensive audit procedure. If offences and non compliance are to be discovered how can this come about unless the whole financial picture is to be audited. To audit just a portion i.e. donations could well mean offences remain hidden.

A candidate should not be disqualified for either offences or non compliance. Assuming disclosure must be submitted 90 days from the Return of Writs the candidate would have already sat in the House. He is then disqualified. This means a by-election straight after a general election. Would the disqualified candidate be allowed to re-nominate? It must be remembered he has been chosen by the people of his electorate." (A Sandell (S11)).*
- (c) A Conway-Jones (S13) was of the opinion that elections should be invalidated upon discovery of non-disclosure of donations and that an agent should be disqualified from office if convicted of an offence against the disclosure provisions.
- (d) *"The Liberal Party does not believe that non-compliance should as a matter of course invalidate an election and in general would adopt the Commonwealth provisions." (Liberal Party (S25)).*

- (e) The National Party (S23) was opposed to the invalidation of an election due to non-compliance with disclosure provisions. It did support the concept that an agent should be disqualified from holding office if convicted of an offence against the disclosure provisions.

Analysis of Evidence and Arguments

- 6.7 The recommendations in Chapters Two and Three impose comprehensive requirements on parties and candidates to disclose their donations, other income and political expenditure. The Commission views the question of compliance with these disclosure requirements as a serious matter.
- 6.8 There was general agreement in the submissions that Queensland offence provisions should be severe to deter would-be offenders. The Commission believes that the CE Act provides a suitable model.
- 6.9 The Commission also notes that the ICAC Report has recommended that the range of penalties in regard to the disclosure of donations and expenditure in NSW should be widened, in particular to create an offence of knowingly giving false information to a person required to lodge a declaration.
- 6.10 In order to have an effective Register of Political Donations and Other Income, it is essential that appropriate offences are provided in Queensland legislation. Both the Commonwealth and NSW provide offences provisions for the lodgement of returns etc., the Commonwealth legislation being more complete in its handling of:
 - (a) giving false information in a return; and
 - (b) giving of false information to a person required to lodge a return.
- 6.11 It is important that efforts to prevent the masking of the true identity of donors to political parties/candidates are successful. Section 315 of the CE Act is more extensive than the NSW legislation and provides the more appropriate model for Queensland legislation.
- 6.12 To reflect the importance the Commission places on the disclosure requirements, offences should carry penalties that are equivalent to the maximum penalties recommended in the Commission's *Report on the Review of the Electoral Act 1983-1991 and Related Matters*. These penalties are fines of 200 penalty units (\$12,000) and 40 penalty units (\$2,400) on bodies corporate and individuals respectively.
- 6.13 The Commission has also closely considered the issue of further penalties such as the loss of a Member's seat and revocation of an agent's registration.
- 6.14 Under the CE Act (s.319) non-compliance with a funding or disclosure provision by any person (including an agent) does not invalidate an election.
- 6.15 Under the CE Act (s.290(2)) if a person who is an agent is convicted of an offence against the disclosure (or funding) provisions, they are disqualified from holding office as an agent. There is no equivalent provision in the NSW EF Act.

- 6.16 The automatic imposition of such penalties, especially the loss of a seat by a Member, would undoubtedly reinforce the serious nature of such offences and has some precedents. Clause 176 of the Electoral Act provides that a Member of the Legislative Assembly convicted of an offence relating to bribery, or intimidation, or voting in the name of another person, is not entitled to sit as a Member or be a candidate for a period of 3 years. Similar provisions have also been part of the Criminal Code.
- 6.17 The Commission therefore considers that Members should automatically lose their seat if convicted of a major disclosure offence.
- 6.18 There is also provision in the Legislative Assembly Act (s.7) for the Parliament to declare a Member's seat vacant for conviction of a crime.
- 6.19 Persons convicted of any offence in relation to disclosure should not be eligible for registration as an agent for a period of 5 years from the date of conviction, and if an agent at the time of conviction, the registration should be revoked.
- 6.20 The Commission does not believe that any election should be invalidated by a failure of a political party, candidate or interested person to comply with the legislative provisions proposed in this Report. The penalties imposed by these provisions and other relevant legislation are considered sufficient. Division 7 of the Draft Bill contains a provision which ensures that elections are not invalidated by non-compliance.

RECOMMENDATIONS

- 6.21 **The Commission recommends that:**
- (a) **Queensland offences in relation to disclosure of donations, other income and expenditure by registered political parties, candidates and third parties should be based on the provisions in the *Commonwealth Electoral Act 1918*. State legislation should contain offence provisions for:**
- (i) **failure to give a return;**
 - (ii) **failure to give disclosure declaration or details (eg. failing to respond to a written request from the Electoral Commission of Queensland seeking confirmation of donation/donor details);**
 - (iii) **continuing offences (ie. failure to comply with return/declaration requirements by due date);**
 - (iv) **incomplete returns and declarations;**
 - (v) **failure to keep records;**
 - (vi) **false or misleading returns/declarations by:**
 - (A) **agents of registered political parties;**
 - (B) **a person, other than an agent of a registered political party;**
 - (C) **a supplier of information;**

and

(vii) **accepting anonymous political donations outside prescribed limits.**

- (b) **Offences should carry maximum penalties of 200 penalty units for bodies corporate and 40 penalty units for individuals.**
- (c) **Continuing offences should carry a penalty of 5 penalty units per day for bodies corporate and 1 penalty unit per day for individuals.**
- (d) **The Legislative Assembly seat of a Member convicted of an offence in relation of (a)(i), (ii), (iii) and (vi) above should be declared vacant, and that person should not be entitled to be elected to the Assembly or sit as a Member for a period of three years following conviction.**
- (e) **Any person convicted of a disclosure offence should not be eligible for registration as an agent for a period of five years from the date of conviction, and if currently an agent, then that registration is to be revoked.**

6.22 These recommendations are included in Division 3A, s.176 (amendment) and 126C of the Draft Bill. The current value of one penalty unit is \$60.00 as prescribed by the *Penalty Units Act 1985-1988*.

Detriment to Donors

6.23 The Issues Paper did not raise this matter. However the question was brought up by the National Party:

" ... it should be a criminal offence visited by severe sanctions (fines of up to \$500,000 and imprisonment) for a person to seek to in any way discriminate against a person who has donated to political parties." (National Party (S23)).

EVIDENCE AND ARGUMENTS

6.24 This issue was also raised in other submissions:

- (a) *"Just as there is a fear in some sections of the community that government knowledge of a donation made to the party which forms the government will generate a preference for the donor, there is equally a fear that public knowledge and more importantly government knowledge of the identity of a donor to a opposition party can lead to the victimisation of that donor by the government and by certain unions." (Liberal Party (S25)).*
- (b) *"I would strongly submit to EARC that its recommendations should aim to clearly overcome the problems that existed in the seventies and eighties in Queensland where some business people were so intimidated by the government of the day, that is the National Party, that they were literally terrified to give money to the Labor Party.*

I can recall one businessman in the early 1980's who went to elaborate lengths to try and hide his identity from the National party when donating \$1000 to the Labor Party.

He went to such elaborate lengths because, although he wanted to ensure that the ALP got the money, he wanted to make certain his donation would never become known to the National Party.

His fear was based on his concern that if it became known that he had donated money to the Labor Party, his business interests would be seriously jeopardised. He feared reprisals from the then Government in the awarding of State Government contracts.

Other business people were concerned enough to protect their identity from being recorded on receipts, which we insisted on giving, by having the money donated through a reputable firm of accountants or solicitors. This meant there was no record of the company's donation on the public record." (P Beattie MLA (S3)).

ANALYSIS OF EVIDENCE AND ARGUMENTS

- 6.25 Clause 158 of the Electoral Act provides some protection for express rights or duties in relation to an election:

"Interfering with election right or duty

158. A person must not hinder or interfere with the free exercise or performance, by another person, of another right or duty under this Act that relates to an election.

Maximum penalty - 20 penalty units, or imprisonment for 6 months or both."

- 6.26 The Commission does not consider that this provision provides adequate protection against the intimidation described in the submissions.

- 6.27 The PB & PD Act (s.28) has addressed this potential problem by providing that:

"(2) A person must not discriminate against another person on the ground of the making by the other person of a donation to a political party, to a State branch or a division of a State branch of a political party, to a candidate in an election or by-election or to a group:

- (a) by denying him or her access to membership of any trade union, club or other body;***
- (b) by not allowing him or her to work or to continue to work;***
- (c) by subjecting him or her to any form of intimidation or coercion;***
- (d) by subjecting him or her to any other detriment.***

Penalty:

- (a) if the offender is a natural person - \$5,000 or imprisonment for 2 years, or both; or***
- (b) if the offender is a body corporate - \$20,000."***

- 6.28 The Commission is of the opinion that a similar provision be included in State legislation to protect donors from intimidation.

RECOMMENDATIONS

- 6.29 **The Commission recommends that:**

- (a) State legislation should contain offence provisions for discriminatory and intimidatory actions against donors, modelled on Commonwealth legislation.**
- (b) Penalties for this offence should be the same as penalties for offences against disclosure provisions namely 20 penalty units, 6 months imprisonment or both.**

- 6.30 These provisions are included in the proposed amendment to s.158 of the Electoral Act contained in the Draft Bill.

CHAPTER SEVEN

SUMMARY OF RECOMMENDATIONS

Introduction

- 7.1 In the course of this Report the Commission has made a number of recommendations. These recommendations have been drawn together below to form a summary list.

Summary of Recommendations

CHAPTER TWO DISCLOSURE OF POLITICAL DONATIONS AND OTHER INCOME

- 7.2 **The Commission recommends that candidates and political parties contesting State, Local Government and Community Council elections should be required to disclose political donations they have received. (para.2.37).**
- 7.3 **The Commission recommends:**
- (a) **The Electoral Commission of Queensland should be responsible for the administration of the scheme for the public disclosure of political donations made to political parties for all elections, and to candidates for Legislative Assembly elections.**
 - (b) **The Electoral Commission of Queensland should be required to report to the Parliament on its operations in connection with the donations disclosure scheme on an annual basis as part of its normal annual reporting on other matters.**
 - (c) **Provisions governing the disclosure scheme should be contained in the same Act as other Queensland electoral legislation. (para.2.52).**
- 7.4 **The Commission recommends that the following definition be included in the new legislation. The term "political donation" means a gift made to a political party, candidate or an interested person in the form of:**
- (i) **a disposition of property including money paid without consideration or with inadequate consideration; or**
 - (ii) **the provision of a service (other than volunteer labour) for no consideration or inadequate consideration.**

Requests made to political parties or candidates anonymously do not fall within the definition of "political donation". (para.2.62).

- 7.5 **The Commission recommends the following items be exempt from disclosure by political parties and candidates to the extent indicated:**
- (a) **Party membership subscriptions of less than \$200 should be aggregated and disclosed as a single total sum for each disclosure period. Subscriptions of \$200 or over should be individually disclosed.**
 - (b) **Contributions by candidates to parties' campaigns and vice versa should not be exempt.**

- (c) Volunteer labour should be exempt.
- (d) Small donations (ie. below the threshold stipulated in a later recommendation) should be disclosed as a single lump sum for each disclosure period. (para.2.77).

7.6 The Commission recommends:

- (a) A candidate's contribution to their own election campaign should be disclosed.
- (b) Such information should be contained in the candidate's disclosure of donations return to the Electoral Commission of Queensland. (para.2.84).

7.7 The Commission recommends that all donations received by political parties and candidates should be disclosed regardless of the intended purpose of such donations. (para.2.99).

7.8 The Commission recommends that:

- (a) There should be a minimum threshold below which disclosure should not be required.
- (b) Donations below this threshold should be aggregated and disclosed as a single sum together with the number of donations in prescribed value brackets.
- (c) A separate threshold should apply for political parties and candidates. The threshold levels should be:
 - (i) for political parties - \$1000; and
 - (ii) for candidates - \$200.
- (d) Multiple donations from one donor should be aggregated and disclosed with details of the donor by the recipient political party/candidate if the aggregation exceeds the relevant threshold.
- (e) The period over which the aggregation of donations is to occur is the whole disclosure period, ie.:
 - (i) political parties - each calendar year, except in a year in which an election is held, in which case two aggregation periods should apply:
 - A. the period between the issue of the election writ and 30 days after polling-day; and
 - B. the remainder of the calendar year.
 - (ii) Candidates who contested a district at the previous election - from 31 days after the polling-day for the previous election to 30 days after the polling-day for the current election.
 - (iii) Candidates who did not contest a district at the previous election - from the day a candidate announces their candidacy or the day the writ is issued, whichever is the earlier, to 30 days after polling-day.

(iv) interested persons - the last full year of the term of Parliament to a date 30 days after polling-day; if the writ is issued for an election during the third year of the scheduled term of Parliament the period will be less than 12 months. If the writ is issued during the first or second years of the term then the period will run from the date of issue of the writ to 30 days after the election. (para.2.112).

7.9 The Commission recommends that no maximum limit be imposed on the size of donations that a party or candidate can receive. (para.2.121).

7.10 The Commission recommends that "third parties" ("interested persons"), other than registered charitable institutions, should be required to divulge the true source of all donations received (above the threshold of \$200) if they engage in electoral expenditure above a threshold limit of \$200. (para.2.141).

7.11 The Commission recommends that:

(a) Anonymous donations of \$200 or above should not be accepted by political parties or candidates.

(b) All anonymous donations of above \$200 received by a political party or candidate should be passed over to the relevant authority for forwarding to the Consolidated Revenue Fund. An anonymous bequest in excess of \$200 which has as a condition preservation of the anonymity of the donor is exempt from the forfeiture requirement.

(c) Political parties and candidates should disclose the total value of anonymous donations received below the threshold limit and the number of anonymous donations of particular values.

(d) It should be an offence for a political party or candidate to receive an anonymous donation of or above the prescribed threshold limit and not pass it on to the Electoral Commission of Queensland. The Commission should be empowered to take action to recover amounts due to the State. (para.2.153).

7.12 The Commission recommends that the disclosure periods be:

(i) political parties - each calendar year, except in a year in which an election is held, in which case two disclosure periods should apply:

- A. the period between the issue of the election writ and 30 days after polling-day; and
- B. the remainder of the calendar year.

(ii) Candidates who contested a district at the previous election - from 31 days after the polling-day for the previous election to 30 days after the polling-day for the current election.

