



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: [Campaign finance reform](#))

Members:

**MRS V DUNNE (The Chair)
MR J HARGREAVES (The Deputy Chair)
MS M HUNTER**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 8 SEPTEMBER 2010

**Secretary to the committee:
Dr B Lloyd (Ph: 6205 0137)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

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Privilege statement

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Amended 21 January 2009

The committee met at 10.28 am.

CORBELL, MR SIMON, Attorney-General, Minister for the Environment, Climate Change and Water, Minister for Energy and Minister for Police and Emergency Services

THE ACTING CHAIR (Mr Hargreaves): This is the Standing Committee on Justice and Community Safety inquiry into campaign finance reform. Can you indicate whether you have read the privilege statement, that you have done it before and that you know if you abuse privilege you can go to jail?

Mr Corbell: Yes.

THE ACTING CHAIR: Minister, I invite you to make an opening statement.

Mr Corbell: Thank you, Mr Hargreaves, Ms Hunter and the committee, for the opportunity to give evidence to this inquiry this morning. I will make a brief opening statement but then I and officers of my department are happy to try to answer any questions you might have about the government's submission.

The government has prepared the submission with the benefit of reference to the commonwealth government's electoral reform green paper, the submission to this inquiry by the ACT Electoral Commission and the commission's report on the most recent ACT Legislative Assembly election. As the government's submission notes, the government acknowledges the full and frank advice of the commission and its suggestions to this inquiry for changes to funding disclosure of elections in the ACT.

Given the volume of information available in the documents already before the inquiry in relation to this matter, the government has chosen, in its submission, to focus on those matters where the government holds a differing or a particularly strong view. The government's view is that an effective regime for disclosure of political donations is critical to the operation of the electoral system and to the integrity of that system and, therefore, the government is strongly supportive of this inquiry's consideration of proposals to maintain the integrity of the system and identify opportunities for further improvement.

I would like to deal with a couple of the issues. The first is regulating donations and expenditure. The government is satisfied that the \$1,000 threshold is an appropriate level for the disclosure threshold. That was implemented by the Labor government in amendments made to the Electoral Act in 2008. In the absence of good reasons to raise the threshold, the government does not propose any change to this threshold at this time. However, there should be, in the government's view, some examination of possible amendments to the Electoral Act to require disclosure of multiple donations that in total exceed the \$1,000 per donor threshold. There is, in the government's view, merit in such an amendment.

I note that the effectiveness of the ACT's electoral system has been under consideration by the Assembly on numerous occasions in recent years. In 2008, debate in the Assembly endorsed the view that the practice of donating to election campaigns supports the freedom of ACT citizens to participate in political activity.

This is an important principle that I know other witnesses have spoken to in their evidence to this inquiry and it is one that the government would reiterate.

Turning to the issue of financial disclosure and gifts, all parties conduct a wide range of events and activities to raise funds for electoral and non-electoral functions, including with respect to the day-to-day administration and governance associated with political parties' operations. Donors too, though, seek to provide financial or in-kind services or other assistance. That is a factor that should be had regard to also.

The passage of the Electoral Legislation Amendment Act in 2008 followed a comprehensive debate in the Assembly, including debate about financial disclosure. However, the government does believe there is room for further improvement in this area and, as indicated in the government's submission, the government believes consideration should be given to whether the current definition of "gift" provides an appropriate level of transparency.

The government would also support reasonable measures to ensure that large amounts of money cannot be anonymously donated in order to avoid disclosure. I note that the Electoral Commission has given evidence on this matter.

Can I address the issue of consistency with the commonwealth regime. This is an important consideration, particularly because political parties operate in both the commonwealth and ACT jurisdictions when it comes to the conduct of their activities. The desirability of maintaining a reasonable level of consistency between the operations of the two legislative schemes is, I think, an appropriate matter to consider to reduce the risk of errors being made in reporting and to ensure that there is not an unreasonable administrative burden placed on political parties and their ability to operate effectively in the territory.

For this reason, the government has already taken steps, as I indicated earlier, in relation to the \$1,000 threshold, the disclosure threshold. I note that the commonwealth has now confirmed as late as yesterday in the agreements that the Labor government has reached with the Greens party and other independents that the \$1,000 threshold should be the threshold. What is quite clear now is that, despite the Liberal Party blocking that in the Senate for the last three years, that will, I think, now become law, if not in the term of the current Senate certainly in the term of the new Senate. So the government welcomes that. It will mean we will have a consistent financial disclosure threshold between the territory and the commonwealth regimes.

