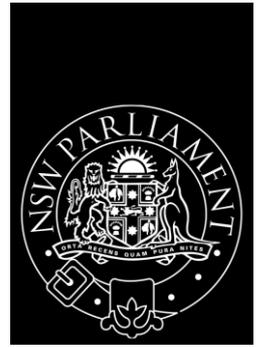


PARLIAMENT OF NEW SOUTH WALES



Joint Standing Committee on Electoral Matters

Public funding of local government election campaigns

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Terms of reference

That:

- (1) having regard to the June 2008 report of the Legislative Council Select Committee on Electoral and Political Party Funding which recommended, among other things, that all but small donations by individuals be banned and that further consultation be undertaken on increasing public funding of political parties and elections; and
- (2) noting that the Government has announced its support for the introduction of a comprehensive public funding model;

the Joint Standing Committee on Electoral Matters is to inquire into a public funding model for political parties and candidates to apply at the state and local government levels.

The Committee is to consider the following:

- (a) the criteria and thresholds that should apply for eligibility to receive public funding;
- (b) the manner in which public funding should be calculated and allocated, including whether it should take into account first preference votes, parliamentary representation, party membership' subscriptions, individual donations and/or other criteria;
- (c) any caps that should apply, including whether there should be an overall cap on public funding and/or caps on funding of each individual party or candidate either absolutely or as a proportion of their total campaign expenditure or fundraising;
- (d) the persons to whom the public funding should be paid, including whether it should be paid directly to candidates or to political parties;
- (e) the mechanisms for paying public funding, including the timing of payments;
- (f) whether any restrictions should be imposed on the expenditure of public funding and, if so, what restrictions should apply and how should the expenditure of public funding be monitored;
- (g) whether any restrictions should be imposed on expenditure by political parties and candidates more generally and, if so, what restrictions should apply and how should expenditure be monitored;
- (h) how public funding should apply as part of the broader scheme under which political donations are banned or capped;
- (i) whether there should be any regulation of expenditure by third parties on political advertising or communication;
- (j) whether there should be any additional regulation to ensure that government public information advertising is not used for partisan political purposes;
- (k) any implications arising from the federal nature of Australia's system of government and its political parties, including in relation to intra-party transfers of funds from federal and other state/territory units of political parties;
- (l) what provisions should be included in order to prevent avoidance and circumvention of any limits imposed by a public funding scheme;
- (m) the compatibility of any proposed measures with the freedom of political communication that is implied under the Commonwealth Constitution;
- (n) the impact of any proposed measures on the ability of new candidates, including independent candidates and new political groupings, to contest elections;
- (o) any relevant reports and recommendations previously made by the Select Committee on Electoral and Political Party Funding; and
- (p) any other related matters.

Chair's foreword

In March this year, the Joint Standing Committee on Electoral Matters delivered its report into Public Funding of Election Campaigns. The report was in response to a referral by the former Premier and included Terms of Reference that covered expenditure caps, donation reform and public funding.

The referral sought the development of a model encompassing reforms in these areas for both State and Local government elections. The Committee resolved to inquire separately into local government given its nature and complexities, and to ensure a thorough consideration of the issues could take place.

This report provides the background, comparative models, evidence and recommendations of the Committee's inquiry into public funding of local government elections.

In NSW, local government plays a pivotal role in the provision of community and social infrastructure, including libraries, sporting fields, aquatic centres, children's services and facilities for seniors.

The importance of this level of government is reflected in the high number of citizens who seek to make a contribution as candidates for election to their local government areas. In fact, more than 4,600 people stood as candidates in the 2008 local government elections.

The 'grass-roots' nature of local government, the engagement of its citizens, and the role it plays in setting policy and planning frameworks for development require the processes of election to have as high a standard of integrity, transparency and confidence as that operating at State Election.

Indeed, given the ability of elected representatives within local government to make significant planning policy decisions and to approve individual applications, some have argued the system regulating donations and campaign expenditure for local government should be the most robust.

The significant work undertaken by the Committee in its report into public funding of election campaigns for State elections provided a solid foundation for this inquiry. The principles that underpinned the arguments in favour of reform to donations, expenditure and public funding are as valid at local government level as they are at State level.

It is for this reason that the committee, as part of its 16 recommendations, has recommended that public funding for local governments be introduced. And as with recent reforms to State elections, this report also recommends local government elections be the subject of expenditure caps and has recommended that donations also be capped.

The inquiry received a number of submissions and took evidence in public meetings from the Independent Commission Against Corruption, the NSW Electoral Commissioner as well as political parties that contest local government elections. Evidence was also received from Councillors and representatives of the NSW Local Government and Shires Association.

Not all of the evidence and submissions received supported the introduction of public funding. However, the weight of evidence by ICAC and evidence gathered during the earlier

inquiry make it clear that reducing the demand for campaign finances through a suite of reforms including caps on expenditure, caps on donation and public funding of local government elections is sound public policy. It's also an effective way of reducing the potential for and perception of undue influence in decision-making.

As with the Committee's earlier report into public funding of election campaigns, it is not possible to develop a model for local government that is perfect in every way. Local Government in NSW varies from Councils with a few hundred residents to Councils with well over 200,000 and the committee has attempted to make recommendations and findings that reflect this huge variation while achieving a system that improves integrity, transparency and impartial decision-making by elected councillors.

Once again, I would like to acknowledge the outstanding work of the committee secretariat. The Parliament of NSW is very fortunate to have such capable, diligent and hard-working people as Helen Minnican, Carly Sheen, Amy Bauder, Dora Oravec, Vanessa Pop and John Miller. Their contribution to this report has been nothing less than exceptional.

This report provides the blue-print for advancing policy development in the critical area of public funding of local government election campaigns. There is more work required to be done, but with the hard work of the Committee and those who contributed their time and energy, we are now well-advanced on this important reform.

I have no doubt that legislation that incorporates the key recommendations of this report will significantly improve the governance and perceptions of integrity in local government.



Robert Furolo MP
Chair

List of recommendations

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RECOMMENDATION 14: The Committee recommends that, to ensure compliance with disclosure requirements, public funding could be introduced in the form of an allowance to candidates and groups to assist with the costs of auditing as required under the *Election Funding and Disclosures Act*.61

RECOMMENDATION 15: The Committee recommends that compliance monitoring and penalties for breaches are consistent with those applying at a State level.61

RECOMMENDATION 16: The Committee recommends that, in considering the above recommendations, the Premier have regard to the forthcoming research report to be published by the Electoral Commissioner.63

Chapter One - Introduction

- 1.1 The purpose of this inquiry is to examine the reform of the election finance system for political parties and candidates contesting local government elections, including the possible introduction of a public funding scheme at this level of government. This chapter provides background information on the referral of the inquiry, terms of reference and the conduct of the inquiry.
- 1.2 This inquiry follows on from the Committee's inquiry into the public funding of election campaigns completed in March 2010, which did not consider a model of public funding for local government election campaigns in great detail, but recommended that local government election campaign issues be considered separately.

Background to inquiry referral

- 1.3 The Committee received a referral for an inquiry into public funding of election campaigns from the then Premier on 3 December 2009. The terms of reference were developed by the Premier following consultation with interested parties, including the leaders of political parties and independent Members of Parliament.¹ The final terms of reference were as follows:

That:

- (1) having regard to the June 2008 report of the Legislative Council Select Committee on Electoral and Political Party Funding which recommended, among other things, that all but small donations by individuals be banned and that further consultation be undertaken on increasing public funding of political parties and elections; and
- (2) noting that the Government has announced its support for the introduction of a comprehensive public funding model;

the Joint Standing Committee on Electoral Matters is to inquire into a public funding model for political parties and candidates to apply at the state and local government levels.