- (iii) Candidates who did not contest a district at the previous election - from the day the candidate announces their candidacy or the day the writ is issued, whichever is the earlier, to 30 days after polling-day.
- (iv) interested persons - the last full year of the term of Parliament to a date 30 days after polling-day but if the writ is issued for an election during the third year of the scheduled term of Parliament the period will be less than 12 months. If the writ is issued during the first or second years of the term then the period will run from the date of issue of the writ to 30 days after the election. (para.2.171).

7.13 The Commission recommends that:

- (a) Political parties should be required to disclose their total income received other than by way of political donations, provided it is in excess of the threshold of \$1000, from the following sources:
 - (i) interest received from banks and other savings;
 - (ii) proceeds from sale of real property, other property (including livestock) and chattels;
 - (iii) income from rent of property;
 - (iv) income from share holdings;
 - (v) subscriptions (as an aggregated figure except for any individual subscriptions of over \$200 per annum which should be disclosed individually in detail);
 - (vi) proceeds from fundraising;
 - (vii) donations in the form of professional (skilled) services; and
 - (viii) any other income.

Details of outstanding loans/debts should also be provided.

- (b) Candidates should be required to disclose, in addition to provisions recommended in this Report on donations and their contribution to their own campaign, proceeds from fundraising provided these proceeds are in excess of the threshold of \$200.
- (c) Disclosure periods should be the same as for the disclosure of political donations. (para.2.188).

7.14 The Commission recommends that:

- (a) Political parties should be required to appoint an agent to be responsible for the lodgement of disclosure returns.**
- (b) Individual candidates should be given the option of appointing an agent to fulfil the disclosure requirements or be responsible themselves. (para.2.199).**

7.15 The Commission recommends that:

- (a) The agents of political parties should be required to lodge disclosure returns (including nil returns) in relation to donations received by the parties and other relevant income; and**
- (b) Individual candidates (or their agents) should be required to lodge disclosure returns (including nil returns) in relation to donations received by them and other relevant income. (para.2.209).**

7.16 The Commission recommends that the deadline for receipt of disclosure returns of donations and other income by the Electoral Commission of Queensland should be:

- (a) political parties - (i) 30th April each year; and
(ii) 120 days after each polling-day;**
- (b) candidates - 90 days after the end of the disclosure period (ie. 120 days after polling-day); and**
- (c) interested persons - 90 days after the end of the disclosure period (ie. 120 days after polling-day). (para.2.220).**

7.17 The Commission recommends that:

- (a) Political parties, individual candidates and interested persons should be required to submit an audited statement in regard to disclosure of donations and other income returns.**
- (b) Political parties, candidates and interested persons should be required to keep records that are or could be required to be reported in a disclosure of donations and other income return for a period of at least three years commencing at the end of the relevant disclosure period.**
- (c) The Electoral Commission of Queensland should retain disclosure returns in its office for a period of at least seven years commencing on the due day for giving the return. (para.2.230).**

7.18 The Commission recommends that:

- (a) The following information should be set out in disclosure returns and made publicly available by the Electoral Commission of Queensland on a public register:
 - (i) name of the political party or candidate who was the recipient of the donation;****

- (ii) name and address of the donor;
 - (iii) size of the donation; and
 - (iv) date when the donation was received.
- (b) Details of donations made below the relevant threshold limit should be aggregated and disclosed in the return for the public register as a single total figure accompanied by a frequency indicator, for example, 25 donations of \$199; 15 donations of \$99.
- (c) If aggregated donations from one donor exceed the threshold limit the name and address of the donor should appear on the public register. (para.2.236).

7.19 The Commission recommends that:

- (a) The Electoral Commission of Queensland should be provided with powers of unfettered right of entry and inspection; and the power to conduct "spot audits" of the records of a political party, candidate or interested person in relation to disclosure of donations and other income returns.
- (b) The Electoral Commission of Queensland should be empowered to demand from donors to registered parties, candidates and interested persons confirmation that they are the true source of the donation or else the identity of the true donor. The deadline for receipt of such information from donors should be 30 days from the date of dispatch of a letter from the Electoral Commission of Queensland seeking confirmation of the true identity of the donor.
- (c) If the true source of the donation cannot be ascertained then the Electoral Commission of Queensland should have the power to confiscate the amount of the donation that is in excess of the maximum allowed anonymous donation. (para.2.257).

7.20 The Commission recommends that the disclosure of donations provisions of the new electoral legislation should also apply to candidates at Local Government elections, including Community Council elections. The Ministers respectively responsible for Local Government and for Aboriginal and Islander Affairs should develop enabling legislation to extend disclosure requirements to the Local Government level. The registers of donations should be public and be maintained by the relevant Local Authorities themselves. The information on the registers should be maintained for a period of at least seven years following each Local Government election. The approval of the Electoral Commission of Queensland should be sought before any such information is destroyed. (para.2.271).

CHAPTER THREE DISCLOSURE OF ELECTORAL EXPENDITURE

7.21 The Commission recommends that electoral expenditure by political parties and candidates should be disclosed. (para.3.22).

7.22 The Commission recommends:

- (a) Electoral expenditure be defined as expenditure incurred:

- (i) for the purpose of promoting or opposing, directly or indirectly -
 - (A) a political party; or
 - (B) the election of a candidate or candidates for an election; or
 - (ii) with a view to influencing, directly or indirectly, voting at an election.
- (b) Electoral expenditure should include such items as:
- (i) expenditure on advertisements in radio, television, cinemas, newspapers, periodicals, billboards, posters, brochures, how-to-vote cards and any other printed election material;
 - (ii) expenditure on the holding of election rallies;
 - (iii) expenditure on the distribution of election material;
 - (iv) expenditure on travel and accommodation expenditure of a candidate for election;
 - (v) expenditure on research associated with election campaigns;
 - (vi) expenditure incurred in raising funds for an election;
 - (vii) expenditure on stationery, telephones, messages, postage and telegrams;
 - (viii) expenditure on committee rooms;
 - (ix) the payment by a political party or other person, other than the candidate for the election, of a candidate's deposit;
 - (x) expenditure classified as electoral expenditure by the Electoral Commission of Queensland; and
 - (xi) the making of a gift by a person or organisation (other than a political party, the Queensland division or a branch of a political party or a candidate in the election) to:
 - (A) any political party or the Queensland division or a branch of a political party;
 - (B) any candidate in an election; or
 - (C) any person or body (whether incorporated or not) specified by the Electoral Commissioner by notice in the Government Gazette.
- (c) The following should not be classified as electoral expenditure:
- (i) meetings to be held for the purpose of selecting persons for nomination as candidates for election;
 - (ii) meetings of parties, branches of parties or conferences, committees or other bodies of parties for organisational purposes; and
 - (iii) any other matter involving solely the administration of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties. (para.3.39).

7.23 The Commission recommends the following disclosure periods for electoral expenditure returns:

- (a) political parties - each calendar year, except in a year in which an election is held, in which case two periods should apply:
 - A. the period between the issue of the election writ and 30 days after polling-day; and
 - B. the remainder of the calendar year.
- (b) Candidates who contested a district at the previous election - from 31 days after the polling-day for the previous election to 30 days after the polling-day for the current election.
- (c) Candidates who did not contest a district at the previous election - from the day the candidate announces their candidacy or the day the writ is issued, whichever is the earlier, to 30 days after polling-day.
- (d) interested persons - the last full year of the term of Parliament to a date 30 days after polling-day but if the writ is issued for an election during the third year of the scheduled term of Parliament the period will be less than 12 months. If the writ is issued during the first or second years of the term then the period will run from the date of issue of the writ to 30 days after the election. (para.3.43).

7.24 The Commission recommends that third parties or interested persons be required to disclose electoral expenditure incurred by them above a threshold figure of \$200. (para.3.57).

7.25 The Commission recommends that:

- (a) Publishers should be required to furnish returns as to expenditure by political parties, candidates, third parties and interested parties during the election period (from the day of the issue of the writ to 6.00 p.m. on polling day) on advertising and details provided in the returns should reflect Commonwealth provisions. These returns should be submitted within 90 days of polling-day.
- (b) These returns should be required in relation to expenditure incurred on or in excess of a threshold level and the threshold level below which expenditure by political parties, candidates and interested persons will not require disclosure by broadcasters and publishers should be \$200.
- (c) Should the *Political Broadcasts and Political Disclosures Act 1991* not survive the High Court challenge to its validity, or be repealed, then recommendations (a) and (b) above should also apply to broadcasters. (para.3.70).

7.26 **The Commission recommends that:**

- (a) **Government instrumentalities be required as part of their Annual Reports to disclose all expenditure on:**
 - (i) **advertising agencies;**
 - (ii) **market research organisations;**
 - (iii) **polling organisations;**
 - (iv) **direct mail organisations;**
 - (v) **direct postal or other direct communications to electors or to householders;**
 - (vi) **public relations organisations; and**
 - (vii) **media advertising organisations,**

and the persons or organisations to whom those amounts were paid.
- (b) **The threshold below which disclosure is not required should be \$1000. (para.3.82).**

7.27 **The Commission recommends there be no maximum limit fixed on electoral expenditure by political parties, candidates or "third parties". (para.3.107).**

7.28 **The Commission recommends parallel procedures for the disclosure of political donations and electoral expenditure, that is:**

- (a) **Parties should appoint agents; candidates should have the choice of appointing agents or acting as agents themselves. This recommendation is the same as that proposed in respect of disclosure of donations and other income.**
- (b) **Parties and candidates should be required to disclose their own electoral expenditure. Expenditure on behalf of candidates by the central party should be disclosed by the party and vice versa.**
- (c) **The same timetable proposed in respect of submission of returns relating to disclosure of donations and other income should apply to submission of returns on disclosure of electoral expenditure, that is:**
 - (i) **political parties** - **A. 30th April of each year; and**
B. 90 days after the end of the disclosure period (ie. 120 days after polling-day).
 - (ii) **candidates** - **90 days after the end of the disclosure period (ie. 120 days after polling-day); and**
 - (iii) **interested persons** - **90 days after the end of the disclosure period (ie. 120 days after polling-day).**

- (d) As with parties, the disclosure of donations and other income by candidates and third party or interested persons, there should be a requirement for statements of electoral expenditure to be certified by qualified auditors. (para.3.112).

7.29 The Commission recommends that:

- (a) All returns disclosing electoral expenditure from parties, candidates and third parties should be made publicly available.
- (b) The Electoral Commission of Queensland should retain records in relation to disclosure of expenditure returns for a period of not less than seven years from the deadline by which disclosure returns are required to be lodged by political parties, candidates and interested persons.
- (c) Political parties, candidates and interested persons should be required to retain records that are or could be required to be reported in a disclosure of expenditure return for a period of at least three years commencing at the end of the relevant disclosure period. (para.3.124).

7.30 The Commission recommends that:

- (a) Political parties should submit an aggregated statewide total of electoral expenditure for each class of expenditure.
- (b) Individual candidates should submit individual returns (at the district level) for each class of electoral expenditure.
- (c) Limits below which details of expenditure need not be disclosed should be the same as for non-donation income. (para.3.132).

7.31 The Commission recommends that the Electoral Commission of Queensland be given the powers of entry and inspection by authorised persons and power to conduct "spot audits" of the records of a political party, candidate or interested person in relation to disclosure of electoral expenditure where there is reason to believe that disclosure provisions have not or are not being complied with. (para.3.140).

7.32 The Commission recommends that:

- (a) The disclosure of electoral expenditure provisions contained in the new electoral legislation should also apply to:
 - (i) political parties;
 - (ii) candidates; and
 - (iii) interested persons,at Local Government elections, including Community Council elections. Enabling legislation should be developed to extend disclosure requirements to the Local Government level.
- (b) The Department of Housing and Local Government and the Department of Family Services and Aboriginal and Islander Affairs should develop legislation based on the proposed State scheme, requiring councils to keep registers relating to the disclosure of electoral expenditure. These registers should be open for public inspection.

- (c) **These registers should be retained for at least seven years. Before destruction of records, Local Authorities should seek the consent of the Electoral Commission of Queensland. (para.3.144).**

CHAPTER FOUR PUBLIC FUNDING OF ELECTION CAMPAIGNS

7.33 The Commission recommends that:

- (a) **Irrespective of the future of the *Political Broadcasts and Political Disclosures Act 1991*, the Commission's recommendations on disclosure of political donations, other income and electoral expenditure should stand.**
- (b) **If the *Political Broadcasts and Political Disclosures Act 1991* remains in force, public funding for political parties or candidates should not be introduced in Queensland. (para.4.83).**

7.34 The Commission recommends that if the *Political Broadcasts and Political Disclosures Act 1991* is declared invalid, or the ban on political advertisements in the electronic media is repealed, then a public funding scheme which applies only to the election campaigns of candidates, whether endorsed by political parties or standing as independents, should be introduced. The Commission does not recommend public funding being paid directly to political parties. (para.4.104).

7.35 The Commission recommends that the proposed system of public funding should provide partial funding only. Public funding should be available only as a supplement to other sources for electoral expenditure by candidates. (para.4.116).

7.36 The Commission recommends that:

- (a) **The amount of public funding to be received by each eligible candidate should be in direct proportion to the number of valid first preference votes received by the candidate in the electoral district.**
- (b) **Provision should be made to allow for the weighting of electoral districts of over 100,000 sq kms by adding 2% of the area to the valid first preference votes.**
- (c) **The monetary amount to be paid per vote should be \$1.00 at the next election. The amount thereafter should be indexed to increases in the Consumer Price Index.**
- (d) **There should be no ceiling placed on the share of the money payable to any one candidate. (para.4.131).**

7.37 The Commission recommends that candidates should be required to register at the time of nomination to be eligible for public funding. (para.4.137).

7.38 The Commission recommends that to be eligible for any public funding a candidate must achieve the threshold figure of 4% of the valid first preference vote in an electoral district. (para.4.143).