Turning to the issue of regulation of donations and personal candidate funding, greater regulation of donations by private individuals should have regard to the rights to privacy of individuals under the Human Rights Act and the commonwealth Privacy Act and, moreover, rights which individuals are entitled to in the ACT with respect to freedom of peaceful assembly and association are also relevant considerations. Another relevant consideration is, of course, the right to freedom of political expression, which the High Court has commented on on a number of occasions.

Increased regulation of organisations other than individuals should be considered in the context of what level of regulation is reasonably warranted, having regard to legal, financial and governance obligations. While a high level of public funding might be

arguable at some later stage, the government does not see a cogent policy reason for limiting private donations other than when this intrudes on broader social or criminal policy issues, such as the minimisation of conflict or corruption.

The government does not support the banning or capping of donations or the banning of advertising. I note that Professor Twomey has already put to the inquiry her view that capping or banning private donations would merely force political parties to find others means of conducting their campaigns. The government shares that view and concern.

The government considers that the rights to privacy of individuals must be considered in connection with any potential impacts upon those rights that may result from further regulation of the territory's current disclosure regime. The circumstances in which personal information may be published will clearly require consideration in the context of the right to privacy. Human rights under ACT law with respect to freedom of peaceful assembly and association as well as constitutional issues associated with implied rights of political communication, as I referred to earlier, should merit the committee's particular attention. These are addressed in more detail in chapter 6 of the government's submission.

I have referred briefly to the issue of public funding of election campaigns. The government's position is that there is no demonstrated need to transfer funding for the conduct of election campaigns in terms of public funding of political parties or candidates any further than we have at this particular point in time. The current financial environment simply does not warrant and does not enable the territory to give consideration to improvements in public funding of election campaigns. Therefore, there must be capacity for private entities to make donations to political parties and candidates.

In summary, the government recognises that we need to maintain an open and transparent system governing campaign financing, but we view that the best way to maintain that is through continuing to enhance and strengthen the reporting and disclosure regime. The government is mindful of evolving social values and the importance the community places upon the balance between rights of privacy and freedom to participate in political life.

We have a strong and robust election system in the ACT, one that has not encountered the problems and difficulties associated with some other systems in other places. The strength of that, I think, is down to a very robust reporting and disclosure regime. The Electoral Commission has identified some areas for improvement when it comes to disclosure and reporting, and the government believes that those warrant serious consideration and that there is significant merit in the reforms the Electoral Commission has identified in that regard. With that, I and my departmental officials are happy to try and answer your questions.

THE ACTING CHAIR: Thank you very much, minister. In fact, I think you have covered most of the issues that we wish to discuss. We might explore them a little bit more deeply. I am interested in the relationship between the Human Rights Act in the ACT and the other laws. I remember Professor Twomey saying that it was her opinion that the imposition of limits—donation limits and expenditure limits, if my memory

serves me correctly—in Tasmania may very well have been constitutional under Australian law, but that the problem is that nobody politically is game enough to challenge it.

I note in chapter 6 that you actually refer to the ACT's Human Rights Act and you talk about freedom of expression and those sorts of things. Just for my simple mind, do you consider that the right to expend one's own money on whatever one wants to is, in fact, a form of that expression, and where does that sit in the context of the Human Rights Act? If I want to spend my money and give it to a charity, I will do so. If I want to give my money to a political party, I would want to do so. Is that a right enshrined in the Human Rights Act?

Mr Corbell: Section 17 of the Human Rights Act provides for taking part in public life. It states:

Every citizen has the right, and is to have the opportunity, to—

- (a) take part in the conduct of public affairs, directly or through freely chosen representatives; and
- (b) vote and be elected at periodic elections, that guarantee the free expression of the will of the electors; and
- (c) have access, on general terms of equality, for appointment to the public service and public office.

Inherent in that right to take part in the conduct of public affairs is the right to express your political view, including potentially through donation to the political cause of your choice. This does not mean that the right is completely unlimited. There are reasonable—as there are with any aspects of the operations of the Human Rights Act—limits that can be imposed on these rights. But those limits must be proportionate and they must be only to the extent necessary to address some other pressing public political issue or reason.