The Committee is to consider the following:

- a) the criteria and thresholds that should apply for eligibility to receive public funding;
- b) the manner in which public funding should be calculated and allocated, including whether it should take into account first preference votes, parliamentary representation, party membership¹ subscriptions, individual donations and/or other criteria;
- c) any caps that should apply, including whether there should be an overall cap on public funding and/or caps on funding of each individual party or candidate either absolutely or as a proportion of their total campaign expenditure or fundraising;
- d) the persons to whom the public funding should be paid, including whether it should be paid directly to candidates or to political parties;
- e) the mechanisms for paying public funding, including the timing of payments;

¹ Letter from Premier to Committee Chair referring the inquiry, 3 December 2009, p.2 at <http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/C499102BD6B76127CA2576880001E6AC> (accessed on 22 December 2009)

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- f) whether any restrictions should be imposed on the expenditure of public funding and, if so, what restrictions should apply and how should the expenditure of public funding be monitored;
 - g) whether any restrictions should be imposed on expenditure by political parties and candidates more generally and, if so, what restrictions should apply and how should expenditure be monitored;
 - h) how public funding should apply as part of the broader scheme under which political donations are banned or capped;
 - i) whether there should be any regulation of expenditure by third parties on political advertising or communication;
 - j) whether there should be any additional regulation to ensure that government public information advertising is not used for partisan political purposes;
 - k) any implications arising from the federal nature of Australia's system of government and its political parties, including in relation to intra-party transfers of funds from federal and other state/territory units of political parties;
 - l) what provisions should be included in order to prevent avoidance and circumvention of any limits imposed by a public funding scheme;
 - m) the compatibility of any proposed measures with the freedom of political communication that is implied under the Commonwealth Constitution;
 - n) the impact of any proposed measures on the ability of new candidates, including independent candidates and new political groupings, to contest elections;
 - o) any relevant reports and recommendations previously made by the Select Committee on Electoral and Political Party Funding; and
 - p) any other related matters.
- 1.4 The Committee tabled its report, *Public funding of election campaigns*, in March 2010. The report contained the following recommendation in relation to local government election funding:
- RECOMMENDATION 51: The Committee recommends that:
- (a) public funding for local government elections be considered as a separate Committee inquiry process.
 - (b) the issue of public funding for local government be re-visited after the new public funding system has been introduced and tested at the state level.²
- 1.5 This report is the outcome of the separate inquiry process.
- 1.6 Recognising that there have been significant changes to electoral funding and the regulation of donations at a state level, there will be much to be learned that is relevant to this inquiry from analysing the operations of the new state system.

RECOMMENDATION 1: The Committee recommends that the findings of this inquiry be further reviewed, based on an evaluation of the operation of the November 2010 changes to the *Election Funding and Disclosures Act 1981*.

² Joint Standing Committee on Electoral Matters, *Public funding of election campaigns*, March 2010, p.46.

Conduct of the inquiry

- 1.7 The Committee published an issues paper in August 2010 which explored some of the factors affecting the development of a public funding scheme for local government elections. The issues paper contained nine questions to guide potential submission makers
- 1.8 A copy of the issues paper was sent, along with a letter inviting a submission, to 67 stakeholders, including all state and local government registered political parties, academics, the Local Government and Shires Association of NSW (LGSA) and a number of interest groups. Additionally an email with the issues paper attached was sent to all councils and shires in NSW. A press release was emailed to 144 regional newspapers, 43 suburban newspapers and 161 radio stations in NSW.
- 1.9 The Committee received 29 submissions, and one supplementary submission, from metropolitan, regional and rural councils, the LGSA, Independent Commission Against Corruption (ICAC), political parties registered for state and local government elections, Councillors, individuals and advocacy organisations.

Public hearings

- 1.10 Public hearings were held on 12 and 13 October 2010. The Committee took initial evidence from Mr Colin Barry, in his capacity as Chair of the Election Funding Authority (EFA), and Mr Brian DeCelis, Director of Funding and Disclosures at the NSW Electoral Commission. The Committee also took evidence from the ICAC and LGSA.
- 1.11 Evidence was also taken from councillors and senior staff representing three councils, as well as two councillors appearing as individuals.
- 1.12 The Greens as a state registered political party, and the Residents Action Group for Auburn Area and Burwood Community Voice, two local government registered political parties also appeared before the Committee.
- 1.13 The Committee wishes to thank the organisations, councils, parties and individuals who made submissions and gave evidence as part of the inquiry.

Chapter Two - Background

2.1 This chapter examines the system of election for local government in NSW, including the structures of local government areas and the method of election for councillors and mayors, and the funding and disclosure system currently in place for local government elections. The funding, expenditure and disclosure regime recently introduced for state elections is also outlined.

Local government elections

2.2 There are 152 local government areas in New South Wales. Elections for councillors and popularly elected mayors are held in September every four years. In 2008 elections were held for 148 local government areas. The next elections are due in September 2012.

2.3 During the Committee's Inquiry into 2008 local government elections, the NSW Electoral Commissioner explained to the Committee that the conduct of local government elections is a complex, large-scale operation.³ The Commission reported that local government elections in NSW are the most complex in Australia, with legislative and regulatory frameworks creating a variety of voting and counting systems for different types of elections for different councils.⁴

2.4 The following facts from the NSWEC's report on the elections held in September 2008 give an indication of the elections' complexity:

- elections were held for 148 council areas across NSW
- there were 332 individual elections conducted for councillors in 187 wards, 84 undivided councils and 27 mayoral elections
- thirty-nine uncontested elections were conducted for 36 wards, two undivided councils and one mayoral election
- seventeen council referenda and 17 polls were conducted
- a roll of 4,500,000 million electors was managed
- 3,529,220 votes were cast for councillor positions
- nominations were processed for 4,654 candidates
- services were provided to 4,620 candidates.⁵

Structure of local government areas

2.5 There are a number of variables for the structure of local government areas, such as the number of councillors, the division of the council area into wards, the method of election for mayor and the size and population of the local government area.

2.6 The *Local Government Act 1993* provides that a council must have at least 5 and no more than 15 councillors, including the mayor if popularly elected.⁶

³ Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p.2.

⁴ NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p.8, <http://www.elections.nsw.gov.au/_data/assets/pdf_file/0007/65077/Report_on_the_Local_Government_Elections_2008.pdf> accessed 4 November 2010.

⁵ NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p.10.

⁶ *Local Government Act 1993*, s.224.

Undivided councils

2.7 A council may be undivided, where the councillors are elected by electors in the local government area as a whole.⁷ The number of councillors in undivided councils vary across the state, as does the number of electors in an undivided council, for example:

- Albury City Council has nine councillors and 26,188 electors.
- Balranald Shire Council has ten councillors and 1,211 electors.
- Burwood Council has seven councillors and 16,301 electors.
- Campbelltown City Council has fifteen councillors and 79,568 electors.
- Inverell Shire Council has twelve councillors and 9,338 electors.
- Tumut Shire Council has seven councillors and 6,505 electors.
- Lismore City Council has ten councillors, a popularly elected mayor and 24,837 electors.

2.8 In 2008, elections were conducted for 148 council areas, 84 of which were for undivided councils.⁸

Wards

2.9 The *Local Government Act 1993* provides that a local government area may be divided into wards with an equal number of electors in each ward.⁹ Each ward must also have the same number of councillors to be elected.¹⁰ The number of wards per council, councillors per ward and electors per ward varies across the state, for example:

- Wyong Shire Council has two wards with five councillors per ward, and an average of 42,179 electors per ward.
- Liverpool City Council has two wards with five councillors per ward, a popularly elected mayor, and approx 43,500 electors per ward.
- Penrith City Council has three wards with five councillors per ward, and approx 33,000 electors per ward.
- Shoalhaven City Council has three wards with four councillors per ward, a popularly elected mayor, and approx 18,454 electors per ward.
- Council of the Shire of Wakool has three wards with two councillors per ward, and an average of 729 electors per ward.
- Sutherland Shire Council has five wards with three councillors per ward, and an average of 26,145 electors per ward.
- Ku-ring-gai Council has five wards with two councillors per ward, and an average of 12,288 per ward.