- 7.39 **The Commission recommends that:**
- (a) **No candidate should be able to receive public funding which is greater than the amount of eligible electoral expenditure actually spent by that candidate.**
 - (b) **The list of eligible expenses for public funding claims should be the same as the list proposed by the Commission for the disclosure of electoral expenditure.**
 - (c) **No separate claim form should be required for public funding. The disclosure return form should serve both purposes.**
 - (d) **Candidates who wish to be eligible for public funding should be required to indicate on their nomination form whether they wish to receive public funding if they subsequently qualify. (para.4.155).**
- 7.40 **The Commission recommends that disclosure of electoral expenditure should be a precondition for the payment of public funds to candidates. (para.4.164).**
- 7.41 **The Commission recommends that no advance payments of public funding should be available for candidates contesting Queensland elections. However, every effort should be made administratively to provide an early payment of any such funding after polling day. (para.4.170).**
- 7.42 **The Commission recommends that any public funding scheme introduced for general elections in Queensland should also extend to by-elections. The basis on which funding is to be calculated should also be the same as for a general election. (para.4.174).**

CHAPTER FIVE POLITICAL ADVERTISING

- 7.43 **The Commission recommends that:**
- (a) **The regulation of "political advertising" should cover advertisements that "relate to an election".**
 - (b) **A definition of "advertisement" is not required in the legislation, as the dictionary definition is adequate for the purpose.**
 - (c) **Editorials and political commentary published in newspapers and journals or otherwise, should be specifically excluded from the definition. (para.5.11).**
- 7.44 **The Commission recommends that:**
- (a) **State legislation should prohibit political advertising by Government instrumentalities in the print media during the election period but should not create an offence on the part of publishers.**
 - (b) **The exemptions in the *Political Broadcasts and Political Disclosures Act 1991* should be incorporated in State legislation in relation to print media.**

- (c) If the *Political Broadcasts and Political Disclosures Act 1991*, is declared invalid the recommendations (a) and (b) above should be extended to electronic media.
- (d) The disclosure provisions in s.311A of the *Commonwealth Electoral Act 1918* (as amended by Rec. 3.82) should be incorporated into State electoral legislation. (para.5.20).

7.45 The Commission recommends that:

- (a) The regulation of the content of electoral matter in Section 163 of the *Electoral Act 1992* should stand whether or not the challenge against the *Political Broadcasts and Political Disclosure Act 1991* is successful; and
- (b) Section 162 of the *Electoral Act 1992* should be amended to be consistent with Sections 161 & 163 so that it applies to the election period only. (para.5.32).

CHAPTER SIX OFFENCES AND PENALTIES

7.46 The Commission recommends that:

- (a) Queensland offences in relation to disclosure of donations, other income and expenditure by registered political parties, candidates and third parties should be based on the provisions in the *Commonwealth Electoral Act 1918*. State legislation should contain offence provisions for:
 - (i) failure to give a return;
 - (ii) failure to give disclosure declaration or details (eg. failing to respond to a written request from the Electoral Commission of Queensland seeking confirmation of donation/donor details);
 - (iii) continuing offences (ie. failure to comply with return/declaration requirements by due date);
 - (iv) incomplete returns and declarations;
 - (v) failure to keep records;
 - (vi) false or misleading returns/declarations by:
 - (A) agents of registered political parties;
 - (B) a person, other than an agent of a registered political party;
 - (C) a supplier of information;
 - and
 - (vii) accepting anonymous political donations outside prescribed limits.

- (b) Offences should carry maximum penalties of 200 penalty units for bodies corporate and 40 penalty units for individuals.
- (c) Continuing offences should carry a penalty of 5 penalty units per day for bodies corporate and 1 penalty unit per day for individuals.
- (d) The Legislative Assembly seat of a Member convicted of an offence in relation of (a)(i), (ii), (iii) and (vi) above should be declared vacant, and that person should not be entitled to be elected to the Assembly or sit as a Member for a period of three years following conviction.
- (e) Any person convicted of a disclosure offence should not be eligible for registration as an agent for a period of five years from the date of conviction, and if currently an agent, then that registration is to be revoked. (para.6.21).

7.47 The Commission recommends that:

- (a) State legislation should contain offence provisions for discriminatory and intimidatory actions against donors, modelled on Commonwealth legislation.
- (b) Penalties for this offence should be the same as penalties for offences against disclosure provisions namely 20 penalty units, 6 months imprisonment or both. (para.6.29).

CHAPTER EIGHT

ACKNOWLEDGMENTS AND CONCLUDING REMARKS

- 8.1 The Commission wishes to express its appreciation to all persons and organisations who made submissions and comments in response to the Commission, or otherwise provided views, on the Investigation of Public Registration of Political Donations, Public Funding of Election Campaigns and Related Matters. All submissions, comments and opinions expressed have been taken into account. Public input is essential to the Commission's review process and the Commission benefited greatly from the public response to its review.
- 8.2 The Commission also wishes to express its appreciation to the following members of staff who assisted the Commission in the conduct of the Review at different stages, namely: John Greenaway (Senior Project Officer); Alex Bogicevic, Graham Smith and Garry Wiltshire (Project Officers); Debra Carter, Michael Clair and Lyn Doblo (Research Officers); and Donna Cook, Wendy Rikihana and Christine McManus (Administrative Assistants). The Commission also wishes to express its appreciation to its consultant, Jan Woodward, and to Errol Wilson, Senior Assistant Parliamentary Counsel, for his assistance in preparing the Draft Electoral Amendment Bill 1992.
- 8.3 The Commission acknowledges the assistance of the Australian Electoral Commission and electoral agencies in other States and Queensland.
- 8.4 This Report was adopted unanimously at a meeting of the Commission held on 5 June 1992. Commissioners Davies, Hall, Hunter, and the Acting Chairman were present at the meeting.



COLIN A. HUGHES
Acting Chairman

5 June 1992

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APPENDIX A

ADVERTISEMENT CALLING FOR PUBLIC SUBMISSIONS



ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

QUEENSLAND

INVESTIGATION OF PUBLIC REGISTRATION OF POLITICAL DONATIONS, DISCLOSURE OF ELECTORAL EXPENDITURE, PUBLIC FUNDING OF ELECTION CAMPAIGNS, REGISTRATION OF POLITICAL PARTIES AND POLITICAL ADVERTISING.

The Commission seeks written public submissions to assist with its consideration of these issues. This investigation forms part of the fourth stage of the review of the Legislative Assembly electoral system and will culminate in a report to the Chairman of the Parliamentary Committee, the Speaker of the Legislative Assembly and the Premier later this year. The report may have attached to it draft legislation covering the principles and issues analysed in the report.

Issues Paper No. 12, *Public Registration of Political Donations, Public Funding of Election Campaigns and Related Issues*, is now available. Copies of the Issues Paper can be inspected at major Public Libraries and selected Magistrate's Courts throughout the State. Persons or organisations wanting a copy of the Issues Paper should contact the Commission on Ph. 237 1998 (Brisbane callers) or 008 177 172 (Country callers)

The major issues include:

- whether a system of public registration of political donations should be established in Queensland;
- whether political parties and candidates should be required to disclose their electoral expenditure;
- whether Queensland should introduce public funding of election campaigns;
- whether the registration of political parties and individual candidates should be introduced;
- whether legislative controls should be imposed on political advertising.

Initial written submissions should be marked Reference 445 and received at the Commission by 5.00 pm on Friday, 7 June 1991. The postal address for submissions is:

**ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION
PO BOX 349
NORTH QUAY QLD 4002 (REFERENCE 445)**

All initial submissions received will be available for public inspection at the Commission's Public Reading Room from Tuesday, 11 June 1991. Copies of these submissions will also be available for perusal and inspection at major Public Libraries and selected Magistrate's Courts from Wednesday, 19 June 1991.

Comments in response to initial submissions (ie submissions in reply) should be received at the Commission by 5.00 pm on Friday, 5 July 1991. Such comments on initial submissions will be available for inspection at the Commission's Public Reading Room from Monday, 8 July 1991.

Commission's Public Reading Room: Level 8, Capital Hill
85 George Street, Brisbane

Telephone: 237 1998 (Brisbane) 008 177 172 (Country)
Facsimile: (07) 237 1990.

TOM SHERMAN
Chairman
27 April, 1991.

E5974C

APPENDIX B

PUBLIC REGISTRATION OF POLITICAL DONATIONS, PUBLIC FUNDING OF ELECTION CAMPAIGNS AND RELATED ISSUES - PUBLIC SUBMISSIONS

Submission No	Name/Organisation	Address	Date Received
1	Various Authors	Copies of submissions received during stage 1 of the Legislative Assembly Electoral Review	1990
2	H H Duncan	PO Box 735 CHARTERS TOWERS QLD 4820	1/5/91
3	P Beattie, MLA Member for Brisbane Central	21 Enoggera Terrace RED HILL QLD 4059	1/5/91
4	R E Ward	18 Davidson Street NEWMARKET QLD 4051	1/5/91
5	J Hobbs Hon Secretary	Bribie Island Chamber of PO Box 223 BRIBIE ISLAND QLD 4507	2/5/91
6	B Draper	PO Box 1275 MAREEBA QLD 4880	26/3/91
7	F McLennan	34 Munro Street AUCHENFLOWER QLD 4066	14/5/91
8	Professor K Wiltshire	Dept of Government University of Queensland ST LUCIA QLD 4072	15/5/91
9	M Passmore	PO Box 162 STANTHORPE QLD 4380	17/5/91
10	J Russell	16 Orchis Drive EAGLE HEIGHTS QLD 4271	24/5/91
11	A Sandell	Lot 85 Greensward Road TAMBORINE QLD 4270	30/5/91

Submission No	Name/Organisation	Address	Date Received
12	O Yates	113 Spencer Street GATTON QLD 4343	31/5/91
13	A Conway-Jones	12 Willow Street BIGGERA WATERS QLD 4216	5/6/91
14	F G Short	9/12-14 Mountain View Road MIAMI QLD 4220	5/6/91
15	Alderman D Hinchliffe	Brisbane City Council (Spring Hill Ward Office) 80 Days Road GRANGE QLD 4051	28/3/91
16	R MacKinnon	38 Burleigh Street BURLEIGH HEADS QLD 4220	6/6/91
17	A Mijo	PO Box 123 MOSSMAN QLD 4873	6/6/91
18	Andrew Bartlett (Secretary)	Australian Democrats (Queensland Division) PO Box 715 SOUTH BRISBANE QLD 4101	7/6/91
19	R McKinnon	Lot 1 New England Hwy EAST GREENMOUNT QLD 4359	7/6/91
20	Ray Sargent	Australian Republican Party PO Box 670 ASHGROVE QLD 4060	7/6/91
21	Australian Labor Party	PO Box 32 WEST END QLD 4101	7/6/91
22	G Richardson	Aboriginal & Torres Strait Islander Commission PO Box 1599 CAIRNS QLD 4870	7/6/91
23	National Party of Australia	PO Box 403 SPRING HILL QLD 4004	7/6/91

Submission No	Name/Organisation	Address	Date Received
24	Chris Griffith (Secretary)	Queensland Watchdog Committee PO Box 998 TOOWONG QLD 4066	11/6/91
25	Liberal Party (Queensland Division)	PO Box 188 SPRING HILL QLD 4004	11/6/91
26	P J Jardine	PO Box 5120 MACKAY MC QLD 4740	11/6/91
27	Queensland Watchdog Committee	C Griffith Secretary PO Box 998 TOOWONG QLD 4066	17/6/91
28	National Party of Australia Queensland Division	K Crooke State Director PO Box 403 SPRING HILL QLD 4004	28/6/91
29	Australian Democrats Queensland Division	A Bartlett Secretary PO Box 715 SOUTH BRISBANE QLD 4101	5/7/91
30	Local Government Assoc. of Queensland Inc.	G Hoffman Executive director PO Box 130 NEWSTEAD QLD 4006	5/7/91
31	P J Keogh	8 Thunderbird Drive BOKARINA QLD 4575	4/7/91
32	Dept of the Auditor-General Queensland	P B Nolan Auditor-General GPO Box 1139 BRISBANE QLD 4001	5/7/91
33	Dept of the Auditor-General Queensland	P B Nolan Auditor-General GPO Box 1139 BRISBANE QLD 4001	8/7/91
34	Dr I Ward	Department of Government University of Queensland ST LUCIA Qld 4072	12/6/91

APPENDIX C
PUBLIC HEARING WITNESSES

BRISBANE, 21 OCTOBER 1991

Name of Group/Person/Organisation	Transcript Page No.
P Beattie MLA	4 - 16
A Conway-Jones	17 - 22
Australian Democrats (T Walters)	23 - 34
Australian Labor Party (W Swan)	35 - 47
Republican Party (R Sargent)	48 - 53
Liberal Party (I Prentice, D Fraser)	54 - 62
National Party (D Russell QC)	63 - 73
Queensland Watchdog Committee (C Griffith)	74 - 78

APPENDIX D

CROWN LAW ADVICE RE ELECTRONIC ADVERTISING



Crown Solicitor,
State Law Building,
50 Ann Street,
Brisbane, Queensland. 4001
27 FEB 1992

The Chairman
Electoral and Administrative Review Commission
Level 9, Capital Hill
85 George Street
BRISBANE QLD 4000

Folio No:	112
File No:	044
Officer:	PR
Refer to 044/106	

Dear Sir

I refer to your letter of 23 January 1992.

I note my advice has been sought as to the potential conflict between the provisions of the Political Broadcasts and Political Disclosures Act 1991 (Cth) and the Draft Bill for an Electoral Act recommended by the Commission late last year.

The Political Broadcasts and Political Disclosures Act 1991 operated to introduce a series of amendments to the Broadcasting Act 1942 (Cth) ("the Act").

In short, the amendments to the Act effectively prohibit the broadcasting of political advertisements during election periods in respect of elections to the Parliaments of the Commonwealth, the States and the Territories. A similar ban is also imposed in respect of a referendum which involves the submission to the electors of a proposed law for the alteration of the Constitution.

However, the amendments to the Act do contain a number of exceptions to the ban on political advertising. Of particular relevance there are a number of exceptions contained in Divisions 3 and 4 of Part IIID of the Act which are concerned with the provision of free election broadcasting time both in respect of election broadcasts and policy launches. Sections 95G and 95S of the Act impose restrictions on the style of broadcasting and the length of particular broadcasts covered by Divisions 3 and 4 of IIID of the Act.

On its face Section 163 of the proposed Electoral Act covers a wider sphere of information dissemination in that it extends beyond broadcasting and includes other forms of publishing or distribution.