That is why the government has adopted the view that banning donations from particular entities or individuals because of their particular associations—because they are, for example, a developer, which is a category that is often raised in discussion in other jurisdictions—would present some challenges. That is why the government believes that the most appropriate way of dealing with this issue is to make sure that all donations are disclosed so that people know who is making donations and can make judgements about whether or not those donations have an impact.

One of the issues here is the frequency of disclosure. Some would argue that there is little point in having a disclosure regime if disclosure occurs after the election has taken place, for example, and the money has already been provided and an X or Y candidate may have been successful in an election. There is, therefore, I think, some argument for the need to have disclosure in a more timely manner than occurs currently. I know there are a range of proposals that have been put forward as to how that can be achieved. I think those should be considered in the context of continuing to strengthen the disclosure regime, because it is the disclosure regime rather than the banning or the prohibition of donations which I think is the best way to strengthen the

integrity of the system.

THE ACTING CHAIR: In the context of disclosure, you talked about gifts, and the need, I suppose for a clearer definition of what “gifts” may constitute. One of the dilemmas that I am struggling with is the distinction between a contribution to a campaign in terms of cash and a contribution to a campaign in terms of in-kind support. And that in-kind support can be either the purchase of advertising or anything like that—and that is pretty obvious—or the provision of volunteer labour, which is in fact a cash alternative. This is what is going through my head: it could be regarded as a cash alternative.

If you are trying to work out what resources actually contributed to the success or failure of a given candidate then we should be able to, as a community, know exactly what was being expended in the way of non-cash resources as well. Do you agree that the provision of volunteer labour can actually be costed? I think there is a dollar value for volunteer labour. Ms Porter actively worked on that particular issue some years ago. So it would be a possibility that people could regard volunteer labour as a cash alternative. You do have to pay for that labour. Do you have a view on that particular aspect?

Mr Corbell: Mr Hargreaves, the government does not have a particular view on that, although it is legitimate to raise the issue that volunteer labour can have, in effect, a monetary value. It will depend, I imagine, a little on the circumstances. For example, if a business owner said, “Well, you can have one of my staff to work on your campaign full time and it’s on me,” then that is perhaps more overtly a gift than somebody who is Joe Citizen off the street who decides of their own free will: “I’m going to take time off from my job and I’m going to go and work on X or Y’s campaign.”

There are some differences. I think that any consideration of declaring that sort of gift would have to have regard to the types of circumstances. The government has not given particular thought to that, but that would be my observation on these issues.

THE ACTING CHAIR: Thank you. We will probably explore that in a bit more depth later. I am concerned that some people do not have the cash resources to contribute to the political party of their choice and particularly work for minor parties. They are asset rich, if you like, in supporters but cash poor. They would look to supporters of the campaign to deliver that. Therefore, from that individual’s contribution to the campaign it is the equivalent of handing over a cheque for \$200. That would be the equivalent. Ms Hunter, do you have a question?

MS HUNTER: I wanted to go back to the issue around human rights. Obviously it is through your submission and you have mentioned it in your opening statement. Going back to the issue we were just discussing, it seems, minister, that what you are saying is that section 17 of the Human Rights Act, in your view, does cover financial donations to political candidates or parties. Am I right in saying that?

Mr Corbell: The position the government has is that bans on donations from certain individuals could breach the Human Rights Act.

MS HUNTER: In paragraph 6.10 you discuss freedom of association. But there is an argument that this is very different from the ability to give money to a party, that they are different things. I just wanted more of an understanding of that from you.

Mr Corbell: The right is the right to engage in political activity. How do you define engaging in political activity? Choosing to support the political party of your choice, or the political candidate of your choice, monetarily or otherwise, is engaging in political activity. That is the issue that the government is drawing the committee's attention to.

There are a range of decisions from other human rights jurisdictions that have recognised that this is a right that must be had regard to when it comes to the regulation of people's participation in the political process, whether monetarily or otherwise. For example, there was a decision of the European Court of Human Rights that held that interference with a civil servant's rights to engage in political activity was justified in the context of the proper functioning of a political democracy, but that those justifications for limitation must be construed strictly, and only convincing and compelling reasons could justify any restriction on such a party's freedom of association.

So in that instance it was recognised that if people were—I think that related to people who were public servants—engaging in political activity, limitations on their rights to engage in political activity had to be viewed very narrowly, and I know that Professor Twomey has given you this advice herself. She has indicated that banning political donations or advertisements may be unconstitutional. Again, this relates to the implied right to freedom of political communication, which the High Court has found does exist in its interpretation of the constitution.