2.10 In 2008, elections were held for 64 councils with wards. Elections were held across NSW for 223 wards.¹¹

⁷ *Local Government Act 1993*, s.278.

⁸ NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p.10.

⁹ *Local Government Act 1993*, s.210.

¹⁰ *Local Government Act 1993*, s.280(2).

¹¹ NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, pp.10.

Background

Election of mayor

- 2.11 One of the two methods of electing mayors is by (and from) the popularly elected councillors. The mayor and deputy mayor are elected at the first council meeting after the election, after which a new election for the positions of mayor and deputy mayor is held at the council meeting in September each year for the four year term of councillors.¹²
- 2.12 Councils may also decide to have a popularly elected mayor, where the mayor is elected by all the electors of a local government area at the local government election. The term of a popularly elected mayor is four years. A constitutional referendum of electors must be to decide if the mayor of a local government area will be elected by the electors.¹³
- 2.13 In 2008 elections were held for 28 popularly elected mayors.¹⁴ In 2008 seven councils conducted referenda on changing the election of mayor from councillors to a popular election. The referenda were passed in five councils, which means popular elections for mayor will be conducted for the first time in these local government areas in 2012.¹⁵

Method of election

- 2.14 Optional preferential voting is used to elect popularly elected mayors and when one or two councillor vacancies are to be filled in areas/wards. Proportional representation is used where there are three or more councillors to be elected in an area/ward.¹⁶
- 2.15 The following persons are eligible to enrol as electors for a local government ward:
- residents of the ward
 - owners of rateable land in the ward who are not residents
 - occupiers or ratepaying lessees of rateable land in the ward.¹⁷

Referenda and polls

- 2.16 Councils may resolve to conduct constitutional referenda on any of the following issues:
- determining whether the mayor is to be popularly elected
 - increasing or reducing the number of councillors
 - dividing the council area into wards or abolishing all wards
 - changing the method of election of ward councillors.¹⁸
- 2.17 A council may conduct a poll of electors for its information and guidance on any matter, for example, the introduction of fluoride into drinking water. Polls may be held in specific parts of a council area, in which case not all electors are eligible to vote. It is not compulsory for electors to vote in a poll, however, voting in a referendum is

¹² *Local Government Act 1993*, ss.230 and 290.

¹³ *Local Government Act 1993*, s.227 – 230.

¹⁴ NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p.10.

¹⁵ NSW Electoral Commission, *Report on the 2008 Local Government Elections, Volume 2*, June 2009.

¹⁶ *Local Government Act 1993*, ss.284 and 285.

¹⁷ *Local Government Act 1993*, s.266

¹⁸ NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p.52.

compulsory. Polls and referenda are both decided by a majority of the formal votes. A referendum result is binding on a council, while the result of a poll is not binding.¹⁹

- 2.18 Local government elections may therefore consist of mayoral elections and councillor elections, as well as referenda, polls and by-elections.

Election funding and disclosure for local government

- 2.19 Part 6 of the *Election Funding and Disclosures Act 1981*, which deals with both political donations and electoral expenditure, applies to local government elections and elected members of councils, as well as to State elections and members of Parliament.²⁰
- 2.20 The Election Funding and Disclosures Amendment Act 2010, which was recently passed by both Houses of Parliament, will commence on 1 January 2011 and makes a number of amendments to the Act.²¹ The Election Funding and Disclosures Amendment Act 2010 largely amends the funding and expenditure regime for state government and caps on political donations, the cap on electoral expenditure and public funding of election campaigns only apply to state elections and members.²² However, some of the amendments provided for in the Act regarding disclosure requirements do apply to local government elections.

Donations

- 2.21 Under the Act, a political donation is a gift made to or for the benefit of a party, elected member, candidate or group of candidates. The definition of political donation also includes:
- a gift made to or for the benefit of an entity or other person (not being a party, elected member, group or candidate), the whole or part of which was used or is intended to be used by the entity or person:
- (i) to enable the entity or person to make, directly or indirectly, a political donation or to incur electoral expenditure, or
 - (ii) to reimburse the entity or person for making, directly or indirectly, a political donation or incurring electoral expenditure.²³
- 2.22 The Election Funding Authority provides the following list of what constitutes a political donation:
- a donation of money;
 - the provision of a service at no charge or at a discounted charge;
 - the purchase of an entry ticket, raffle ticket or other item at a fund raising event or function;
 - the giving of a gift or property;
 - money from the sale of a gift donated to a candidate or group (eg a gift is donated to a candidate or group and it is sold by the candidate or group at a fundraising event such as an auction);

¹⁹ *Local Government Act 1993*, ss.14, 16, 17, 20; NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, pp.52-3.

²⁰ *Election Funding and Disclosures Act 1981*, s.83.

²¹ *Election Funding and Disclosures Amendment Act 2010*.

²² *Election Funding and Disclosures Amendment Act 2010*, Schedule 1, cl.4..

²³ *Election Funding and Disclosures Act 1981*, s.85.

Background

- use of a vehicle not owned by the candidate during an election campaign (unless a payment is made by the candidate, the value of the use of the vehicle is deemed to be a political donation);
 - conducting a voter intention survey on behalf of a candidate at no charge (the cost of this service is deemed to be a political donation);
 - interest earned from the investment of funds donated or raised for election campaign purposes
 - the provision of some types of volunteer labour;
 - incidental or ancillary use of vehicles or equipment of volunteers;
 - anything provided or done by a party for the candidates endorsed by the party in accordance with the arrangements made by the party agent.²⁴
- 2.23 The Act requires a candidate or group to be registered and to appoint an official agent in order to receive donations. Donations must be made to the official agent.²⁵
- 2.24 Political donations over \$1,000 per financial year from an individual or entity to a candidate, group or party in local government elections, and to elected councillors are 'reportable political donations' under the Act. Multiple donations from an individual or entity that add up to \$1,000 or more are in aggregate considered to be a reportable political donation.
- 2.25 Reportable political donations must be disclosed by the candidate, group, party or elected councillor.²⁶
- 2.26 Individuals or entities who have made reportable political donations are also required to make a disclosure to the EFA.²⁷
- 2.27 Donations totalling under \$1,000 are considered small political donations and the details of each individual donation are not required to be disclosed, however a candidate, group, party or elected councillor is required to disclose the total value of small donations received and the total number of donors for each disclosure period.²⁸
- 2.28 Funds raised through fundraising ventures and functions must also be disclosed with details including:
- the gross or net proceeds of each function, excluding any proceeds that are required to be separately disclosed as a reportable political donation.
 - details of the venture or function including a description and date.²⁹
- 2.29 The Act makes political donations by property developers unlawful. It prohibits donations being made by, or on behalf, of property developers and prohibits candidates, groups, parties or elected councillors from receiving donations from property developers or those in 'close association' with property developers.³⁰ The

²⁴ Election Funding Authority, *Funding and Disclosure Guide – Candidates, Groups and Official Agents at Local Government Elections*, January 2010, p.15. <http://www.efa.nsw.gov.au/_data/assets/pdf_file/0007/65194/F-and-DG_Candidates_Groups_and_Official_Agents_at_LG_Elections1.pdf> accessed 1 November 2010.

²⁵ *Election Funding and Disclosures Act 1981*, s.96A.

²⁶ *Election Funding and Disclosures Act 1981*, s.88.

²⁷ *Election Funding and Disclosures Act 1981*, s.92 (2).

²⁸ *Election Funding and Disclosures Act 1981*, s.92 (3).