In my opinion there is no direct inconsistency between the amendments introduced by the Political Broadcasts and Political Disclosures Act 1991 and Clause 163 of the Draft Bill for an Electoral Act. Whilst the amendments to the Act do introduce a prescribed style for electoral advertising the amendments do not deal with the content of such advertisements. In that regard the Draft Bill if enacted would appear to have a role to play in respect of elections to the Legislative Assembly of Queensland.

The only way that it could be said that the Commonwealth Legislation is inconsistent and therefore of paramount force by virtue of Section 109 of the Constitution would be if the amendments to the Act could be categorised as the Commonwealth seeking to cover the field in respect of electoral broadcasting.

However, I am of the opinion that the better view is that the Commonwealth has not sought to cover the field in this regard and that there exists the possibility of both the State and Commonwealth provisions operating in a concurrent manner.

Even if I am wrong in the above conclusion Section 9 of the Acts Interpretation Act 1954 would operate to preserve much of the ambit of Clause 163 of the proposed Electoral Act on the basis that a severance would be possible in the circumstances.

Please do not hesitate to contact me should you have any further enquiries arising from the above.

Yours faithfully



K.M. O'SHEA
Crown Solicitor

APPENDIX E

ELECTORAL AMENDMENT BILL 1992

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1992

A BILL

FOR

An Act to amend the *Electoral Act 1992*, and for other purposes

Electoral Amendment

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.	1 2 3
Short title	4
1. This Act may be cited as the <i>Electoral Amendment Act 1992</i> .	5
Commencement	6
2.(1) Subject to subsection (2), this Act commences on a day to be fixed by proclamation.	7 8
(2) Section 17 commences on the first day after all the other provisions of this Act have commenced.	9 10
Amended Act	11
3. The <i>Electoral Act 1992</i> is amended as set out in this Act.	12
Amendment of s. 3 (Definitions)	13
4. Section 3—	14
<i>insert—</i>	15
“agent” means—	16
(a) an agent of a registered political party appointed under section 126A; or	17 18
(b) an agent of a candidate appointed under section 126B;	19
“anonymous political donation” means a political donation in relation to which the name and address of the person making the donation are not known, or given, to the registered political party or person receiving the donation at the time the donation is made;	20 21 22 23
“auditor” means a registered company auditor within the meaning of the Corporations Law;	24 25
“authorised person” means a person appointed under this Act as an authorised person;	26 27

Electoral Amendment

“chief executive” of a public sector unit means—	1
(a) if the unit is a department—the chief executive (however described) under whose control the department is placed; or	2 3
(b) in the case of another unit—the person who is the most senior person within the management of the unit;	4 5
“debts return” means a return under section 126Z;	6
“disclosure declaration” means a declaration under section 126O;	7
“disclosure period” —	8
(a) for a registered political party—has the meaning given by section 4A; and	9 10
(b) for a candidate for an election—has the meaning given by section 4B; and	11 12
(c) for an interested person—has the meaning given by section 4C;	13
“disposition of property” has the meaning given by section 4D;	14
“electoral expenditure” has the meaning given by section 4E;	15
“exempt matter” has the meaning given by section 4F;	16
“expenditure return” means a return under section 126U, 126V or 126W;	17
“gift” has the meaning given by section 4G;	18
“government authority” means—	19
(a) a department; or	20
(b) another authority or body (whether or not incorporated) that is established for a public purpose by the State, regardless of the way it is established;	21 22 23
“income” includes amounts of a capital nature;	24
“income return” means a return under section 126L, 126M or 126N;	25
“interested person” means a person to whom section 126N or 126W applies;	26 27
“journal” means a newspaper, magazine or other periodical, whether published—	28 29
(a) for sale; or	30

(b) for distribution without charge;	1
“non-donation income” has the meaning given by section 4H;	2
“participant” in an election means—	3
(a) a political party; or	4
(b) a candidate for the election; or	5
(c) another person or body by whom, or with the authority of whom, electoral expenditure in relation to the election is incurred;	6 7
“political donation” means a gift made—	8
(a) to a registered political party; or	9
(b) to a candidate for an election; or	10
(c) to or by an interested person;	11
“political reference” means material comprising an express or implied reference to, or comment on—	12 13
(a) an election or an election that might be held in the future; or	14
(b) the government or the opposition or a previous government or opposition; or	15 16
(c) a member of the Legislative Assembly; or	17
(d) a political party or a branch or division of a political party; or	18
(e) a candidate for an election; or	19
(f) an issue submitted or otherwise before, or likely to be submitted or otherwise before, electors in an election;	20 21
“public sector unit” means—	22
(a) a department; or	23
(b) a Commission established under an Act; or	24
(c) the Queensland Police Service; or	25
(d) Queensland Railways; or	26
(e) a corporation sole, another corporation or an instrumentality—	27
(i) representing the Crown; or	28
(ii) constituted under an Act or other law; or	29

(iii) constituted for a purpose in relation to the government of the State; or	1 2
(f) another body prescribed by regulation;	3
“publisher’s return” means a return under section 126ZA;	4
“Queensland Police Service” means the Queensland Police Service maintained under the <i>Police Service Administration Act 1990</i> ;	5 6
“Queensland Railways” means the corporation continued in existence under that name under the <i>Transport (Infrastructure Railways) Act 1991</i> ;	7 8 9
“return” means—	10
(a) an income return; or	11
(b) an expenditure return; or	12
(c) a debts return; or	13
(d) a publisher’s return;’.	14
 Insertion of new ss. 4A to 4H	15
5. After section 4—	16
insert—	17
‘Meaning of “disclosure period” for registered political parties	18
‘4A.(1) The “disclosure period” , in relation to an election, for a registered political party is the period—	19 20
(a) beginning on the day after the writ for the election is issued; and	21
(b) ending 30 days after polling day for the election.	22
‘(2) Each calendar year is also a “disclosure period” for a registered political party.	23 24
 ‘Meaning of “disclosure period” for candidates	25
‘4B.(1) The “disclosure period” , in relation to an election (the “current election”), for a candidate for the election is the period—	26 27
(a) beginning at the relevant time; and	28

(b) ending 30 days after polling day for the election.	1
‘(2) The relevant time for the beginning of the disclosure period is—	2
(a) if the candidate had been a candidate for the previous election—the end of 30 days after polling day for the previous election; and	3 4 5
(b) if the candidate had not been a candidate for the previous election—	6 7
(i) the day on which the candidate announced that he or she would be a candidate for the current election; or	8 9
(ii) the day on which the writ for the current election is issued;	10
whichever happens first.	11
‘Meaning of “disclosure period” for interested persons	12
‘4C.(1) The “disclosure period” , in relation to an election (the “current election”), for an interested person is the period—	13 14
(a) beginning at the relevant time; and	15
(b) ending 30 days after polling day for the election.	16
‘(2) The relevant time for the beginning of the disclosure period is—	17
(a) if the writ for the current election is issued not less than 2 years after the day appointed for the return of the writ for the previous election—the end of 2 years after that day; or	18 19 20
(b) if the writ for the current election is issued less than 2 years after the day appointed for the return of the writ for the previous election—the day after the writ for the current election is issued.	21 22 23
‘Meaning of “disposition of property”	24
‘4D.(1) A “disposition of property” is a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property.	25 26
‘(2) Without limiting subsection (1), a “disposition of property” includes—	27 28
(a) the allotment of shares in a corporation; and	29

(b) the creation of a trust in property; and	1
(c) the grant or creation of a lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and	2 3
(d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of—	4 5
(i) a debt, contract or chose in action; or	6
(ii) an interest in property; and	7
(e) the exercise by a person of a general power of appointment of property in favour of another person; and	8 9
(f) a transaction entered into by a person with the intention of—	10
(i) reducing, directly or indirectly, the value of the person's own property; and	11 12
(ii) increasing the value of the property of another person.	13
'Meaning of "electoral expenditure"	14
'4E.(1) "Electoral expenditure" is expenditure incurred—	15
(a) for the purpose of promoting or opposing, directly or indirectly—	16
(i) a political party; or	17
(ii) the election of a candidate or candidates for an election; or	18
(b) with a view to influencing, directly or indirectly, voting at an election.	19 20
'(2) Without limiting subsection (1), "electoral expenditure" includes expenditure incurred on—	21 22
(a) advertisements (whether in a printed or another form); and	23
(b) the holding of electoral rallies or meetings; and	24
(c) the distribution of electoral material; and	25
(d) the carrying out of research (including opinion polls) in relation to election or other campaigns; and	26 27
(e) the raising of funds; and	28
(f) travel or accommodation for a candidate for an election; and	29

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(g) stationery, telephones, messages, postage or telegrams; and	1
(h) computing equipment, including both hardware and software; and	2 3
(i) committee rooms; and	4
(j) the payment by a registered political party or another person (other than a candidate for an election) of the deposit payable under section 85 in relation to a candidate's nomination.	5 6 7
'(3) The kinds of advertisements to which subsection (2)(a) applies includes—	8 9
(a) advertisements in or on radio, television and cinemas; and	10
(b) advertisements in journals and other publications; and	11
(c) advertisements in or on billboards, posters, brochures and how-to- vote cards.	12 13
'(4) Expenditure mentioned in subsection (2)(h) and (i) includes expenditure of a capital nature.	14 15
'(5) Expenditure on an advertisement is not electoral expenditure if the advertisement is a factual advertisement of—	16 17
(a) a meeting to be held for the purpose of selecting persons for nomination as candidates for an election; or	18 19
(b) a meeting, for organisational purposes, of—	20
(i) a political party; or	21
(ii) a branch, conference or committee of a political party; or	22
(iii) another body of a political party or branch of a political party; or	23 24
(c) another matter that relates only to the administration of a party, branch, conference, committee or other body mentioned in paragraph (b).	25 26 27
'(6) For the purposes of this Act, each of the following constitutes a class of electoral expenditure—	28 29
(a) expenditure mentioned in a paragraph of subsection (2);	30
(b) other electoral expenditure declared by regulation to be a class of electoral expenditure for the purposes of this subsection;	31 32

(c) any other electoral expenditure.	1
‘Meaning of “exempt matter”	2
‘4F.(1) “Exempt matter” is—	3
(a) matter directly relating to warnings of impending natural disasters or military or civil disorders; or	4 5
(b) matter relating to measures (including relief measures) taken to deal with—	6 7
(i) natural disasters or military or civil disorders; and	8
(ii) the consequences of the disasters or disorders; or	9
(c) matter provided by the authorities responsible for the conduct of an election; or	10 11
(d) advertisements of goods and services offered for sale by or on behalf of the government or a government authority; or	12 13
(e) advertisements—	14
(i) relating to vacant positions; or	15
(ii) calling for expressions of interest in appointment to public offices; or	16 17
(f) advertisements calling for tenders; or	18
(g) advertisements that have been approved in writing by the agent of a registered political party; or	19 20
(h) announcements relating to any public inquiry or public hearing conducted under a law of the State, the Commonwealth, another State or a Territory; or	21 22 23
(i) a notice or announcement required to be printed, published or distributed by or under a law of the State, the Commonwealth, another State or a Territory.	24 25 26
‘(2) The matter to which subsection (1)(c) applies includes material relating to—	27 28
(a) the procedures and polling places for an election; and	29
(b) the promotion of participation in an election.	30

‘(3) Subsection (1)(d) applies to an advertisement only if it does not contain a political reference.	1 2
‘(4) Subsection (1)(h) does not apply to a prescribed notice or announcement.	3 4
‘Meaning of “gift”	5
‘4G.(1) Subject to this section, a “gift” is—	6
(a) a disposition of property made without consideration or with inadequate consideration; or	7 8
(b) the provision of a service for no consideration or inadequate consideration.	9 10
‘(2) The provision of a service in the form of volunteer labour is not a “gift”.	11 12
‘(3) A reference in subsection (1)(b) to a service includes a reference to a service of a professional, skilled or similar nature.	13 14
‘Meaning of “non-donation income”	15
‘4H.(1) The “non-donation income” of a registered political party is any income of the party, other than income consisting of political donations.	16 17
‘(2) Without limiting subsection (1), “non-donation income” of a registered political party includes—	18 19
(a) interest received by the party on money held on deposit with a bank or other financial institution; and	20 21
(b) rent received by the party; and	22
(c) subscriptions paid to the party by persons in relation to their membership of the party; and	23 24
(d) net proceeds of fund raising activities carried out by or on behalf of the party; and	25 26
(e) proceeds of the sale of property of the party; and	27
(f) dividends received by the party in relation to shares held by it in corporations.’.	28 29

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Electoral Amendment

Insertion of new ss. 5A, 5B and 5C	1
6. After section 5—	2
<i>insert—</i>	3
‘Electoral expenditure of registered political parties and candidates	4
‘5A.(1) A reference in Division 3 of Part 6A to electoral expenditure incurred by or with the authority of a registered political party or candidate includes a reference to electoral expenditure incurred by or with the authority of a campaign committee of the party or candidate, as the case may be.	5 6 7 8 9
‘(2) In this section—	10
“campaign committee” of a registered political party or candidate means a body of persons appointed or engaged to form a committee to assist the campaign of the party or candidate, as the case may be, in an election.	11 12 13 14
‘When certain details constitute a return	15
‘5B. Except in section 126ZD, a reference in Division 5 of Part 6A or Division 3A of Part 8 to a return includes a reference to details under section 126ZD(4).	16 17 18
‘Things done by registered political parties	19
‘5C. If—	20
(a) there is a reference in Part 6A to a thing done by or with the authority of a registered political party; and	21 22
(b) the party is not a corporation;	23
the reference is a reference to a thing done by or with the authority of members or officers of the party on its behalf.’.	24 25
Insertion of new s. 6A	26
7. After section 6 (in Part 1)—	27
<i>insert—</i>	28

‘Related corporations	1
‘6A. For the purposes of this Act—	2
(a) a corporation and another corporation that is related to the first corporation is taken to be the same person; and	3 4
(b) the question whether a corporation is related to another corporation is to be determined in the same way as the question whether a body corporate is related to another body corporate is determined under the Corporations Law.’.	5 6 7 8
Amendment of s. 19 (Reports by Commission)	9
8. After section 19(2)—	10
<i>insert—</i>	11
‘(2A) As soon as practicable after 30 April in each year, the Commission must give to the Minister a report on the operation of Part 6A in relation to registered political parties for the preceding calendar year.	12 13 14
‘(2B) As soon as practicable after the end of the period within which returns under section 126M are required to be given in relation to an election, the Commission must give to the Minister a report on the operation of Part 6A in relation to the election.’.	15 16 17 18
Insertion of new Part 6A	19
9. After Part 6—	20
<i>insert—</i>	21
‘PART 6A—FINANCIAL DISCLOSURE	22
‘Division 1—Agents	23
‘Agents of registered political parties	24
‘126A.(1) A registered political party must have an agent for the purposes of this Part.	25 26
‘(2) The agent is to be a person appointed by the party.	27