The issue is about reasonable limitation. I think the government's position is that a ban on certain types of political donations would be an unreasonable limitation and that reasonable limits can be, could be considered and may be considered by the Assembly, but an outright ban would probably breach that test of proportionality which is required in all considerations of human rights law. Is it a proportionate response to the problem that is trying to be addressed?

MS HUNTER: I might come back to that in a moment.

THE ACTING CHAIR: We talked to Professor Twomey in some detail about this. I recognised the point that she made, which you make, I believe, in paragraph 6.14, 6.15 and 6.16, that there can be some limitations placed on it without it being regarded necessarily as an abrogation of a right, but the removal of it is regarded by the professor as the abrogation of a right, and that is the significant bit that the committee ought to take into consideration. Really, the conversation needs to be about limitation and disclosure. I think the recommendation I am seeing coming out of the government's report and Professor Twomey's stuff is that the abolition of it is not a crash hot idea and it would be invalid.

Mr Corbell: An outright prohibition would raise serious questions. There is no doubt about that. Obviously, this is a matter that would have to be tested if there were legislation that did that. But we can certainly infer, from decisions of the High Court

previously and decisions from other human rights jurisdictions, that it would certainly be contested.

MS HUNTER: But, as you say in that decision that is used in the submission, it is about political activity; it does not mention donation in that case.

Mr Corbell: I think, as Professor Twomey and the government have indicated, if a political donation is not engaging in political activity, then what is it? I think that is the point. The right is the right to engage in political activity, and I fail to see what a political donation is, if it is not engaging in political activity.

THE ACTING CHAIR: So you would make no distinction, for example, between a citizen standing in Glebe Park and advocating for a given political party, because that is their right to freedom of expression, and the person who then walks around with a campaign bucket, and the person giving a donation into the campaign bucket. You see that as exactly the same activity?

Mr Corbell: That is exactly right, Mr Hargreaves, and the point that I am making is not that there should not be reasonable limits on that activity. We place limits on political activity in a range of ways, but they are proportionate, and they do not prohibit the activity outright. I think that is the distinction the government is trying to draw in its submission. Yes, if the committee—and, ultimately, the Assembly—determine that there are certain activities upon which limits should be put, then that is more likely to be successful in terms of an application of the Human Rights Act than the outright prohibition of certain types of political activity.

MS HUNTER: Could I just take that a step further too, because you also referred to entities making donations. I was just wondering if you could talk more about what entities, in your view, should not be making donations. I am particularly interested in that in regard to the Human Rights Act, because the act is obviously about individuals having human rights, not about entities, so I am just interested in your views.

THE ACTING CHAIR: Before you answer, could you also explain something else to us, because I am not quite sure if Ms Hunter's point is correct. I have always thought that the constitution and the Human Rights Act do actually apply to non-human entities as well. I thought the provisions to conduct a business, for example, were covered by that. I would just like to get that clarified in that context.

Mr Corbell: The Human Rights Act applies to natural persons; it does not apply to other constructs. But, clearly, natural persons use, for example, company structures, to make donations. So that interaction of the law is a complex one, but the donation is being made by a person, albeit through a structure. So, in that respect, I would anticipate that human rights law would still be a relevant consideration.

The government has not said that certain entities should be prohibited, Ms Hunter, from making donations. The government's submission is that those entities should be required to disclose. Disclosure—putting sunshine onto donations—is the best way of maintaining the integrity of the system, in the government's view. Banning individuals or entities from making donations will simply result in other structures or mechanisms being devised for payments to be made. They will be made in secret or

they will be made in ways that are hidden or convoluted or difficult to detect or understand. So the government's strong preference is that, to maintain the integrity of the campaign finance arrangements, we rely on disclosure., because that way you know what is going on, and you do not create perverse incentives for alternative structures or mechanisms to be established to channel donations or other levels of support.

MS HUNTER: I am just noting also that in other jurisdictions there are some prohibitions. I think in New South Wales it is around some developer donations.

Mr Corbell: Yes.

MS HUNTER: In Victoria it is around the casino making donations. Do you think there are circumstances where it is not in the public interest for political parties to receive funding from certain private entities, particularly where there might be a perception that those entities stand to gain from those donations?

THE ACTING CHAIR: Let's call a spade a bloody shovel here and put the make-up on the pig. We are talking about the Labor Club, so let's put it on the table.