²⁹ *Election Funding and Disclosures Act 1981*, s.92 (5).

³⁰ *Election Funding and Disclosures Act 1981*, s.96GA.

Election Funding and Disclosures Amendment Act 2010 also provides that donations are prohibited from 'a tobacco industry business entity' or 'a liquor or gambling industry business entity', where the ultimate purpose of the entity is the making of a profit.³¹

- 2.30 Political donations can only be used to pay electoral expenditure or reimburse a person for incurring electoral expenditure, or any other purpose prescribed in the Act.³²

Electoral expenditure

- 2.31 Under the Act, electoral expenditure incurred by a candidate, group, party or elected councillor totalling \$1,000 or more must be disclosed.
- 2.32 Payment of electoral expenditure or reimbursement of electoral expenditure can only be made by the official agent and the funds must be taken from the campaign account of the candidate, group or party.³³ Records of donations and expenditure must be kept in line with the requirements set out in the Act.

Disclosures

- 2.33 The official agent of each candidate and group and the party agents of registered political parties are required to lodge a disclosure of the political donations received and electoral expenditure incurred in a disclosure period. Disclosures have to be lodged on a form provided by the EFA.³⁴
- 2.34 The Act provides that the relevant disclosure period is 'each six month period ending 30 June and on 31 December'.³⁵ The Election Funding and Disclosures Act 2010 amends the relevant disclosure period to 12 months, ending on 30 June.³⁶
- 2.35 Disclosures must include information on the following:
- If a candidate is self funded, the total amount paid
 - Reportable donations – general donations and those received from fundraising ventures
 - The total value of and number of small political donations received
 - The gross or net proceeds from fundraising ventures or functions
 - Reportable loans
 - Electoral expenditure separated into advertising, printing and other expenses
 - Electoral expenditure in the form of political donations made by a candidate.³⁷

³¹ *Election Funding and Disclosures Amendment Act 2010*, Schedule 1, cl.28-30.

³² *Election Funding and Disclosures Act 1981*, s.96A(6)

³³ *Election Funding and Disclosures Act 1981*, s.96A and 96B. Donations must also be deposited into a campaign account by the official agent.

³⁴ Election Funding Authority, *Funding and Disclosure Guide – Candidates, Groups and Official Agents at Local Government Elections*, January 2010, p.32, <http://www.efa.nsw.gov.au/data/assets/pdf_file/0007/65194/F-and-DG_Candidates_Groups_and_Official_Agents_at_LG_Elections1.pdf>, accessed 1 November 2010.

³⁵ *Election Funding and Disclosures Act 1981*, s.88(1)

³⁶ *Election Funding and Disclosures Amendment Act 2010*, Schedule 1, cl.15.

³⁷ Election Funding Authority, *Funding and Disclosure Guide – Candidates, Groups and Official Agents at Local Government Elections*, January 2010, p.32-37, <http://www.efa.nsw.gov.au/data/assets/pdf_file/0007/65194/F-and-DG_Candidates_Groups_and_Official_Agents_at_LG_Elections1.pdf> accessed 1 November 2010.

Background

- 2.36 Disclosures from candidates, groups and parties must be accompanied by an audit certificate from a registered company auditor.³⁸
- 2.37 The EFA has the authority under s 96K(3) of the Act to waive the requirement for an audit certificate for groups and individual candidates where the candidate did not receive donations or incur expenditure, or where the group or candidate is not eligible for public funding. The EFA has the authority to grant an exemption to any candidate or group. According to the EFA, exemptions are currently granted to candidates and groups where neither political donations received, nor electoral expenditure incurred, exceeded \$2,500.³⁹

Additional regulation

- 2.38 The Local Government and Planning Legislation Amendment (Political Donations) Act 2008 amended the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979. This Act:
- (a) requires the general manager of a council to record which local councillors voted for, and which local councillors voted against, each planning decision of the council (and makes that record publicly available), and
 - (b) enables matters relating to political donations in connection with local councillors to be referred to the Pecuniary Interest and Disciplinary Tribunal, and
 - (c) when any relevant planning application is made to the Planning Minister, Department or local council, requires the applicant (or any person making a public submission opposing or supporting the application) to disclose political donations and gifts made within 2 years before the application or submission is made.⁴⁰

Electoral funding, expenditure and disclosure for state elections

- 2.39 The Election Funding and Disclosures Amendment Act 2010, which commences on 1 January 2011, includes the following reforms for state government elections only:

Caps on donations

- 2.40 The following caps on donations have been introduced:
- (1) General cap
- The applicable cap on political donations is as follows:
- (a) \$5,000 for political donations to or for the benefit of a registered party,
 - (b) \$2,000 for political donations to or for the benefit of a party that is not a registered party,
 - (c) \$2,000 for political donations to or for the benefit of an elected member,
 - (d) \$5,000 for political donations to or for the benefit of a group,
 - (e) \$2,000 for political donations to or for the benefit of a candidate,
 - (f) \$2,000 for political donations to or for the benefit of a third-party campaigner.⁴¹

³⁸ *Election Funding and Disclosure Act 1981*, s.96K.

³⁹ Election Funding Authority, Answers to Questions on Notice provided in relation to the inquiry into 2008 local government elections, 26 October 2009, p.7.

⁴⁰ Explanatory Notes, *Local Government and Planning Legislation Amendment (Political Donations) Act 2008*.

⁴¹ *Election Funding and Disclosures Amendment Act 2010*, Schedule 1, cl.23.

Expenditure

2.41 The following caps on expenditure have been introduced:

...

(2) Parties with Assembly candidates in a general election

For a State general election, the applicable cap for a party that endorses candidates for election to the Assembly is \$100,000 multiplied by the number of electoral districts in which a candidate is so endorsed.

(3) Subsection (2) does not apply to a party that endorses candidates in a group for election to the Council and endorses candidates for election to the Assembly in not more than 10 electoral districts.

Note. The total cap for a party that endorses candidates in all 93 electorates at a general election is \$9.3 million.

(4) Other parties with Council candidates in a general election

For a State general election, the applicable cap for a party that endorses candidates in a group for election to the Council, but does not endorse any candidates for election to the Assembly or does not endorse candidates in more than 10 electoral districts, is \$1,050,000.

(5) Independent groups of candidates in Council general elections

For a periodic Council election, the applicable cap for a group of candidates who are not endorsed by any party is \$1,050,000.

(6) Party candidates in Assembly general election

For a State general election, the applicable cap for a candidate endorsed by a party for election to the Assembly is \$100,000.

(7) Independent candidates in Assembly general election

For a State general election, the applicable cap for a candidate not endorsed by any party for election to the Assembly is \$150,000.

(8) Non-grouped candidates in Council general election

For a periodic Council election, the applicable cap for a candidate who is not included in a group is \$150,000.

(9) Candidates in Assembly by-election

For a by-election for the Assembly, the applicable cap for a candidate (whether or not endorsed by a party) is \$200,000.

(10) Third-party campaigners

For a State general election, the applicable cap for a third-party campaigner is:

(a) \$1,050,000 if the third-party campaigner was registered under this Act before the commencement of the capped expenditure period for the election, or

(b) \$525,000 in any other case.

(11) For a by-election for the Assembly, the applicable cap for a third-party campaigner is \$20,000 for each by-election.

(12) Additional cap for individual Assembly seats

The applicable cap for parties and third-party campaigners is subject to an additional cap (within the overall applicable cap) in relation to State general elections, or by-

Background

elections in more than one electorate, for electoral communication expenditure incurred substantially for the purposes of the election in a particular electorate, being:

- (a) in the case of a party—\$50,000 in respect of each such electorate, or
- (b) in the case of a third-party campaigner—\$20,000 in respect of each such electorate.