‘(3) If—	1
(a) an obligation is imposed on the agent of a registered political party under Division 2, 3 or 4; and	2 3
(b) there is no appointment of an agent of the party in force;	4
the obligation is taken to be imposed on each member of the executive committee (however described) of the party and this Act applies to each member as if the obligation had been imposed on the member alone.	5 6 7
‘Agents of candidates	8
‘126B.(1) A candidate for an election may appoint a person to be the agent of the candidate in relation to the election.	9 10
‘(2) If there is no appointment in force—	11
(a) the candidate is taken to be his or her own agent in relation to the election; and	12 13
(b) a reference in this Act to the agent of a candidate is to be read accordingly.	14 15
‘Eligibility for appointment	16
‘126C.(1) A person is not eligible to be appointed as an agent unless the person is an elector.	17 18
‘(2) If a person who is an agent is convicted of an offence against Division 3A of Part 8 in relation to an election, the person is not eligible to be appointed, or to hold office, as an agent in relation to a subsequent election held within 5 years after the conviction.	19 20 21 22
‘Notice and acceptance of appointment	23
‘126D.(1) An appointment of an agent—	24
(a) must be made by notice given to the Commission by the registered political party or candidate making the appointment; and	25 26 27
(b) has no effect unless the person appointed—	28
(i) consents to the appointment; and	29

(ii) makes a declaration of eligibility for appointment.	1
‘(2) The notice must—	2
(a) be in writing; and	3
(b) set out the name and address of the person appointed; and	4
(c) in the case of an appointment of an agent by a candidate for an election—be given before the cut-off day for the nomination of candidates.	5 6 7
‘(3) The consent and declaration—	8
(a) must be in writing; and	9
(b) must be signed by the person appointed; and	10
(c) must be given to the Commission; and	11
(d) may be incorporated in the notice.	12
‘When appointment has effect	13
‘126E. The appointment of an agent—	14
(a) takes effect on the entry in the relevant register of the relevant details relating to the agent; and	15 16
(b) ceases to have effect if—	17
(i) the agent dies; or	18
(ii) the name of the agent is removed from the relevant register.	19
‘Revocation of appointment	20
‘126F. A registered political party or candidate may, by written notice given to the Commission, revoke the appointment of a person as the agent of the party or candidate, as the case may be.	21 22 23
‘Death or resignation of agent	24
‘126G. If an agent dies or resigns, the registered political party or candidate by whom the agent was appointed must immediately give to the Commission written notice of the death or resignation.	25 26 27

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‘Registers of agents	1
‘126H.(1) The Commission must keep, on a continuous basis, a register called the Register of Agents of Parties.	2 3
‘(2) The Commission must keep, in relation to each election, a register called the Register of Agents of Candidates.	4 5
‘Registration of agents	6
‘126L.(1) On receipt by the Commission of a notice of appointment of an agent of a registered political party, the Commission must enter in the Register of Agents of Parties—	7 8 9
(a) the name and address of the agent; and	10
(b) the name of the party.	11
‘(2) On receipt by the Commission of a notice of appointment of an agent of a candidate, the Commission must enter in the Register of Agents of Candidates—	12 13 14
(a) the name and address of the agent; and	15
(b) the name of the candidate.	16
‘Removal of names from registers	17
‘126J.(1) The Commission must remove the name of an agent from the relevant register—	18 19
(a) on receipt by it of a vacation of office notice relating to the agent; or	20 21
(b) if the agent is convicted of an offence against Division 3A of Part 8.	22 23
‘(2) In removing the name of an agent from a register, the Commission must also remove any other details entered in the register in relation to the agent.	24 25 26
‘(3) For the purposes of subsection (1), a vacation of office notice is—	27
(a) a notice under section 126F of the revocation of the appointment of the agent; or	28 29
(b) a notice under section 126G of the death or resignation of the	30

agent; or	1
(c) a written notice of resignation signed by the agent.	2
‘Amendment of registers	3
‘126K. The Commission may amend a register for the purpose of—	4
(a) correcting a mistake or omission; or	5
(b) recording a change of—	6
(i) the name or address of an agent; or	7
(ii) the name of a registered political party or candidate.	8
‘Division 2—Disclosure of political donations and other income	9
‘Disclosure of income of registered political parties	10
‘126L.(1) The agent of a registered political party must give to the Commission—	11
(a) a return relating to the income of the party for the disclosure period for an election; and	13
(b) a return relating to the income of the party for each calendar year.	14
‘(2) Subject to subsection (5) and section 126S, a return must set out—	15
(a) the details mentioned in section 126P of all political donations; and	16
(b) the details mentioned in section 126Q of all non-donation income;	17
received by the party during the disclosure period,	18
‘(3) If no political donations were received by the party during the disclosure period, the return must contain a statement to that effect.	19
‘(4) If—	20
(a) no non-donation income was received by the party during the disclosure period; or	21
(b) the total amount or value of non-donation income received by the	22
	23
	24
	25
	26
	27

party during the disclosure period was less than \$1 000;	1
the return must contain a statement to that effect.	2
‘(5) If—	3
(a) a return relates to a calendar year; and	4
(b) a disclosure period for an election, or part of such a period, falls within the calendar year;	5 6
details of any political donations or non-donation income received by the party during the disclosure period for the election, or the part of the period, as the case may be, are not required to be set out in the return.	7 8 9
‘(6) A return relating to a calendar year must be given within 4 months after the end of the year.	10 11
‘(7) A return relating to a disclosure period for an election must be given within 3 months after the end of the period.	12 13
‘Disclosure of income of candidates	14
‘126M.(1) The agent of a candidate for an election must give to the Commission a return relating to the income of the candidate for the disclosure period for the election.	15 16 17
‘(2) The return must—	18
(a) subject to section 126S—set out the details mentioned in section 126P of all political donations received by the candidate during the disclosure period; and	19 20 21
(b) set out the total amount of payments made by the candidate during the period for the purposes of the candidate’s campaign in the election; and	22 23 24
(c) set out the amount representing the net proceeds of fund raising activities carried out by or on behalf of the candidate during the period for the purposes of the candidate’s campaign in the election.	25 26 27 28
‘(3) If—	29
(a) no political donations were received by the candidate during the disclosure period; or	30 31

(b) no amounts of the kind mentioned in subsection (2)(b) or (c) applied in relation to the candidate in relation to the disclosure period;	1 2 3
the return must contain a statement to that effect.	4
‘(4) The return must be given within 3 months after the end of the disclosure period.	5 6
‘Disclosure of political donations by interested persons	7
‘126N.(1) If a person who is not a registered political party or candidate for an election incurs electoral expenditure in relation to an election during the disclosure period for the election, the person must give to the Commission a return relating to any political donations received by the person.	8 9 10 11 12
‘(2) The return must—	13
(a) subject to section 126S—set out the details mentioned in section 126P of all political donations received by the person during the disclosure period; or	14 15 16
(b) if no political donations were received by the person during the disclosure period—contain a statement to that effect.	17 18
‘(3) The return must be given within 3 months after the end of the disclosure period.	19 20
‘(4) Subsection (1) does not apply in relation to—	21
(a) a charity that is registered under the <i>Collections Act 1966</i> ; or	22
(b) a person if the total amount of the expenditure is less than \$200; or	23 24
(c) a political donation received by a person unless the whole or a part of the donation was used by the person—	25 26
(i) to incur electoral expenditure; or	27
(ii) to reimburse the person for electoral expenditure incurred by the person.	28 29

‘Disclosure of political donations by donors	1
‘126O.(1) If an income return sets out, in relation to a political donation, the name or other description of the donor of the donation, the Commission may require the donor, or a representative of the donor, to make a declaration for the purposes of this section.	2 3 4 5
‘(2) If a declaration previously received by the Commission under subsection (1) sets out, in relation to a political donation, the name or other description of the donor of the donation, the Commission may require the donor, or a representative of the donor, to make a declaration for the purposes of this section	6 7 8 9 10
‘(3) The requirement must be made, as soon as practicable after the Commission receives the return or declaration, by written notice given to the donor or representative.	11 12 13
‘(4) The declaration must—	14
(a) state whether the donor was or was not the actual donor of the donation; and	15 16
(b) if the donor was not the actual donor—identify the donor from whom the donor set out in the return or declaration received the donation; and	17 18 19
(c) be given to the Commission within such period (not less than 30 days after the notice was given) as is specified in the notice.	20 21
‘(5) In this section—	22
“donor” of a political donation means—	23
(a) except where paragraph (b) or (c) applies—the person who made the donation; or	24 25
(b) if the donation was made on behalf of the members of an unincorporated body—the body; or	26 27
(c) if the donation was made, or is claimed to have been made, out of a trust fund or the funds of a foundation—the trust fund or foundation;	28 29 30
“representative” of the donor of a political donation means—	31
(a) if the donation was made by a corporation—an officer, or another person concerned in the management of the affairs, of the corporation; or	32 33 34

(b) if the donation was made on behalf of the members of an unincorporated body—a member of the executive committee (however described) of the body; or	1 2 3
(c) if the donation was made, or is claimed to have been made, out of a trust fund or the funds of a foundation—a trustee of the fund or of the funds of the foundation.	4 5 6
‘Details of political donations	7
‘126P.(1) The details of political donations to be set out in an income return are—	8 9
(a) the total amount or value of the donations; and	10
(b) the number of donors involved; and	11
(c) in relation to political donations to which section 126S(1), (2) or (3), as the case requires, applies—	12 13
(i) the total amount or value of the donations; and	14
(ii) for each amount for which donations were received—the number of donors involved; and	15 16
(d) in the case of an income return under section 126L or 126M—in relation to anonymous political donations of less than \$200—	17 18
(i) the total amount or value of the donations; and	19
(ii) for each amount for which donations were received—the number of donors involved.	20 21
‘(2) The following details must also be set out in an income return for each political donation—	22 23
(a) the amount or value of the donation;	24
(b) the date on which the donation was received;	25
(c) except where paragraph (d) or (e) applies—the name and address of the person who made the donation;	26 27
(d) if the donation was made on behalf of the members of an unincorporated body—	28 29
(i) the name of the body; and	30
(ii) the name and address of each member of the executive	31

committee (however described) of the body;	1
(e) if the donation was made, or is claimed to have been made, out of a trust fund or the funds of a foundation—	2
	3
(i) the name and address of each trustee of the fund or of the funds of the foundation; and	4
	5
(ii) the name or other description of the trust fund or foundation.	6
‘Details of non-donation income	7
‘126Q.(1) An income return of a registered political party under section 126L must set out the total amount or value of the non-donation income.	8
	9
‘(2) If the amount of a subscription paid during a disclosure period by a person to a registered political party in relation to the person’s membership of the party is more than \$200, the following details must also be set out in the income return—	10
	11
	12
	13
(a) the name and address of the person by whom the subscription was paid;	14
	15
(b) the date on which the subscription was paid;	16
(c) the amount of the subscription.	17
‘(3) For the purposes of subsection (1), the total amount or value of non-donation income is the sum of the following classes of income—	18
	19
(a) income mentioned in a paragraph of section 4H(2);	20
(b) other non-donation income declared by regulation to be a class of non-donation income for the purposes of this subsection;	21
	22
(c) any other non-donation income.	23
‘(4) For the purposes of subsection (2), 2 or more payments of subscriptions made by 1 person to a registered political party during the disclosure period to which the income return relates are taken to be 1 payment.	24
	25
	26
	27
‘Determination of value of political donations	28
‘126R. If a regulation sets out principles for determining the amount or value of a political donation involving property other than money, the	29
	30

amount or value of the donation is to be determined in accordance with the principles.	1 2
‘Minimum amounts applicable to political donations and non-donation income	3 4
‘126S.(1) The agent of a registered political party is not required to set out in an income return—	5 6
(a) the specific details of a political donation if the amount or value of the donation is less than \$1 000; or	7 8
(b) the total amount or value of non-donation income if the amount or value of the income is less than \$1 000.	9 10
‘(2) The agent of a candidate is not required to set out in an income return the specific details of a political donation if the amount or value of the donation is less than \$200.	11 12 13
‘(3) An interested person is not required to set out in an income return the specific details of a political donation if the amount or value of the donation is less than \$200.	14 15 16
‘(4) For the purposes of subsection (1), 2 or more political donations made by 1 person to a registered political party during the disclosure period to which the income return relates are taken to be 1 donation.	17 18 19
‘(5) For the purposes of subsection (2) or (3), 2 or more political donations made by 1 person to another person during the disclosure period to which the income return relates are taken to be 1 donation.	20 21 22
‘(6) In this section—	23
“specific details” of a political donation means the details of the donation mentioned in section 126P(2).	24 25
‘Receipt of anonymous political donations	26
‘126T.(1) A registered political party or a person acting on behalf of a registered political party must not receive a political donation—	27 28
(a) that is made to or for the benefit of the party by another person; and	29 30
(b) the amount or value of which is not less than \$200;	31