MS HUNTER: No, not specifically. I am talking about one example; there are many examples that can happen.

THE ACTING CHAIR: That is the one that is in the public arena.

MS HUNTER: I am just wondering—

THE ACTING CHAIR: All right. How about the con council? We will go there.

Mr Corbell: I would draw the committee's attention to the evidence of the Electoral Commission. The Electoral Commission has disclosed that our existing disclosure regime is not operating as well as it could be when it comes to private donations. I note, for example, that in the last full financial year reporting period the Liberal Party did not disclose 60 per cent of its total funding in terms of who that was received from, or \$624,000 out of just over \$1 million. Equally, the Greens party did not disclose 62 per cent of its total funding for the 2008-09 year, or \$124,000 out of just over \$200,000. For the Labor Party the amount that was undisclosed was only 13 per cent, or \$183,000 out of \$1,334,000.

MS HUNTER: I do not think there is a disagreement from the committee about the importance of disclosure.

Mr Corbell: I think the point that needs to be made, the point the government is seeking to make, is that, if there is any problem in the disclosure regime or in the campaign finance regime, it is around the current operation of a regime that permits that level of funding—for its sources not to be disclosed. And this reinforces the government's point that strengthening the disclosure system is where we face issues rather than saying that there are problems with donations from particular entities or organisations. It is the fact that disclosure is not adequately identifying where that money is coming from that is the problem.

THE ACTING CHAIR: Can I pick up on that? That was the question I was actually going to ask. It goes to paragraph 6.14 of the government submission and also to Professor Twomey's evidence. She was indicating that the disclosure regimes in the US were such that the relationship between an elected official's operation as that elected official has a direct bearing on the amount of contribution they receive from single sources and undisclosed sources. Our disclosure laws are supposedly trying to prevent that sort of thing from happening—prevent interference in the political process through the granting or the denial of political donations.

I also note that the Electoral Commission actually made recommendations for change for that. One example that you pointed out the need for with such change was the one that you have just articulated. Was, though, the Electoral Commission's view—I did not get a chance to ask this question, or I do not think I did—based on an anticipated problem or real problems?

Mr Corbell: Sorry?

THE ACTING CHAIR: In terms of the recommendations of the Electoral Commission, for example in disclosure, we want to tighten up the definition of what people and what entities need to do, what the thresholds are, sources of funding and those sorts of things—the timeliness of when reporting is done in the context of a campaign. And I think it was also around who actually has to disclose it—whether it is the recipient, the donor or both. I think there were some recommendations on that. What I was trying to get a handle on was this. Are we trying to anticipate a problem? Are we trying to get a solution before the problem arises—in which case, congratulations—or do we have evidence of other things which are of concern besides this stuff that you have just shown us?

Mr Corbell: Well, it is not for me to speak for the Electoral Commission, obviously, but I think what is clear from their submission—which the government has mirrored in its submission—is that there are areas for improvement in the disclosure regime, and it is those matters that the government is drawing the committee's attention to in its submission—that is, at table 4 in appendix A, the Electoral Commission's submission highlights that there are hundreds of thousands of dollars worth of donations that are not being disclosed in terms of who made them.

There may be a range of reasons for this. It may be that they are genuinely all less than \$1,000 from one person each time. But, as the government has said in its submission and as the Electoral Commission has said in its submission, it is possible that these are, in fact, multiple donations from the same people or persons that total more than \$1,000 but are not being disclosed by the recipients because they are not required to under electoral law currently.

So the government's view is that there is real merit in changing that. If there are multiple donations of less than \$1,000 but which in total sum more than \$1,000, then the identity of that donor should be disclosed by the recipient and not just by the person making the donation, which is currently the requirement.

Equally, there are fundraising activities that fall outside the definition of “gift” that

should be captured by that definition. So, as the commission has identified and as the government has reiterated in its submission, events such as dinners—where, effectively, under the current law you can indicate that you are paying for a service and therefore it is not a gift—are really, in effect, fundraising, where you pay \$300 or \$500 or whatever it may be to attend a dinner where a minister or ministers or members of parliament or leading figures nationally of a political party are in attendance. That is, in effect, a donation; that is, in effect, a gift, and it should be identified as such for the purposes of the disclosure regime.

So those are the types of improvements that the government has focused on, because we believe it is important in the context of the construct of the human rights law and, indeed, in terms of how we go about dealing with reform of our campaign finance laws generally that we identify those issues that are a problem in our system rather than those that people might like to think are a problem but for which there is no evidence to support that argument.