(13) For the purposes of subsection (12), electoral communication expenditure is only incurred for the purposes of the election in a particular electorate if the expenditure is for advertising or other material that:

- (a) explicitly mentions the name of a candidate in the election in that electorate or the name of the electorate, and
- (b) is communicated to electors in that electorate, and
- (c) is not mainly communicated to electors outside that electorate.⁴²

Public funding

2.42 The following public funding model has been introduced for eligible parties and candidates:

Eligible Assembly party

100% of so much of the actual expenditure of the party as is within 0–10% of the applicable expenditure cap, plus

75% of so much of the actual expenditure of the party as is within the next 10–90% of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the party as is within the last 90–100% of the applicable expenditure cap.

Eligible Council party

100% of so much of the actual expenditure of the party as is within zero to one third of the applicable expenditure cap, plus

75% of so much of the actual expenditure of the party as is within the next one third to two thirds of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the party as is within the last two thirds to 100% of the applicable expenditure cap.

Eligible Assembly party candidate

100% of so much of the actual expenditure of the candidate as is within 0–10% of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the candidate as is within the next 10–50% of the applicable expenditure cap.

Eligible Assembly independent candidate

100% of so much of the actual expenditure of the candidate as is within 0–10% of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the candidate as is within the next 10–80% of the applicable expenditure cap.

Eligible Council candidate

100% of so much of the actual expenditure of the candidate as is within zero to one third of the applicable expenditure cap, plus

⁴² *Election Funding and Disclosures Amendment Act 2010*, Schedule 1, cl.23.

75% of so much of the actual expenditure of the candidate as is within the next one third to two thirds of the applicable expenditure cap, plus

50% of so much of the actual expenditure of the candidate as is within the last two thirds to 100% of the applicable expenditure cap.⁴³

⁴³ *Election Funding and Disclosures Amendment Act 2010*, Schedule 2, cl.3.

Chapter Three - Comparative models

3.1 This chapter examines the regulation of disclosure, donations, expenditure and public funding for a number of jurisdictions outside of New South Wales. There is currently no public funding for local government elections in any Australian jurisdiction. However, regulation of local government and local government elections in the following international jurisdictions may provide useful comparative models to consider:

- the Canadian provinces of Ontario, Quebec and Manitoba
- New Zealand
- New York City
- the United Kingdom.

Canada

3.2 Canada, like Australia, has three levels of government: federal, provincial and local. Laws regulating local government elections are determined by province and there are 10 provinces and three territories. Currently there are three Canadian jurisdictions that provide some form of public financing – Ontario, Quebec and Manitoba.⁴⁴

Ontario

About local government in Ontario

3.3 Local government areas in Ontario are known as municipalities and there are 444 municipalities in the province.⁴⁵ The population of municipalities varies from 105 to 2.5 million.⁴⁶

3.4 The clerk of a local municipality is responsible for conducting elections within that municipality.⁴⁷ Elections for mayors, councillors and school board trustees occur every four years on the same day throughout the province.⁴⁸ In a regular election, voting day is the fourth Monday in October.⁴⁹

3.5 The campaign period begins on the day a person nominates to be a candidate. In a regular election, nomination day is on the second Friday in September and the campaign period ends on 31 December.⁵⁰

3.6 Each candidate must submit a financial statement for the campaign to the clerk. The financial statement is a public document and clerks are required to make the statements publicly available in an electronic format free of charge. The financial statement includes:

⁴⁴ British Columbia Local Government Elections Task Force, *Public Financing Discussion Paper*, 2010, p.5.

⁴⁵ Ontario Ministry of Municipal Affairs and Housing website <www.mah.gov.on.ca/Page1591.aspx> accessed 1 November 2010.

⁴⁶ Statistics Canada website, *Population and dwelling counts, for Canada, provinces and territories, and census subdivisions (municipalities), 2006 and 2001 censuses*, <www12.statcan.gc.ca/english/census06/data/popdwel/Table.cfm?T=302&SR=1&S=3&O=A&RPP=25&PR=35&CMA=0> accessed 1 November 2010.

⁴⁷ *Ontario Municipal Elections Act*, 1996, s.69

⁴⁸ Ontario Ministry of Municipal Affairs and Housing, *The Municipal Elections 2010 Guide*, 2009, p.5,

⁴⁹ *Ontario Municipal Elections Act 1996* (Ontario), s.5.

⁵⁰ *Ontario Municipal Elections Act 1996* (Ontario), ss.31 and 68.

- the total amount of donations received,
- the value of all expenses incurred in relation to the campaign, and
- the name and address of any donor whose donation exceeded \$100.⁵¹

Donations

- 3.7 Eligible donors are Ontario residents, corporations and trade unions (except in Toronto where donations from corporations and trade unions are banned).⁵²
- 3.8 There is a donation limit of \$750 to any one candidate (except candidates for the office of mayor of Toronto, who have a \$2,500 donation limit). The maximum amount a donor may give to candidates in the same council is \$5,000.⁵³
- 3.9 Donations include:
- monetary donations
 - the value of goods and services
 - the admission price for a fund-raising function
 - the difference between the amount paid and the market value of a good or service sold at a fund-raising function
 - the difference between the amount paid and the market value of a good or service purchased for the campaign
 - any unpaid but guaranteed balance of a campaign loan.⁵⁴
- 3.10 The following entities are banned from contributing to a municipal campaign:
- federal and provincial political parties and candidates
 - federal government
 - provincial governments
 - municipalities
 - school boards
 - anonymous donors.⁵⁵
- 3.11 Donations cannot be accepted outside of the campaign period.⁵⁶

Expenditure

- 3.12 Expenditure limits apply to all municipalities, however the limits vary according to the office being contested. The following limits apply:
- Mayor - \$7,500 plus \$0.85 per voter
 - Councillor/School board trustee - \$5,000 plus \$0.85 per voter.⁵⁷

⁵¹ Ontario Ministry of Municipal Affairs and Housing, *The Municipal Elections 2010 Guide*, 2009, pp.24 and 30.

⁵² Ontario Ministry of Municipal Affairs and Housing, *The Municipal Elections 2010 Guide*, 2009, p.24.

⁵³ Ontario Ministry of Municipal Affairs and Housing, *The Municipal Elections 2010 Guide*, 2009, pp.24 and 25.

⁵⁴ Ontario Ministry of Municipal Affairs and Housing, *The Municipal Elections 2010 Guide*, 2009, p.23.

⁵⁵ Ontario Ministry of Municipal Affairs and Housing, *The Municipal Elections 2010 Guide*, 2009, pp.18 and 24.

⁵⁶ *Municipal Elections Act 1996* (Ontario), s.70.

⁵⁷ British Columbia Local Government Elections Task Force, *Report of the Local Government Elections Task Force*, 2010, pp.53-54.

Comparative models

- 3.13 For example, the City of Peterborough in Ontario had 53,557 eligible voters for the October 2010 election⁵⁸, and as such the expenditure limit for candidates for mayor would have been \$53,023.
- 3.14 Campaign expenses are those costs incurred by the candidate during his or her campaign. All expenses count toward the candidate's spending limit, except for the items described below:
- expenses incurred in holding a fundraising function;
 - expenses incurred for parties and other expressions of appreciation after the close of voting;
 - expenses relating to a court action for a controverted election;
 - expenses relating to a recount in respect of an election;
 - expenses relating to a compliance audit;
 - expenses incurred by a candidate with a disability that are directly related to the disability and would not have been incurred if not for the election;
 - and audit and accounting fees.⁵⁹

Public funding

- 3.15 There is no direct public funding for local government candidates, however some municipalities in Ontario offer donation rebates. That is, after the election, individuals are rebated a percentage of their donations to candidates. Not all municipalities give rebates, each municipality determines if it wishes to establish a rebate program.⁶⁰
- 3.16 For example, the City of Toronto gives donation rebates which are calculated as a percentage of the donation, up to a maximum \$1,000. The rebate is calculated according to the following formula:
- If the donation is less than \$300, the rebate is 75% of the donation
 - If the donation is between \$300 and \$1,000, the rebate is \$225 plus 50% of the amount over \$300
 - If the donation is over \$1,000, the rebate is the lesser of:
 - \$1,000, or
 - \$575 plus 33.3% of the amount over \$1,000
 - Donations of less than \$25.00 will not receive a rebate.⁶¹

Quebec

About local government in Quebec

- 3.17 There are 1,112 municipalities in Quebec, with populations varying from less than 100 to over 1.5 million.⁶²

⁵⁸ City of Peterborough, *Unofficial Election Results*,

<http://www.peterborough.ca/election%20results/results.html>, accessed 25 November 2010.