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- unless the receipt of the donation is authorised under subsection (3). 1
- ‘(2) A candidate for an election or a person acting on behalf of a 2
candidate for an election must not, during the disclosure period for the 3
election, receive a political donation— 4
- (a) that is made to or for the benefit of the candidate by another 5
person; and 6
 - (b) the amount or value of which is not less than \$200; 7
- unless the receipt of the donation is authorised under subsection (3). 8
- ‘(3) The receipt by a registered political party or person (the “recipient”) 9
of a political donation is authorised for the purposes of subsection (1) or (2) 10
if— 11
- (a) the name and address of the person making the donation (the 12
“donor”) are known to the recipient; or 13
 - (b) at the time the donation is made— 14
 - (i) the name and address of the donor are given to the recipient; 15
and 16
 - (ii) the recipient has no grounds for believing that the name and 17
address so given are not the true name and address of the 18
donor. 19
- ‘(4) If— 20
- (a) a registered political party or person receives a political donation; 21
and 22
 - (b) the receipt of the donation is not authorised under this section; 23
- an amount equal to the amount or value of the donation is payable by the 24
party or person to the State. 25
- ‘(5) An amount payable under subsection (4) may be recovered by the 26
State as a debt due to it— 27
- (a) if the donation was made to or for the benefit of a political 28
party— 29
 - (i) if the party is a corporation—against the party; and 30
 - (ii) in any other case—against the agent of the party; and 31
 - (b) if the donation was made to or for the benefit of a 32

candidate—against the candidate or the agent of the candidate.	1
‘(6) For the purposes of subsection (1) or (2), 2 or more political donations made by 1 person to or for the benefit of a registered political party or candidate are taken to be 1 donation.	2 3 4
‘(7) In subsection (1) or (2), a reference to a political donation made by a person includes a reference to a political donation made on behalf of the members of an unincorporated body.	5 6 7
‘(8) For the purposes of subsection (2), a person who is a candidate for an election is taken to remain a candidate for 30 days after the polling day for the election.	8 9 10
‘(9) In subsection (3), a reference to the name and address of a person making a political donation includes a reference to—	11 12
(a) if the donation is made on behalf of the members of an unincorporated body—	13 14
(i) the name of the body; and	15
(ii) the name and address of each member of the executive committee (however described) of the body; and	16 17
(b) if the donation is made, or is claimed to have been made, out of a trust fund or the funds of a foundation—	18 19
(i) the name and address of each trustee of the fund or of the funds of the foundation; and	20 21
(ii) the name or other description of the trust fund or foundation.	22
‘(10) Nothing in subsection (1) or (2) applies in relation to a political donation made by way of a bequest.	23 24
‘ <i>Division 3—Disclosure of electoral expenditure</i>	25
‘ Disclosure of electoral expenditure of registered political parties	26
‘126U.(1) The agent of a registered political party must give to the Commission—	27 28
(a) a return relating to the electoral expenditure of the party for the disclosure period for an election; and	29 30

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(b) a return relating to the electoral expenditure of the party for each calendar year.	1 2
‘(2) A return must—	3
(a) subject to subsection (3) and section 126Y—set out the details mentioned in section 126X(1) of all electoral expenditure incurred by or with the authority of the party during the disclosure period; or	4 5 6 7
(b) if no electoral expenditure was incurred by or with the authority of the party during the disclosure period—contain a statement to that effect.	8 9 10
‘(3) If—	11
(a) a return relates to a calendar year; and	12
(b) a disclosure period for an election, or part of such a period, falls within the calendar year;	13 14
details of any electoral expenditure incurred by or with the authority of the party during the disclosure period for the election, or the part of the period, as the case may be, are not required to be set out in the return.	15 16 17
‘(4) A return relating to a calendar year must be given within 4 months after the end of the year.	18 19
‘(5) A return relating to a disclosure period for an election must be given within 3 months after the end of the period.	20 21
‘Disclosure of electoral expenditure of candidates	22
‘126V.(1) The agent of a candidate for an election must give to the Commission a return relating to the electoral expenditure of the candidate for the disclosure period for the election.	23 24 25
‘(2) The return must—	26
(a) subject to section 126Y—set out the details mentioned in section 126X(1) of all electoral expenditure incurred by or with the authority of the candidate during the disclosure period; or	27 28 29
(b) if no electoral expenditure was incurred by or with the authority of the candidate during the period—contain a statement to that effect.	30 31 32

‘(3) The return must be given within 3 months after the end of the disclosure period.	1 2
‘Disclosure of electoral expenditure of interested persons	3
‘126W.(1) If, during the disclosure period for an election, electoral expenditure is incurred by or with the authority of a person who is not a registered political party or candidate for the election, the person must give to the Commission a return relating to—	4 5 6 7
(a) the expenditure; and	8
(b) any political donations made by or with the authority of the person.	9 10
‘(2) Subject to section 126Y, the return must set out the details mentioned in section 126X(1) of all electoral expenditure incurred by or with the authority of the person during the disclosure period.	11 12 13
‘(3) The return must also set out the details mentioned in section 126X(2) of all political donations made by or with the authority of the person during the disclosure period to—	14 15 16
(a) a political party or a branch, or another body, of a political party; or	17 18
(b) a candidate for an election; or	19
(c) a person or body (whether or not incorporated) specified by the Commission by Gazette notice.	20 21
‘(4) The return must be given within 3 months after the end of the disclosure period.	22 23
‘Details to be set out in expenditure returns	24
‘126X.(1) The details of electoral expenditure to be set out in an expenditure return are—	25 26
(a) the total amount of the expenditure; and	27
(b) the total amount of expenditure for each class of the expenditure.	28
‘(2) The details of a political donation to be set out in an expenditure return of an interested person are—	29 30

(a) the amount or value of the donation; and	1
(b) the date on which the donation was made; and	2
(c) except where paragraph (d) or (e) applies—the name and address of the person; and	3 4
(d) if the donation was made on behalf of the members of an unincorporated body—	5 6
(i) the name of the body; and	7
(ii) the name and address of each member of the executive committee (however described) of the body; and	8 9
(e) if the donation was made, or is claimed to have been made, out of a trust fund or the funds of a foundation—	10 11
(i) the name and address of each trustee of the fund or of the funds of the foundation; and	12 13
(ii) the name or other description of the trust fund or foundation.	14
‘Minimum amounts applicable to electoral expenditure	15
‘126Y.(1) The agent of a registered political party is not required to set out in an expenditure return the total amount of expenditure for a class of electoral expenditure if the amount of the expenditure for the class is less than \$1 000.	16 17 18 19
‘(2) The agent of a candidate is not required to set out in an expenditure return the total amount of expenditure for a class of electoral expenditure if the amount of the expenditure for the class is less than \$200.	20 21 22
‘(3) An interested person is not required to set out in an expenditure return the total amount of expenditure for a class of electoral expenditure if the amount of the expenditure for the class is less than \$200.	23 24 25
‘(4) Subsection (1) does not apply in relation to electoral expenditure of the kind mentioned in section 4E(2)(j).	26 27

<i>‘Division 4—Disclosure of debts, advertisements and public sector expenditure</i>	1
	2
‘Disclosure of debts of registered political parties	3
‘126Z.(1) The agent of a registered political party must give to the Commission a return relating to the debts of the party for each calendar year.	4
	5
	6
‘(2) Subject to subsection (4), the return must set out the details mentioned in subsection (3) of the outstanding amounts, as at the end of the year, of all debts incurred by or on behalf of the party.	7
	8
	9
‘(3) The details to be set out in the return are—	10
(a) the total amount of the debts; and	11
(b) in relation to each debt—	12
(i) the amount of the debt; and	13
(ii) the name of the person or body to whom the debt is owed.	14
‘(4) The agent is not required to set out in the return the details mentioned in subsection (3)(b) of debts owed to a person or body if the total amount of the debts is less than \$1 000.	15
	16
	17
‘(5) The return must be given within 4 months after the end of the disclosure period.	18
	19
‘Disclosure of advertisements by publishers	20
‘126ZA.(1) If—	21
(a) during the election period for an election, the publisher of a journal publishes in the journal an advertisement relating to the election; and	22
	23
	24
(b) the advertisement was published with the authority of a participant in the election;	25
	26
subject to subsection (3), the publisher must give to the Commission a return setting out the details mentioned in subsection (2) relating to the advertisement.	27
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‘(2) The details to be set out in the return are details that—	1
(a) identify the journal in which the advertisement was published;	2
and	3
(b) identify the person at whose request the advertisement was	4
published; and	5
(c) identify the participant in the election with whose authority the	6
advertisement was published; and	7
(d) specify the day or days on which the advertisement was	8
published; and	9
(e) identify—	10
(i) the page in the journal on which the advertisement was	11
published; and	12
(ii) the space in the journal occupied by the advertisement; and	13
(f) show whether or not a charge was made by the publisher for	14
publishing the advertisement; and	15
(g) if a charge is shown under paragraph (f)—specify the amount of	16
the charge.	17
‘(3) The publisher is not required to give the return if the total amount of	18
the charges made by the publisher in relation to the publication of	19
advertisements of the kind mentioned in subsection (1) is less than \$200.	20
‘(4) The return must be given within 3 months after the end of the	21
election period.	22
‘Disclosure of certain expenditure of public sector units	23
‘126ZB.(1) Subject to subsection (3), the chief executive of a public	24
sector unit must include in the unit’s annual report a statement setting out	25
the details mentioned in subsection (2) of all expenditure incurred by or on	26
behalf of the unit during the reporting period in relation to—	27
(a) advertising agencies; and	28
(b) market research organisations; and	29
(c) polling organisations; and	30
(d) public relations organisations; and	31

(e) media advertising organisations; and	1
(f) direct mail organisations; and	2
(g) direct postal communications or other direct communications sent to electors or householders.	3 4
‘(2) The details to be set out in the statement are—	5
(a) the total amount of the expenditure; and	6
(b) in relation to each class of expenditure constituted by a paragraph of subsection (1)—	7 8
(i) the amount of the expenditure for the class; and	9
(ii) the name of each person, agency or organisation to whom an amount was paid.	10 11
‘(3) The chief executive is not required to set out in the statement the details mentioned in subsection (2)(b) in relation to a class of expenditure if the amount of the expenditure for the class is less than \$1 000.	12 13 14
<i>‘Division 5—Returns and declarations</i>	15
‘Form of returns and declarations	16
‘126ZC.(1) A return must—	17
(a) be in writing; and	18
(b) be in a form approved and made available by the Commission; and	19 20
(c) be in the form that is applicable to the particular case.	21
‘(2) A disclosure declaration must—	22
(a) be in writing; and	23
(b) be in a form approved and made available by the Commission.	24
‘(3) An income return and an expenditure return relating to a registered political party may be incorporated in 1 document.	25 26
‘(4) An income return and an expenditure return relating to a candidate for an election may be incorporated in 1 document.	27 28

‘(5) An income return and an expenditure return relating to an interested person may be incorporated in 1 document.	1 2
‘Incomplete returns	3
‘126ZD.(1) If—	4
(a) a person is required to give a return; and	5
(b) the person considers that it is impossible to complete the return because the person is unable to obtain details that are required for the preparation of the return;	6 7 8
the person may take the alternative action mentioned in subsection (2) in relation to the return.	9 10
‘(2) The alternative action that may be taken by the person is to—	11
(a) prepare the return to the extent that it is possible to do so without the details; and	12 13
(b) give the return to the Commission; and	14
(c) give to the Commission a written notice that complies with subsection (3).	15 16
‘(3) The notice must—	17
(a) identify the return; and	18
(b) state that the return is incomplete because the person is unable to obtain certain details; and	19 20
(c) identify the details; and	21
(d) set out the reasons why the person is unable to obtain the details; and	22 23
(e) if the person believes, on reasonable grounds, that another person whose name and address are known to the person can give the details—	24 25 26
(i) state that belief and the reasons for it; and	27
(ii) state the name and address of the other person.	28
‘(4) If the Commission is informed under subsection (3)(e) or (6)(e) that a person can give details that have not been included in a return, the Commission may, by written notice given to the person, require the person	29 30 31

to give the details to the Commission, in writing, within the period specified in the notice.	1 2
‘(5) Subject to subsection (6), a person must comply with a requirement under subsection (4).	3 4
‘(6) If a person who is required to give details under subsection (4) considers that he or she is unable to obtain some or all of the details, the person must give to the Commission a written notice that—	5 6 7
(a) sets out any details the person is able to give; and	8
(b) states that the person is unable to obtain some or all of the details; and	9 10
(c) identifies the details the person is unable to obtain; and	11
(d) sets out the reasons why the person is unable to obtain the details; and	12 13
(e) if the person believes, on reasonable grounds, that another person whose name and address are known to the person can give the details—	14 15 16
(i) states that belief and the reasons for it; and	17
(ii) states the name and address of the other person.	18
‘(7) A person who complies with subsection (1) or (6) is not to be taken, for the purposes of section 175E, because of the omission of the details identified under subsection (3)(c) or (6)(c), to have given a return that is incomplete.	19 20 21 22
‘Amendment of returns	23
‘126ZE.(1) If the Commission is satisfied that a return—	24
(a) contains a formal error; or	25
(b) is subject to a formal defect;	26
the Commission may amend the return to the extent necessary to correct the error or remove the defect.	27 28
‘(2) A person who has given a return (“the requester”) may request the permission of the Commission to make a specified amendment of the return for the purpose of correcting an error or omission.	29 30 31

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‘(3) If, on a request made to it, the Commission is satisfied that there is an error in, or omission from, the return, the Commission must allow the requester to amend the return in accordance with the request. 1
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‘(4) If the Commission refuses the request, the Commission must give to the requester written notice of— 4
5

(a) its decision; and 6

(b) the reasons for its decision. 7

‘(5) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence against section 175E or 175F arising out of the giving of the return. 8
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‘Audit of returns 11

‘126ZF.(1) An income return or expenditure return is taken not to have been validly given to the Commission unless it is accompanied by a certificate of an auditor. 12
13
14

‘(2) The certificate must state— 15

(a) that the auditor was given full and free access at all reasonable times to all accounts, records and documents of— 16
17

(i) the agent or other person by whom the return is to be given; 18
and 19

(ii) if appropriate—the relevant registered political party or relevant candidate; 20
21

relating, directly or indirectly, to any detail required to be set out in the return; and 22
23

(b) that the auditor examined the accounts, records and documents that the auditor considered relevant for the purpose of giving the certificate; and 24
25
26

(c) that the auditor received all information and explanations that the auditor asked for relating to any detail required to be set out in the return, subject to any qualifications specified in the certificate; and 27
28
29

(d) that the auditor has no reason to think that any detail set out in the return is incorrect. 30
31

‘(3) Subsection (1) does not apply to a return relating to a candidate for an election if the Commission waives compliance with the audit requirement for the return.

‘(4) The Commission may waive compliance with the audit requirement if the return contains the statement mentioned in section 126M(3) or 126V(2)(b), as the case requires.

‘(5) A waiver—

- (a) is at the discretion of the Commission; and
- (b) may be made before or after the return is received by the Commission; and
- (c) may be revoked by the Commission at any time.

‘(6) The revocation of a waiver does not affect the validity of a return already given unless the certificate of the auditor is not given to the Commission within the time specified by the Commission.