We are seeking to look at what the commission itself has identified, and the government's submission is trying to lend support to the Electoral Commission's issues that it has identified in its submission. We believe those issues are relevant, have merit and should be addressed.

MS HUNTER: I wanted to go to consistency with the commonwealth, which is something you have raised in the submission and your opening statements and so forth. One of my questions was to clarify your view about the disclosure of multiple donations, and I think you clarified that quite clearly just then. In the submission I think you said you would like the committee to investigate this, but I think you have made a stronger statement there, saying you believe there needs to be change.

Mr Corbell: There is merit in considering change. That is the government's position.

MS HUNTER: Going to anonymous donations, what do you think would be a reasonable cap on anonymous donations? The figure of \$50 has been put out there as reasonable. Do you have a view?

Mr Corbell: The government does not have a particular view on that matter, Ms Hunter, but any limit on anonymous donations should be set at quite a low level—that is, the total monetary value should be low. Large anonymous donations present real problems for the integrity of campaign finance laws. As to whether the current \$200 limit is reasonable, I have not seen much evidence to suggest that there is a significant problem. But if the committee was inclined to consider a revision downwards of that figure, the government would certainly give serious consideration to that. As a matter of principle, anonymous donations should be very modest.

THE ACTING CHAIR: We have heard the figure of \$50 mentioned; a couple of hundred dollars has been mentioned to me; \$1,000 has been mentioned. In fact, even higher figures have been mentioned. Is the government aware of any empirical supporting evidence to back up any of those figures?

Mr Corbell: I am not aware of any, Mr Hargreaves, but I think that the matter of principle is that, if you want to donate money anonymously to political parties or

candidates, it should be at low levels, very low levels, to avoid any compromising of the disclosure regime or the integrity of the political process. So, to what extent it should be \$50 versus \$100 versus \$150 versus \$200, the government certainly does not support any change upwards in relation to that threshold; absolutely not. But, in terms of whether it should be lower, I think these are judgement calls.

I think we have to have regard to the relative worth of a donation in our system. For example, obviously this is not the federal electoral system; it is not a system in which very large multinational or national companies tend to participate. But the commonwealth itself has said its threshold for disclosure is \$1,000, which is welcome. Labor governments here and in the federal regime have had that position for a long time and have been thwarted by conservative parties in relation to trying to implement that. I am pleased that that will now be implemented at a national level.

Therefore, that should be the point of comparison—what is the disclosure level for donations nationally and locally? Well, it is \$1,000, so what is a relative point of comparison for a maximum for anonymous donations? Certainly, we would not support any increase in that figure for anonymous donations, but there may be an argument for reducing it. I have not seen any evidence to suggest it is a significant problem or issue, but the government would be open to the views the committee might have on that issue.

THE ACTING CHAIR: We have concentrated largely on donations in; we have not concentrated terribly on expenditure in terms of campaigning. I would be interested in the government's view on whether or not a cap on expenditure might be a reasonable idea. I do not get a sense that that is the government's position.

Mr Corbell: This is a complex issue, and I do not think there are any easy answers to it. Putting caps on expenditure potentially creates the same perverse incentives that exist if you try to ban donations from certain entities or individuals. The human mind is a very creative thing and it seeks to find other ways of achieving its ends. I think the risk is that if you put a cap on expenditure it may result in the establishment of third-party entities, political action committees, as they are known in other states, or other types of entities basically running proxy campaigns on behalf of political candidates or parties to get around expenditure caps.

It is a very difficult issue to address. I think if you are seriously worried about the level of expenditure that occurs in political campaigns then the only complete way to address it is through public funding, but then the issue with public funding is how much can the public purse bear in the financing of political campaigns. As I have indicated in the government's submission, we do not believe there is any real capacity to improve public funding.

THE ACTING CHAIR: In the conversation around the activities of people in the political arena, we are essentially saying that people who contribute to political parties will be governed by a set of laws, and political parties who make expenditure will be governed by the laws.

Mr Corbell: Yes.

THE ACTING CHAIR: What about the application of those things to people who are not of a registered political party but still make a political statement through their advertising, whether it is in print or electronic, in favour of a given position in the context of an election campaign? Is their contribution regarded as a gift to one side of the argument or not?