⁵⁹ Ontario Ministry of Municipal Affairs and Housing, *The Municipal Elections 2010 Guide*, 2009, pp.29-31.

⁶⁰ Ontario Ministry of Municipal Affairs and Housing, *The Municipal Elections 2010 Guide*, 2009, p.20.

⁶¹ *City of Toronto By-law No. 1257-2009*, (Toronto) s.12.

⁶² Le Répertoire des municipalités website, <www.mamrot.gouv.qc.ca/cgi-bin/repert1.pl?T2=&T3=&D3=&D4=%5B+Toutes+les+municipalit%E9s+%5D&D5> accessed 1 November 2010.

- 3.18 Elections for mayors and councillors of all municipalities are held every four years on the first Sunday of November.⁶³ The election period in Quebec begins 44 days before polling day and ends on polling day.⁶⁴
- 3.19 The provincial Chief Electoral Officer (Directeur général des élections du Québec) is responsible for the conduct of local government elections. However, each municipality appoints an election clerk and treasurer who oversight the election for that municipality and to whom financial reports are submitted.⁶⁵
- 3.20 Different electoral rules apply depending on the size of the municipality. For example, larger municipalities may be divided into electoral districts – this is compulsory for municipalities with more than 20,000 inhabitants, but voluntary for municipalities with less than 20,000 inhabitants.⁶⁶
- 3.21 Further, municipalities with a population of 5,000 or more are subject to the rules governing the financing of political parties. There are 175 municipalities and 13 regional county municipalities subject to these rules.⁶⁷
- 3.22 In municipalities with over 5,000 voters, candidates are required to disclose the amount of expenses and donations, and the details of any donor who gives more than \$100. Whereas candidates in municipalities with less than 5,000 voters are only required to disclose the details of donors who give more than \$100.⁶⁸

Donations

- 3.23 Only voters within the municipality have the right to make donations, and the maximum donation to each party or candidate is \$1,000.⁶⁹ Corporations are banned from making donations.⁷⁰
- 3.24 Donations include:
- gifts of money to a party or to a candidate;
 - goods or services rendered to a party or to a candidate free of charge and for political purposes;
 - any money, goods or services furnished by the candidate himself in view of his election; and
 - discounts - where goods or services are furnished for political purposes to a party or candidate at a price lower than their value, the difference constitutes a donation.⁷¹

⁶³ Directeur général des élections du Québec website, <www.electionsquebec.qc.ca/english/municipal/media/frequency-of-elections.php> accessed 1 November 2010.

⁶⁴ Directeur général des élections du Québec, *The Financing Of Municipal Political Parties And Independent Candidates*, 2009, p.17.

⁶⁵ *An Act Respecting Elections And Referendums In Municipalities* (Quebec), ss. 479-484 & Division IV,

⁶⁶ Directeur général des élections du Québec website, <www.electionsquebec.qc.ca/english/municipal/electoral-map/municipalities-concerned.php> accessed 2 November 2010.

⁶⁷ Directeur général des élections du Québec website, <www.electionsquebec.qc.ca/english/municipal/financing-and-election-expenses/some-data.php> accessed 2 November 2010.

⁶⁸ British Columbia Local Government Elections Task Force, *Report of the Local Government Elections Task Force*, 2010, pp.54-5.

⁶⁹ *An Act Respecting Elections And Referendums In Municipalities* (Quebec), ss.429-31,

⁷⁰ Directeur général des élections du Québec website <www.electionsquebec.qc.ca/english/municipal/financing-and-election-expenses/contributions.php> accessed 3 November 2010.

Comparative models

3.25 The following are not donations:

- voluntary work performed by individuals;
- an anonymous donation collected at a meeting or rally held for political purposes;
- a loan granted for political purposes, by a voter of the municipality or a financial institution having an office in Québec, at current market interest rates;
- suretyship contracted by a voter of the municipality;
- an annual amount not in excess of \$25 paid by a natural person for membership in a party;
- an entrance fee to a political activity or rally, where the fee is not over \$60 per day.⁷²

3.26 As noted above, loans are not considered donations. If a loan comes from a voter of the municipality, then a \$10,000 limit applies; however, no limit applies to loans from financial organisations.⁷³

Expenditure

3.27 The following expenditure limits apply to candidates in municipalities with more than 5,000 voters:

- Mayor – \$5,400 plus:
- \$0.42 per voter, for the first 20,000 voters;
- \$0.72 per voter, for 20,001 to 100,000 voters;
- \$0.54 per voter, for over 100,000 voters.
- Councillor – \$2,700 plus \$0.42 per voter.⁷⁴

3.28 For example, the city of Thetford Mines has 21,213 eligible voters⁷⁵, and as such the expenditure limit for candidates for mayor would have been \$14,673.36.

3.29 Election expenses include the cost of any goods or services used during an election period to:

- promote or oppose, directly or indirectly, the election of a candidate or the candidates of a party;
- propagate or oppose the program or policies of a candidate or party;
- approve or disapprove courses of action advocated or opposed by a candidate or party; or
- approve or disapprove any act done or proposed by a party, a candidate or their supporters.⁷⁶

⁷¹ *An Act Respecting Elections And Referendums In Municipalities* (Quebec), s.427.

⁷² *An Act Respecting Elections And Referendums In Municipalities* (Quebec), s.428.

⁷³ Le Directeur général des élections du Québec, *Do you want to run for election in a municipality with a population of 5,000 or more?* 2009.

⁷⁴ Directeur général des élections du Québec website, <www.electionsquebec.qc.ca/english/municipal/financing-and-election-expenses/limits-on-election-expenses.php> accessed 1 November 2010.

⁷⁵ Ministère des Affaires municipales, des Régions et de l'Occupation du territoire Québec, *Résultats après le scrutin*, http://www.mamrot.gouv.qc.ca/organisation/orga_elec_elec_2006_resu.asp, accessed 25 November 2010.

⁷⁶ *An Act Respecting Elections And Referendums In Municipalities* (Quebec), s.451.

Public funding

3.30 Public funding in Quebec consists of provincial tax credits to donors and reimbursement of expenses to eligible candidates.

Tax credits

3.31 Donors are eligible for a tax credit equal to 75% of the first \$140 of their donation (i.e. the maximum tax credit is \$105).⁷⁷

Reimbursement of expenses

3.32 A candidate who obtains at least 15% of the vote is eligible for reimbursement of 50% of their election expenses. The amount reimbursed cannot exceed the expenditure limit, nor the combined total of the debts arising from election expenses and the personal donation of the candidate.⁷⁸

Manitoba

About local government in Manitoba

3.33 There are 198 municipalities in Manitoba, with populations ranging from 200 to 42,000 (not including Winnipeg, which has a population of 630,000).⁷⁹

3.34 Elections for all municipalities, other than Winnipeg, are governed by the Municipal Act. However, a number of the electoral finance rules are determined by each municipality. General municipal elections for mayors/reeves, councillors and school trustees are held every four years on the fourth Wednesday in October.⁸⁰

3.35 The campaign period for most municipalities is as follows:

- Mayor/Reeve candidates – between 1 May and 31 March the following year
- Councillor candidates - between 30 June and 31 March the following year.⁸¹

3.36 The Senior Election Official is appointed by the municipality to exercise general direction and supervision over the conduct of municipal elections.⁸²

3.37 All candidates must file an election finance statement with the municipality's Chief Administration Officer. The election finance statement must include the following information:

- All donations received and expenses incurred
- The name, address and amount of anyone who contributed more than \$250
- An itemised list of campaign expenses
- The donations and expenses related to any fundraising event
- Details of loans to the candidate for the election campaign.⁸³

⁷⁷ Le Directeur général des élections du Québec, *Do you want to run for election in a municipality with a population of 5,000 or more?* 2009.