‘Proof of expenditure set out in returns

‘126ZG. An expenditure return is taken not to have been validly given to the Commission unless the incurring of the electoral expenditure set out in the return is supported in the way prescribed by regulation.

‘Keeping of records relating to returns and declarations

‘126ZH. If—

- (a) a person makes or obtains a document or other thing that is, or includes, a record relating to a matter details of which are, or could be, required to be set out in a return or disclosure declaration; and
- (b) the record is not a record that, in the normal course of business or administration, the person would transfer to another person;

the person must keep the record for a period of at least 3 years after it was made or obtained.

‘Public inspection of returns etc.

‘126ZI.(1) The Commission must keep at its office a copy of—	1
(a) each return received by it; and	2
(b) each disclosure declaration received by it; and	3
(c) any document made or received by it relating to a return or disclosure declaration;	4
for at least 7 years after the due day for giving the return or declaration.	5
‘(2) A person is entitled—	6
(a) to inspect, without fee, a copy of a return, declaration or other document kept under subsection (1); and	7
(b) to purchase a copy of a return, declaration or other document at a price determined by the Commission that reasonably reflects the cost of producing the copy.	8
‘(3) To enable a person to inspect a copy of a return, declaration or other document, the Commission must, on the request of the person, make the copy available—	9
(a) at its office during the ordinary business hours of the office; or	10
(b) at another place, and at a time, that the Commission considers is appropriate.	11
‘(4) A person is not entitled to inspect or purchase a copy of a return, declaration or other document until 2 days after the due day for giving the return or declaration, or the return or declaration to which the document relates, as the case may be.	12
‘ <i>Division 6—Investigation</i>	13
‘ Authorised persons	14
‘126ZJ.(1) The Commission may, by signed notice, appoint a qualified person, with the person’s consent, to be an authorised person.	15
‘(2) An authorised person has the powers conferred under this Act.	16
‘(3) In this section—	17
“qualified person” means a person who—	18
	19
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(a)	in the Commission's opinion, has the necessary expertise or experience to be an authorised person; or	1 2
(b)	has satisfactorily completed a course of training approved by the Commission.	3 4
	'Identity cards	5
	' 126ZK.(1) The Commission must issue an identity card to each authorised person.	6 7
	' (2) The identity card must—	8
(a)	contain a recent photograph of the authorised person; and	9
(b)	be in a form approved, in writing, by the Commission; and	10
(c)	be signed by the authorised person.	11
	'Proof of authority	12
	' 126ZL. An authorised person must not exercise a power under this Act in relation to another person unless the authorised person first produces his or her identity card for inspection by the other person.	13 14 15
	'Power to obtain information and documents	16
	' 126ZM.(1) If an authorised person believes on reasonable grounds that a person may be able to give information or produce a document relating to—	17 18 19
(a)	a contravention, or possible contravention of section 175A, 175B, 175C, 175E or 175F; or	20 21
(b)	a matter set out, or required to be set out, in a return or disclosure declaration that is relevant to the administration or enforcement of this Act; or	22 23 24
(c)	a detail given, or required to be given, to the Commission under section 126ZD(4) that is relevant to the administration or enforcement of this Act;	25 26 27
	the authorised person may require the person to give the information, or produce the document, to the authorised person.	28 29

‘(2) The requirement must be made by written notice given to the person specifying—	1
	2
(a) the place at which; and	3
(b) the day on or before which;	4
the information or document is to be given or produced.	5
‘(3) The place and day specified must be reasonable.	6
‘(4) Any information must be given in writing signed—	7
(a) by the person; or	8
(b) in the case of a corporation—by an officer of the corporation.	9
‘Power to retain documents	10
‘126ZN. If a document is produced to an authorised person under section 126ZM, the authorised person—	11
	12
(a) may take possession of, and make copies of or take extracts from, the document; and	13
	14
(b) may keep possession of the document for such period as is necessary for the purpose for which the document was produced; and	15
	16
	17
(c) during that period, must allow it to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the possession of the authorised person.	18
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‘Power to require attendance of persons	21
‘126ZO.(1) If an authorised person believes on reasonable grounds that a person may be able to give information relating to—	22
	23
(a) a contravention, or possible contravention, of section 175A, 175B, 175C, 175E or 175F; or	24
	25
(b) a matter set out, or required to be set out, in a return or disclosure declaration that is relevant to the administration or enforcement of this Act; or	26
	27
	28
(c) a detail given, or required to be given, to the Commission under section 126ZD(4) that is relevant to the administration or	29
	30

enforcement of this Act;	1
the authorised person may require the person to attend before the authorised person to answer questions relevant to the matter.	2 3
‘(2) The requirement must be made by written notice given to the person specifying a reasonable time and place at which the person is to attend.	4 5
‘(3) The authorised person may—	6
(a) administer an oath or affirmation to a person required to attend before the authorised person; and	7 8
(b) examine the person on oath or affirmation.	9
‘(4) The oath or affirmation is an oath or affirmation that the answers the person will give will be true.	10 11
‘(5) A person who appears before an authorised person is entitled to be paid by the State such allowances and expenses as are prescribed by regulation.	12 13 14
‘Power to enter and search	15
‘126ZP.(1) Subject to subsection (3), if an authorised person has reasonable grounds for suspecting that there is in a place a particular thing (the “evidence”) that may afford evidence of the commission of an offence against section 175A, 175B, 175C, 175E or 175F, the authorised person may—	16 17 18 19 20
(a) enter the place; and	21
(b) exercise the powers set out in section 126ZQ.	22
‘(2) If the authorised person enters the place and finds the evidence, the authorised person may—	23 24
(a) seize the evidence; and	25
(b) keep the evidence—	26
(i) for 6 months; or	27
(ii) if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period—until the completion of the proceeding for the offence and any appeal	28 29 30 31

in relation to the proceeding; and	1
(c) if the evidence is a document—while the authorised person has possession of the document—	2 3
(i) make copies of and take extracts from the document; and	4
(ii) allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the possession of the authorised person.	5 6 7
‘(3) An authorised person must not enter the place or exercise a power under subsection (1) unless—	8 9
(a) the occupier of the place consents to the entry or exercise of the power; or	10 11
(b) a warrant under section 126ZR that was issued in relation to the evidence authorises the entry or exercise of the power.	12 13
‘(4) If, while searching the place under subsection (1) under a warrant under section 126ZR, an authorised person—	14 15
(a) finds a thing that the authorised person believes, on reasonable grounds, to be—	16 17
(i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or	18 19 20
(ii) a thing that will afford evidence of the commission of another offence against this Act; and	21 22
(b) the authorised person believes, on reasonable grounds, that it is necessary to seize the thing to prevent—	23 24
(i) its concealment, loss or destruction; or	25
(ii) its use in committing, continuing or repeating the offence mentioned in subsection (1) or the other offence, as the case may be;	26 27 28
subsection (2) applies to the thing as if it were the evidence.	29
‘General powers of search etc. on entry to places	30

‘126ZQ.(1) An authorised person who enters a place under section 126ZP may exercise any of the following powers—	1 2
(a) search any part of the place;	3
(b) inspect or examine anything in or on the place;	4
(c) take extracts from, and make copies of, any documents in or on the place;	5 6
(d) take into or onto the place such persons, equipment and materials as the authorised person reasonably requires for the purpose of exercising any powers in relation to the place;	7 8 9
(e) require the occupier or any person in or on the place to give to the authorised person reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d).	10 11 12
‘(2) This section does not limit any power that an authorised person has apart from this section.	13 14
‘Warrants relating to offences	15
‘126ZR.(1) An authorised person may apply to a magistrate for a warrant under this section in relation to a particular place.	16 17
‘(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 7 days, in or on the place a particular thing (the “evidence”) that may afford evidence of the commission of an offence against section 175A, 175B, 175C, 175E or 175F.	18 19 20 21 22 23
‘(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the authorised person or another person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.	24 25 26 27 28
‘(4) The warrant must—	29
(a) authorise the authorised person, with such assistance and by such force as is necessary and reasonable—	30 31
(i) to enter the place; and	32

(ii) to exercise the powers set out in section 126ZQ; and	1
(iii) to seize the evidence; and	2
(b) state whether the entry is authorised to be made—	3
(i) at any time of the day or night; or	4
(ii) only during specified hours of the day or night; and	5
(c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and	6 7
(d) state the purpose for which the warrant is issued.	8
‘Authorised person to give notice of seizure or damage	9
‘126ZS.(1) An authorised person who seizes or damages anything under this Division must, as soon as practicable after seizing or damaging the thing, give written notice containing particulars of the thing or damage.	10 11 12
‘(2) The notice must be given to—	13
(a) if anything is seized—the person from whom the thing was seized; or	14 15
(b) if damage was caused to anything—the person who appears to the authorised person to be the owner of the thing.	16 17
‘Division 7—Miscellaneous	18
‘Election not affected by non-compliance with Part	19
‘126ZT.(1) A failure of a person to comply with this Part in relation to an election does not invalidate the election.	20 21
‘(2) Without limiting subsection (1), if—	22
(a) a registered political party endorsed a candidate for an election; and	23 24
(b) the candidate was elected at the election;	25
a failure by the agent of the party to comply with this Part in relation to the election does not invalidate the election of the candidate.	26 27
‘(3) Without limiting subsection (1), if the agent of a candidate who is	28

electd at an election fails to comply with this Part in relation to the election, the failure does not invalidate the election of the candidate.’	1 2
Amendment of s. 137 (Restrictions on certain orders)	3
10. After section 137(3)—	4
<i>insert—</i>	5
‘(4) The Court must not make an order mentioned in section 136(2)(a) or (b) because of a contravention by a person of the <i>Broadcasting Act 1942</i> , or the <i>Radiocommunications Act 1983</i> , of the Commonwealth.’	6 7 8
Replacement of s. 158 (Interfering with election right or duty)	9
11. Section 158—	10
<i>omit, insert—</i>	11
‘Interfering with election right or duty	12
‘158.(1) A person must not hinder or interfere with the free exercise or performance, by another person, of another right or duty under this Act that relates to an election.	13 14 15
‘(2) A person must not discriminate against another person because of the making by the other person of a donation to a registered political party or a candidate for an election by—	16 17 18
(a) denying the other person access to membership of any trade union, club or other body; or	19 20
(b) not allowing the other person to work or continue to work; or	21
(c) subjecting the other person to any form of intimidation or coercion; or	22 23
(d) subjecting the other person to any other detriment.	24
Maximum penalty—20 penalty units, imprisonment for 6 months or both.’	25
Amendment of s. 162 (Headline to electoral advertisements)	26
12. Section 162(a)—	27
after ‘is’, <i>insert</i> ‘, during the election period for an election,’	28

47
Electoral Amendment

Insertion of new Division 3A in Part 8	1
13. After section 175—	2
<i>insert—</i>	3
<i>‘Division 3A—Offences relating to financial disclosure</i>	4
‘Failure to give return	5
‘175A. A person who is required to give a return to the Commission must not fail to comply with the requirement within the required time.	6 7
Maximum penalty—	8
(a) in the case of a return required to be given by the agent of a registered political party—200 penalty units; or	9 10
(b) in any other case—40 penalty units.	11
‘Failure to give disclosure declaration	12
‘175B. A person who is required to make and give a disclosure declaration to the Commission must not fail to comply with the requirement within the required time.	13 14 15
Maximum penalty—40 penalty units.	16
‘Failure to give details relating to incomplete return	17
‘175C. A person who is required under section 126ZD(4) to give details relating to a return to the Commission must not fail to comply with the requirement within the required time.	18 19 20
Maximum penalty—40 penalty units.	21
‘Continuance of failure to give return etc.	22
‘175D.(1) This section applies to the following documents—	23
(a) a return;	24
(b) a disclosure declaration;	25
(c) a document setting out details under section 126ZD(4) relating to	26

a return.	1
‘(2) If a person fails to give to the Commission a document to which this section applies within the required period—	2 3
(a) the obligation to give the document continues even though the period has ended; and	4 5
(b) if the person is convicted of an offence that is constituted by a failure to give the document within the period—the person is guilty of a separate and further offence in relation to each day after the day of the conviction during which the failure continues; and	6 7 8 9 10
(c) the penalty applicable to each separate and further offence is—	11
(i) in the case of a return required to be given by the agent of a registered political party—a fine of not more than 5 penalty units; or	12 13 14
(ii) in any other case—a fine of not more than 1 penalty unit.	15
‘(3) If a person is convicted of more than 1 offence under subsection (2)(b), the court may impose 1 penalty in relation to all offences of which the person is convicted but the penalty must not be more than the sum of the maximum penalties that could be imposed if a penalty were imposed in relation to each offence separately.	16 17 18 19 20
‘Giving incomplete returns etc.	21
‘175E.(1) A person who is required to give a return to the Commission must not give a return that the person knows is incomplete in a material particular.	22 23 24
‘(2) A person who is required to make and give a disclosure declaration to the Commission must not make or give a declaration that the person knows is incomplete in a material particular.	25 26 27
‘(3) A person who is required under section 126ZD(4) to give details relating to a return to the Commission must not give details that the person knows are incomplete in a material particular.	28 29 30
Maximum penalty—	31
(a) in the case of a return required to be given by the agent of a registered political party—200 penalty units; or	32 33