Mr Corbell: It is already required to be disclosed, as I understand it.

THE ACTING CHAIR: So we would be able to get our hands, for example, on the amount that GetUp! spent in the last election here if we wanted to?

Mr Corbell: Yes, they are required to disclose expenditure.

THE ACTING CHAIR: I am concerned that one of the government's positions is that there is a consistency between the commonwealth jurisdiction and the ACT jurisdiction. I am aware that, if you want to do political advertising on television, the headquarters of some television stations are not located in the ACT. In fact, they could screen a television program out of Wagga. It would be beamed into the ACT but it would be governed by the electoral laws applicable in New South Wales.

Mr Corbell: No, that is not correct. If any material is broadcast in the territory in relation particularly to territory elections then it is captured by territory law.

THE ACTING CHAIR: Let me use one example which would never happen, which is why I use this example. If a Queanbeyan-broadcast political commentary about ACT elections was that they offered to support or not support the development of Tralee, then they would be governed by ACT law?

Mr Corbell: Yes, absolutely, because the publication is occurring in the territory and, therefore, the relevant laws of the territory apply.

THE ACTING CHAIR: Our electoral laws would enable us to have authority to take action against a New South Wales citizen for breaching an ACT law?

Mr Corbell: I would not want to comment on a particular case. I think you are referring to a particular circumstance.

THE ACTING CHAIR: It was a hypothetical one.

Mr Corbell: Let us treat it as hypothetical because I obviously cannot draw conclusions about any particular matter that may or may not have occurred. It is the case that any media outlets, whether they are print or electronic broadcasts, have to take responsibility for election content. They have to disclose a responsible officer for election content and they have to report in terms of the act in relation to those types of matters. So they are governed by the laws of the territory if the publication of that material occurs in the territory, however it may occur, whether it is electronic or other.

THE ACTING CHAIR: I am worried that at the moment there are media outlets, electronic particularly, which do not have their broadcasting centre anywhere near the ACT. Some of them, indeed, are overseas. I am thinking in particular of websites.

I would imagine it would be difficult to police this. That is a question for the Electoral Commission later.

Mr Corbell: I think it is a question best directed to the commission. I do have the commission's submission in front of me. They do indicate at page 18 of their submission the need for broadcasters' and publishers' returns. There is a regime about reporting on their electoral activity during the election period. It is probably a question best directed to the commission.

THE ACTING CHAIR: Has the government had any conversations with New South Wales? I know it has been in conversation with the commonwealth about consistency. Have there been conversations with New South Wales regarding consistency with that jurisdiction, given that we are an island in it?

Mr Corbell: I have to say it is not a matter that has ever been brought to my attention.

MS HUNTER: To follow up on that issue about the commonwealth, you have talked about unjustified differences with the commonwealth. Where is that line between justified and unjustified differences? We do have differences on how-to-vote cards and the current donation distinction which may no longer exist after 1 July next year. Is there anything else? Is there any justification or otherwise for a proposed diversionary difference with the commonwealth?

Mr Corbell: I think the point I was seeking to make was primarily that government does not adopt the view of consistency for the sake of consistency. For example, the commonwealth still has the threshold of \$10,000. We do not support that. There are good reasons why we do not. Not having to disclose donations up to \$10,000 in the ACT context would be a travesty and is not a position which, fortunately, any party in the Assembly supported. That was primarily the point the government's submission was seeking to make.

There is, however, the other issue of reducing confusion and error in reporting obligations of political parties. Political parties, particularly in the ACT context, are quite small operations. They are not large, professional organisations in terms of the number of staff they have or the ability they have to compile their documentation and adhere to reporting requirements. Therefore, we do need to keep in mind the desirability of a robust but understandable reporting regime.

Therefore, eliminating unnecessary points of difference between the commonwealth and the territory regimes is desirable. But it is not the overriding consideration. It has never been the government's overriding consideration. It is a reasonable consideration when you think about the relative capacity of political parties to prepare their returns and the fact that they are already having to deal in two spaces because they also report to the commonwealth. Avoiding, where practicable and where reasonable, confusion between the two regimes is a desirable outcome.

MS HUNTER: Just going back to the issue that was around the public funding question in your submission, starting on page 12 and going over to the top of page 13, that seems to indicate a reluctance to support increased public funding. You have stated that a few times today.

Mr Corbell: Yes.