⁷⁸ *An Act Respecting Elections And Referendums In Municipalities* (Quebec), ss.475-478.

⁷⁹ Manitoba Local Government website, *Statistical Information 2008*, <http://web5.gov.mb.ca/mfas/pdf/08_stats.pdf> accessed 3 November 2010.

⁸⁰ Manitoba Local Government website, <http://web5.gov.mb.ca/mfas/mfas_elections.aspx> accessed 2 November 2010.

⁸¹ Manitoba Local Government website, <http://web5.gov.mb.ca/mfas/elections_faq.aspx>

⁸² Manitoba Local Government website, <http://web5.gov.mb.ca/mfas/elections_faq.aspx>

⁸³ Manitoba Local Government website, <http://web5.gov.mb.ca/mfas/elections_faq.aspx>

Donations

3.38 Donations can only be accepted from Manitoba residents (anonymous donations and donations from trade unions and corporations are banned). The following donation limits apply according to the office contested:

- \$1,500 per person - Mayor and councillors elected at large
- \$750 per person – councillors elected by ward.⁸⁴

3.39 Non-monetary goods or services may also be considered donations, as described below:

When a good or service is provided by a person who earns a living providing that good or service, the value of the good or service must be recorded as a non-monetary donation.⁸⁵

Expenditure

3.40 Expense limits are set by each municipality according to that municipality's campaign expenses and contributions bylaw.⁸⁶

3.41 For example, in Winnipeg the expenditure limits are calculated according to the following criteria:

- Mayor - \$0.30 for each voter in the entire city
- Councillors - \$0.75 for each voter in the candidate's ward.⁸⁷

3.42 Eligible expenses may include, but are not limited to:

- Costs for a hall or room rentals for public meetings;
- Fees for printing pamphlets, notices and advertisements or making signs;
- Costs for hiring vehicles and drivers for campaign purposes;
- Costs for food and refreshments for candidates or campaign volunteers served at election meetings;
- Travel expenses such as gas.⁸⁸

Public funding

3.43 Public funding rules are determined by each municipality and may fall into one of the following categories:

- A program to provide donors with either a tax credit or rebate for an amount equal to part of their donation.
- A program to reimburse candidates for a portion of their expenses.⁸⁹

3.44 For example, the city of Winnipeg provides rebates of up to \$1,000 to donors. The amount of the rebate is determined by the same formulas as those outlined earlier for the City of Toronto.⁹⁰

⁸⁴ Manitoba Local Government website, <http://web5.gov.mb.ca/mfas/elections_faq.aspx>

⁸⁵ Manitoba Local Government, *Municipal Candidates Guidebook*, 2010, p.15.

⁸⁶ Manitoba Local Government website, http://web5.gov.mb.ca/mfas/elections_faq.aspx

⁸⁷ British Columbia Local Government Elections Task Force, *Report of the Local Government Elections Task Force*, 2010, p.53.

⁸⁸ Manitoba Local Government, *Municipal Candidates Guidebook*, 2010, p.16.

⁸⁹ Manitoba Local Government, *Municipal Candidates Guidebook*, 2010, p.23.

⁹⁰ *Rebate of Election Contributions By-Law No. 9/2010* (City of Winnipeg), s.5.

New Zealand

About local government in New Zealand

- 3.45 New Zealand does not have states or provinces, however there are a number of types of local government authorities. The two main levels are regional councils (there are 12 regional councils) and territorial authorities (comprising 16 city councils and 58 district councils). However, there are also 4 unitary authorities (which perform the combined functions of regional councils and territorial authorities), and 44 community boards (which provide a level of local government below city and district councils).⁹¹
- 3.46 Regional council populations vary from 33,000 to 1.5 million, while the population of territorial authorities lies between 600 and 450,000.⁹²
- 3.47 Elections are held every three years for mayors for each city/district, and members of regional councils, city/district councils, community boards, district health boards and other bodies such as licensing trusts. The elections are conducted entirely via postal votes.⁹³
- 3.48 Electoral officers are appointed in each local government area to enforce the *Local Electoral Act 2001*. Following an election, candidates must submit to the electoral officer a return setting out their electoral expenses and the details of each person who made an electoral donation to the candidate (anonymous donations over \$1,000 must also be noted). The applicable campaign period for local elections is a period commencing three months before election day.⁹⁴

Donations

- 3.49 Donations are known as electoral donations and are defined as money, goods, services or discounts valued at more than \$1,000. Voluntary labour is not considered to be an electoral donation.⁹⁵
- 3.50 There are no caps or bans on donations, just rules about disclosure (see above) and expenditure (see below).

Expenditure

- 3.51 In New Zealand, electoral expenses are defined as expenses that are incurred by or on behalf of the candidate in respect of any electoral activity.⁹⁶
- 3.52 Expenditure limits are based on the local government area population. The limit begins at \$3,500 for populations of less than 5,000, and increases up to \$100,000 for populations over 1,000,000. See the table below for more detail on expenditure limits.

⁹¹ NZ Local Government Online website, *Guide to local government*, <<http://guide.localgovt.co.nz/tbp/localgov.html>> accessed 1 November 2010.

⁹² Statistics New Zealand website, <www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/SubnationalPopulationEstimates_HOTP30Jun10.aspx> accessed 1 November 2010.

⁹³ Elections New Zealand website, <www.elections.org.nz/elections/local-elections/local-elections-what-are-they-faqs.html> accessed 1 November 2010.

⁹⁴ *Local Electoral Act 2001* (New Zealand), ss.12, 109 and 104.

⁹⁵ *Local Electoral Act 2001* (New Zealand), s.104.

⁹⁶ *Local Electoral Act 2001* (New Zealand), s.104.

Table 1 – Expenditure limits⁹⁷

Local government area population	Expenditure limit
up to 4,999	\$3,500
5,000 - 9,999	\$7,000
10,000 - 19,999	\$14,000
20,000 - 39,999	\$20,000
40,000 - 59,999	\$30,000
60,000 - 79,999	\$40,000
80,000 - 99,999	\$50,000
100,000 - 149,999	\$55,000
150,000 - 249,999	\$60,000
250,000 – 999,999	\$70,000
1,000,000 or more	\$100,000 plus 50 cents per voter

Public funding

3.53 There is no public funding for local government elections in New Zealand.

United States of America

3.54 The United States of America has 50 states and systems of local government differ across states and within states. Within New York state, New York City has its own voluntary program for the public funding of local government elections.

New York City

About local government in New York City

3.55 New York City is divided into five boroughs (Bronx, Brooklyn, Manhattan, Queens and Staten Island), and each of the boroughs is further divided into council districts. The total population of the city is 8.4 million, while the population of each of the boroughs ranges from 490,000 to 2.5 million.⁹⁸ There are 51 council districts throughout the five boroughs, with an average population of 157,000.⁹⁹

3.56 Elections occur in November every 4 years, during which the following officers are elected: Mayor, Public Advocate, Comptroller, Borough Presidents, and City Council members.¹⁰⁰ The entire population of New York City votes for the Mayor of New York, as compared with Mayor of Sydney, who is voted for by only those people who live in the Sydney City Council area.