(b) in any other case—40 penalty units.	1
‘False or misleading returns etc.	2
‘175F.(1) The agent of a registered political party must not give to the Commission a return containing details that the agent knows are false or misleading in a material particular.	3 4 5
Maximum penalty—200 penalty units.	6
‘(2) A person, other than the agent of a registered political party, must not give to the Commission—	7 8
(a) a return or disclosure declaration; or	9
(b) details under section 126ZD(4) relating to a return;	10
that the person knows are false or misleading in a material particular.	11
Maximum penalty—40 penalty units.	12
‘(3) If—	13
(a) a person (the “ supplier ”) gives to another person who is required to give to the Commission—	14 15
(i) a return; or	16
(ii) a disclosure declaration; or	17
(iii) details under section 126ZD(4) relating to a return;	18
information relating to the return, declaration or details; and	19
(b) the supplier knows that the information is false or misleading in a material particular;	20 21
the supplier commits an offence punishable on conviction by a penalty of a fine of not more than 40 penalty units.	22 23
‘Receiving anonymous political donations	24
‘175G.(1) A registered political party, or a person acting on behalf of a registered political party, who contravenes section 126T(1) commits an offence punishable on conviction by a penalty of a fine of not more than 200 penalty units.	25 26 27 28
‘(2) A candidate for an election, or a person acting on behalf of a	29

candidate for an election, who contravenes section 126T(2) commits an offence punishable on conviction by a penalty of a fine of not more than 40 penalty units.	1 2 3
‘Failure to keep records	4
‘175H. A person who is required under section 126ZH to keep a record must not, without reasonable excuse, fail to comply with the requirement.	5 6
Maximum penalty—	7
(a) in the case of a record relating to a return required to be given by the agent of a registered political party—200 penalty units; or	8 9
(b) in any other case—40 penalty units.	10
‘Failure to give information or produce document	11
‘175I.(1) A person who is required under section 126ZM to give information or produce a document must not, without reasonable excuse, fail to comply with the requirement.	12 13 14
Maximum penalty—40 penalty units.	15
‘(2) It is a reasonable excuse for a person to fail to give the information or produce the document if giving the information or producing the document might tend to incriminate the person.	16 17 18
‘Failure to attend or be sworn	19
‘175J. A person who is required under section 126ZO—	20
(a) to attend before an authorised person; or	21
(b) to be sworn or make an affirmation;	22
must not, without reasonable excuse, fail to comply with the requirement.	23
Maximum penalty—40 penalty units.	24
‘Failure to answer questions	25
‘175K.(1) A person appearing before an authorised person under section 126ZO who is required to answer a question must not, without reasonable	26 27

excuse, fail to comply with the requirement.	1
Maximum penalty—40 penalty units.	2
‘(2) It is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person.	3 4
‘False or misleading information	5
‘175L.(1) A person must not—	6
(a) make a statement to an authorised person that the person knows is false or misleading in a material particular; or	7 8
(b) omit from a statement made to an authorised person anything without which the statement is, to the person’s knowledge, misleading in a material particular.	9 10 11
Maximum penalty—40 penalty units.	12
‘(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person’s knowledge.	13 14 15
‘False or misleading documents	16
‘175M.(1) A person must not give to an authorised person a document containing information that the person knows is false, misleading or incomplete in a material particular.	17 18 19
Maximum penalty—40 penalty units.	20
‘(2) Subsection (1) does not apply to a person if, when the person gives the document to the authorised person, the person—	21 22
(a) indicates to the authorised person that the document is false, misleading or incomplete; and	23 24
(b) indicates the respect in which the document is false, misleading or incomplete; and	25 26
(c) gives the correct information to the authorised person if the person has, or can reasonably obtain, the correct information.	27 28
‘Failure of authorised person to return identity card	29

‘175N. A person who ceases to be an authorised person must, as soon as practicable, return to the Commission the identity card issued to the person under section 126ZK.	1 2 3
Maximum penalty—40 penalty units.	4
‘Failure to assist authorised persons	5
‘175O. A person who is required under section 126ZQ(1)(e) to give assistance to an authorised person must not, without reasonable excuse, fail to comply with the requirement.	6 7 8
Maximum penalty—40 penalty units.	9
‘Obstruction of authorised persons	10
‘175P.(1) A person must not obstruct an authorised person in the exercise of a power under this Act.	11 12
‘(2) A person is taken to obstruct an authorised person in the exercise of a power under this Act if the person—	13 14
(a) assaults, abuses, hinders, resists or intimidates the authorised person or a person assisting the authorised person in the exercise of the powers of the authorised person under this Act; or	15 16 17
(b) deliberately prevents or attempts to prevent (whether directly or indirectly) a person from—	18 19
(i) answering a question that the person is required by the authorised person to answer; or	20 21
(ii) giving, under this Act, any information or document to the authorised person; or	22 23
(c) in any other way obstructs, or attempts to obstruct, an authorised person in the exercise of the powers of the authorised person under this Act.	24 25 26
Maximum penalty—40 penalty units.	27
‘Impersonation of authorised person	28

(b) any property in which—	1
(i) the party has a beneficial interest; or	2
(ii) any members of the party have, in their capacity as members, a beneficial interest;	3 4
(whether vested in trustees or held in another way) as if the party were a corporation and the absolute owner of the property or interest.	5 6
‘(2) No process is to be issued or executed against—	7
(a) any other property of members of the party; or	8
(b) any property of officers of the party.	9
‘Recovery of amounts by Commission	10
‘177C.(1) A proceeding in a court to recover an amount due to the State under section 126T(4) may be brought in the name of the State by the Commission.	11 12 13
‘(2) Any process in the proceeding required to be served on the State may be served on the Commission.	14 15
‘Compensation	16
‘177D. In a proceeding for—	17
(a) an offence against Division 3A; or	18
(b) the recovery of compensation;	19
a court may order the payment of compensation to a person for any loss resulting from the unreasonable exercise of powers under Division 5 of Part 6A.	20 21 22
‘Evidence	23
‘177E.(1) In a proceeding for an offence against Division 3A, a certificate signed by the Electoral Commissioner and stating that at a specified time, or during a specified period—	24 25 26
(a) a specified person was, or was not, registered as an agent of a specified political party or candidate; or	27 28

(b) no person was registered as the agent of a specified political party or candidate;	1
	2
is evidence of the matters stated.	3
‘(2) A document that purports to have been signed by the Electoral Commissioner is taken to have been so signed unless the contrary is proved.’.	4
	5
	6
Insertion of new ss. 181A and 181B	7
16. After section 181—	8
<i>insert—</i>	9
‘Certain matters not to be published etc. during elections	10
‘ 181A.(1) An officer or employee of a public sector unit must not, during the election period in relation to an election, print, publish or distribute, or cause to be printed, published or distributed, any matter for or on behalf of the government or a government authority.	11
	12
	13
	14
‘(2) Subsection (1) does not apply in relation to exempt matter.	15
‘Publishing etc. of editorials and news allowed	16
‘ 181B. Nothing in this Act prevents a person from printing, publishing or distributing—	17
	18
(a) an item of news or current affairs; or	19
(b) an editorial or other comment on an item of news or current affairs; or	20
	21
(c) a matter relating to public health if the matter does not—	22
(i) directly or indirectly promote or criticise a particular public health system; or	23
	24
(ii) explicitly advocate voting for or against a candidate for an election or a political party.’.	25
	26
Renumbering of Act	27

17.(1) In this section—	1
“ amended Act ” means the <i>Electoral Act 1992</i> as amended by this Act (other than this section);	2 3
“ provision ” means a Part, Division, section or subsection.	4
(2) The several Parts of the amended Act are renumbered so that they bear consecutive arabic numerals starting with ‘1’.	5 6
(3) The several Divisions of each Part of the amended Act are renumbered so that they bear consecutive arabic numerals starting with ‘1’.	7 8
(4) The several sections of the amended Act are renumbered in a single series so that they bear consecutive arabic numerals starting with ‘1’.	9 10
(5) The several subsections of each section of the amended Act are renumbered so that they bear consecutive arabic numerals enclosed in brackets starting with ‘(1)’.	11 12 13
(6) Each provision of the amended Act that refers to a provision of that Act that has been renumbered under this section is further amended by omitting the reference and substituting a reference to the last-mentioned provision as so renumbered.	14 15 16 17
(7) A reference in—	18
(a) section 19; or	19
(b) a provision of another law enacted before the commencement of this section (whether or not the provision has come into operation); or	20 21 22
(c) an instrument or document;	23
to a provision of the <i>Electoral Act 1992</i> that has been renumbered under this section is to be read as a reference to the provision as so renumbered.	24 25
Amendment of Legislative Assembly Act 1867	26
18.(1) The <i>Legislative Assembly Act 1867</i> is amended as set out in this section.	27 28
(2) Section 7(2)—	29
omit ‘168 or 170(a) or (b)’,	30
insert ‘168, 170(a) or (b), 175A, 175B, 175C or 175F’.	31

Transitional	1
19.(1) In this section—	2
“ amended Act ” means the <i>Electoral Act 1992</i> as amended by this Act;	3
“ commencement day ” means the day mentioned in section 2(2).	4
(2) If polling day for an election occurred before the commencement day, a return is not required to be given under the amended Act in relation to the election.	5 6 7
(3) If polling day for an election occurs after the commencement day, the disclosure period for the election for the purposes of section 4A, 4B or 4C of the amended Act is taken to have begun—	8 9 10
(a) on the day determined under the relevant section as the day on which the period begins; or	11 12
(b) the commencement day;	13
whichever is the later day.	14
(4) If polling day for an election occurs after the commencement day, the election period for the election for the purposes of section 126ZA of the amended Act is taken to have begun—	15 16 17
(a) on the day determined under the Act as the day on which the period begins; or	18 19
(b) the commencement day;	20
whichever is the later day.	21
(5) The first return under section 126L, 126U or 126Z relating to a calendar year need only contain details in relation to the period—	22 23
(a) beginning on the commencement day; and	24
(b) ending on the next 31 December.	25
(6) The first statement under section 126ZB need only contain details in relation to the period—	26 27
(a) beginning on the commencement day; and	28
(b) ending on the next 30 June.	29

APPENDIX F

CROSS REFERENCE OF THE DRAFT BILL FOR AN ELECTORAL AMENDMENT ACT 1992 AND THE RECOMMENDATIONS OF THE REPORT

Recommendations of the Report	Bill Reference
para.2.37	Division 2 (pp.20-26) (also see para.2.271)
para.2.52(a)	s.8(1) of <i>Electoral Act 1992</i>
para.2.52(b)	Amendment of s.19 (Electoral Act) (p.16)
para.2.52(c)	3 (p.6)
para.2.62	Definitions section (p.8), 4D (disposition of property) (p.10) and 4G (definition of gift) (p.14); bequests are exempted by 126T(10) (p.28)
para.2.77(a)	126Q(2) (p.25)
para.2.77(b)	126M(2) (p.21)
para.2.77(c)	Definition of "gift" (4G(2)) (p.14)
para.2.77(d)	126P(1)(d) (p.24)
para.2.84(a)	126M(2) (p.21)
para.2.84(b)	126M (pp.21-22)
para.2.99	Nothing in the Bill excludes donations made for particular purposes
para.2.112(a)	126S (p.26)
para.2.112(b)	126P(1)(c) (p.24)
para.2.112(c)	126S (p.26)
para.2.112(d)	126P(1)(c) (p.24)
para.2.112(e)	4A, 4B and 4C (pp.9-10)
para.2.121	No specific reference in Bill needed.
para.2.141	126N (p.22)
para.2.153(a)	126T (pp.26-28)
para.2.153(b)	126T(4) (p.27); anonymous bequests are protected by 126T(10) (p.28)
para.2.153(c)	126P(1)(d) (p.24)
para.2.153(d)	175G (p.49) and 177C (p.54)

**Recommendations
of the Report****Bill Reference**

para.2.171	4A, 4B and 4C (pp.9-10)
para.2.188(a)	4H(a-e) (p.14), 126Z (p.32) and 126Q(3) (p.25)
para.2.188(b)	126M(2) (p.21)
para.2.188(c)	4A, 4B and 4C (pp.9-10)
para.2.199(a)	126A (pp.16-17)
para.2.199(b)	126B (p.17)
para.2.209(a)	126L (pp.20-21)
para.2.209(b)	126M (pp.21-22)
para.2.220(a)	126L(4) and 126L(5) (pp.20-21)
para.2.220(b)	126M(4) (p.20-21)
para.2.220(c)	126N(3) (p.22)
para.2.230(a)	126ZF and 126ZG (pp.37-38)
para.2.230(b)	126ZH (p.38)
para.2.230(c)	126ZI(1) (p.38)
para.2.236(a)	126P (pp.24-25)
para.2.236(b)	126P(1)(c) (p.24)
para.2.236(c)	126T(6) (p.28)
para.2.257(a)	Division 6 (pp.53-54)
para.2.257(b)	126O (p.23)
para.2.257(c)	126T(4) (pp.27)
para.2.271	Amendments to the Local Government Act and other relevant legislation will be necessary.
para.3.22	Division 3 (pp.28-31)
para.3.39(a)	4E(1) (p.11)
para.3.39(b)	4E(2) (pp.11-12)
para.3.39(c)	4E(4) (p.12)
para.3.43(a)	4A (p.9)
para.3.43(b)	4B (pp.9-10)

Recommendations of the Report	Bill Reference
para.3.43(c)	4C (p.10)
para.3.57	126W (p.30) and 126Y (p.31)
para.3.70(a)	126ZA (p.32-33)
para.3.70(b)	126ZA(2) (p.32-33)
para.3.70(c)	Not applicable to this Bill
para.3.82(a)	126ZB(1) and (2) (pp.33-34)
para.3.82(b)	126ZB(3) (p.34)
para.3.107	No maximum limit on electoral expenditure has been imposed in the Bill
para.3.112(a)	Division 1 (pp.16-20)
para.3.112(b)	The Bill requires independent disclosure of expenditure by parties and candidates.
para.3.112(c)	126U(4) and (5) (p.29), 126V(3) and 126W(4) (pp.29-30)
para.3.112(d)	126ZF (p.37)
para.3.124(a)	126ZI (p.38)
para.3.124(b)	126ZI(1) (pp.38-39)
para.3.124(c)	126ZH (p.38)
para.3.132(a)	126X(1) (p.30)
para.3.132(b)	126X(1) (p.30)
para.3.140	Division 6 (pp.53-54)
para.3.144(a)-(c)	Amendments to the Local Government Act and other relevant legislation will be necessary.
para.5.11(a)-(b)	No specific definition of political advertisement has been included.
para.5.11(c)	181B (p.55)
para.5.20(a)	181A (p.55)
para.5.20(b)	4F (pp.13-14)
para.5.20(c)	Not applicable to the Bill

**Recommendations
of the Report****Bill Reference**

para.5.20(d)	126ZB(1) (pp.33-34)
para.5.32(a)	Not applicable to the Bill
para.5.32(b)	Amendment of s.162 (Electoral Act) (p.46)
para.6.21(a)-(c)	Division 3A (pp.47-53)
para.6.21(d)	Amendment of s.176 (Electoral Act) (p.52)
para.6.21(e)	126C(2) (p.17)
para.6.29(a)	158(2) (p.46)
para.6.29(b)	158(2) (p.46)