MS HUNTER: The reason you put seems to be mainly around the economic environment, rather than any policy reason. Could you give some more explanation of the views around that and clarify that last sentence. It is up on 4.23. That sentence talks about “the potential implications for public participation in political activity of increasing the public funding of election campaigns”. Could you just give a bit more explanation around that?

Mr Corbell: I think the issue around the consideration of public funding is overwhelmingly one about affordability. The territory could choose to have a much more generous public funding regime, but that has implications for the budget as a whole and implications in terms of the other pressures and requests that the territory’s budget faces. So the government’s position is that affordability is an entirely reasonable and appropriate consideration and at this point in time we do not believe there is any scope for providing additional funding in this regard. I think the point that is being made in 4.23 is simply that there may actually be an adverse impact on people’s participation in the political system if they feel that the public purse is basically paying for all that activity.

THE ACTING CHAIR: Has the government received any approach from any entity or individual to have the public purse’s liability increased?

Mr Corbell: Not that I am aware of Mr Hargreaves, no.

THE ACTING CHAIR: I just thought I detected a lack of interest.

Mr Corbell: Yes. And I think this is highlighted by the commentary during the most recent federal campaign. There was a lot of commentary about the convention that the costs of candidates’ travel, accommodation and a whole range of other logistical costs continued to be met by the taxpayer until the so-called “launch day” of campaigns. There was a high level of public concern about that, so I think the question of public funding must have regard to those issues as well.

THE ACTING CHAIR: And the clamouring chattering classes of the print media have not been on your back either? I have not detected any sort of commentary on that, except the example that you raise.

Mr Corbell: Those are your words, Mr Hargreaves, not mine.

THE ACTING CHAIR: Okay. And in the example you have, I do recall the commentary on that and the criticism that both parties in the federal arena had for delaying their campaign launches. But, apart from that, between, say, the last Senate election and now, I do not detect anybody in the media commenting or saying that the way to fix things is to go for total public funding. Am I right?

Mr Corbell: That is right. Public funding was raised in the commonwealth government’s green paper, but I think the commonwealth itself has subsequently indicated it does not support increases in public funding, and I think it is primarily an

affordability question.

MS HUNTER: I did have a question around this ACT Electoral Commission submission, and maybe the ACT government's response to that. There were three questions that were posed in that submission. I am wondering whether it would be better to put that as a QoN so that you have that time to go through it. They were about public funding, primarily.

THE ACTING CHAIR: Can I suggest that it might be more appropriate to do that. What I was a bit concerned about was that we might have commentary on other submissions from people and you would get a contest of views coming across the thing. I do not think that assists us as much as it assists those players. I think that would probably be a better call.

MS HUNTER: Yes.

Mr Corbell: I would be happy to provide further answers if the committee is seeking that. I just make the observation in relation to those questions raised by the Electoral Commission that—if there was an increase in public funding, would it decrease other sources of funding? The answer to that is: probably not. And I think it has often been characterised as an arms race, with continued escalation in campaign expenditure. I think an increase in public funding on its own could not lead to any significant reduction in campaign expenditure.

THE ACTING CHAIR: So there are two alternatives; one is to increase the public funding and continue to allow the donations to flow and the other one is to discontinue all donations but have things totally funded out of the public purse. In that scenario, though, that would be a cap on donation expenditure, would it not?

Mr Corbell: It would certainly raise that prospect. Obviously, it goes back to the other issues I raised earlier about what you do with associated entities or third-party type campaign activity—campaigning on behalf of X's or Y's candidate or cause. There are those sorts of issues that arise. So you enter into a much more complex regulatory scheme.

Something has just been brought to my attention. We had a discussion, Ms Hunter, and I think you indicated that the current prescribed amount for an anonymous donation was \$200. It is actually \$1,000.

THE ACTING CHAIR: No; I said it was \$200. I said I heard the \$200 mentioned.

Mr Corbell: Sorry, but it is currently \$1,000. It is a weakness in the laws and there is certainly scope for reducing it.

MS HUNTER: I think that is it, if we have the capacity to put some questions on notice.

THE ACTING CHAIR: Thank you very much, minister and officials. We will draw the hearing to a close. We will send a couple of questions on notice so that you can provide clarification. I am concerned not to get into a competitive discussion between

submissions. Otherwise we will be here long after I am not a member. And also I do wish to have recorded in the minutes Mrs Dunne's apologies for her lack of attendance. She has a family issue to attend to.

The committee adjourned at 11.28 am.