⁹⁷ *Local Electoral Act 2001* (New Zealand), s.111.

⁹⁸ New York City Government website, <www.nyc.gov/html/dcp/html/census/popcur.shtml> accessed 2 November 2010.

⁹⁹ League of Women Voters of the City of New York website, <www.lwvnyc.org/TRY_citycouncil.html> accessed 2 November 2010.

¹⁰⁰ New York City Campaign Finance Board website, <www.nyccfb.info/public/VRC/govtPages.aspx> accessed 2 November 2010.

- 3.57 Candidates are obliged to file campaign finance reports with the New York State Board of Elections and New York City Board of Elections, in which they disclose all of the receipts and expenditures of their campaign.¹⁰¹
- 3.58 New York City also has a voluntary Campaign Finance Program which individual candidates may choose to participate in. The program is run by the New York City Campaign Finance Board; it has more stringent donation and expenditure regulations but provides public funding for candidates.¹⁰² The following sections will outline the regulations for both participants and non-participants in the Campaign Finance Program.

Donations

- 3.59 All candidates are prohibited from accepting donations from corporations.¹⁰³ Anonymous donations are also banned.
- 3.60 Donation limits vary according to the office being contested:
- Limit for Mayor, Public Advocate and Comptroller - \$4,950
 - Limit for Borough President - \$3,850
 - Limit for City Council - \$2,750.¹⁰⁴
- 3.61 In addition, candidates participating in the Campaign Finance Program are allowed to give up to three times the donation limit to their own campaign;¹⁰⁵ while non-participant candidates can contribute any amount to their own campaign.¹⁰⁶
- 3.62 There are also separate, lower, donation limits for people connected with entities who do business with the city, and these donations are ineligible to be matched with public funds.
- Limit for Mayor, Public Advocate and Comptroller: \$400
 - Limit for Borough President: \$320
 - Limit for City Council: \$250.¹⁰⁷

Expenditure

Non-participants

- 3.63 There are no expenditure caps for candidates who are not participating in the Campaign Finance Program.¹⁰⁸

¹⁰¹ New York State Board of Elections website, <www.elections.state.ny.us/Candidate.html#WhatFiled> accessed 2 November 2010.

¹⁰² New York City Campaign Finance Board website, <www.nycffb.info/press/info/faq.aspx> accessed 2 November 2010.

¹⁰³ New York City Campaign Finance Board website, <www.nycffb.info/candidates/candidates/limits/2013.htm#contribution>

¹⁰⁴ New York City Campaign Finance Board website, <www.nycffb.info/candidates/candidates/limits/2013.htm#contribution>

¹⁰⁵ New York City Campaign Finance Board, *2009 Campaign Finance Handbook*, <www.nycffb.info/candidates/candidates/handbooks/2009_Handbook.pdf?sm=candidates_ha>

¹⁰⁶ New York City Campaign Finance Board Rules, Rule 2-11.

¹⁰⁷ New York City Campaign Finance Board website, <www.nycffb.info/candidates/candidates/limits/2013.htm#contribution>

¹⁰⁸ New York City Campaign Finance Board website, <www.nycffb.info/press/info/faq.aspx?sm=public_&sm=public_h19>

Campaign Finance Program

3.64 Participants in the Campaign Finance Program have the following spending limits for the 2013 general election:

- Mayor - \$6,426,000
- Public Advocate & Comptroller - \$4,018,000
- Borough President - \$1,446,000
- City Council - \$168,000

3.65 However, if a participant runs against a well-financed non-participant, the spending limit for that election is increased.¹⁰⁹

Public Funding

3.66 To be eligible for public funding candidates must first meet a two-part threshold which includes a minimum amount of private donations and a minimum number of donors. Only the first \$175 of a donation counts toward meeting the dollar amount threshold. The table below outlines the thresholds for different offices:

Table 2 - Thresholds for public funding¹¹⁰

	Mayor	Public Advocate & Comptroller	Borough President	City Council
Dollar Amount	\$250,000	\$125,000	\$10,000 – \$49,307	\$5,000
Minimum Number of Donors	1,000	500	100	75

3.67 Candidates who are eligible to receive public funding are paid \$6 for every dollar they receive from a private donor, up to a maximum of \$1,050 per donor.¹¹¹

3.68 The total amount each candidate can receive in public funding is capped at 55% of the spending limit. However, when a participating candidate is running against a high-spending non-participant, the participant can receive a greater amount of public funds at an accelerated rate.¹¹²

3.69 The table below outlines the matching rate (the amount the city pays for each \$1 of private donations), maximum public funding available and expenditure limits for various offices. The regular limits are indicated in the first line of each row. The Tier 1 and Tier 2 limits apply in situations when a non-participating opponent raises or spends more than the Trigger Amount.

¹⁰⁹ New York City Campaign Finance Board website, <www.nycffb.info/candidates/candidates/limits/2013.htm#contribution>

¹¹⁰ New York City Campaign Finance Board website, <www.nycffb.info/candidates/candidates/limits/2013.htm#contribution>

¹¹¹ New York City Campaign Finance Board website, <www.nycffb.info/candidates/candidates/limits/2013.htm#contribution>

¹¹² New York City Campaign Finance Board website, <www.nycffb.info/candidates/candidates/overview.aspx?sm=candidates_overview>

Table 3 – 2009 public funding and expenditure limits¹¹³

Office		Matching Rate	Trigger Amount	Max Public Funds	Expenditure Limit
Mayor	Regular	\$6.00 to \$1	—	\$3,386,900	\$6,158,000
	Tier 1	\$7.14 to \$1	\$3,079,001	\$4,105,333	\$9,327,000
	Tier 2	\$8.57 to \$1	\$18,474,001	\$7,697,500	no limit
Public Advocate/ Comptroller	Regular	\$6.00 to \$1	—	\$2,117,500	\$3,850,000
	Tier 1	\$7.14 to \$1	\$1,925,001	\$2,566,667	\$5,775,000
	Tier 2	\$8.57 to \$1	\$11,550,001	\$4,812,500	no limit
Borough President	Regular	\$6.00 to \$1	—	\$762,300	\$1,386,000
	Tier 1	\$7.14 to \$1	\$693,001	\$924,000	\$2,079,000
	Tier 2	\$8.57 to \$1	\$4,158,001	\$1,732,500	no limit
City Council	Regular	\$6.00 to \$1	—	\$88,550	\$161,000
	Tier 1	\$7.14 to \$1	\$80,501	\$107,333	\$241,500
	Tier 2	\$8.57 to \$1	\$483,001	\$201,250	no limit

The voluntary program in practice – participating and non-participating opponents

3.70 In the 2009 elections Michael Bloomberg, who became mayor, was a non-participant in the Campaign Finance Program. He raised and spent \$108 million on his election campaign. His main rival was William Thompson Jr. who participated in the program. William Thompson Jr. raised \$6 million from private donations, received public funding of \$3 million and spent \$9 million on his campaign.¹¹⁴

United Kingdom

About Local Government in the United Kingdom

3.71 The United Kingdom has a complex system of local government. The regulation of local government in Scotland and Wales is devolved to the Scottish and Welsh Parliaments. However the financial regulations for elections are similar across most local jurisdictions in England, Scotland and Wales, with the exception of London.

3.72 In England there are a variety of local government authorities including county councils, unitary authorities, metropolitan districts, shire districts, London boroughs, parish councils and town councils. These various authorities fall into 2 or 3 different tiers of local government, depending on the region. There are 27 county councils which are divided into 201 shire districts and then further into town and parish councils.¹¹⁵ There are 54 unitary authorities which may have town and parish councils. There are 37 metropolitan districts which may have town and parish councils. Greater London is divided into 32 London boroughs and the City of London. The following diagram outlines these different local government structures.¹¹⁶

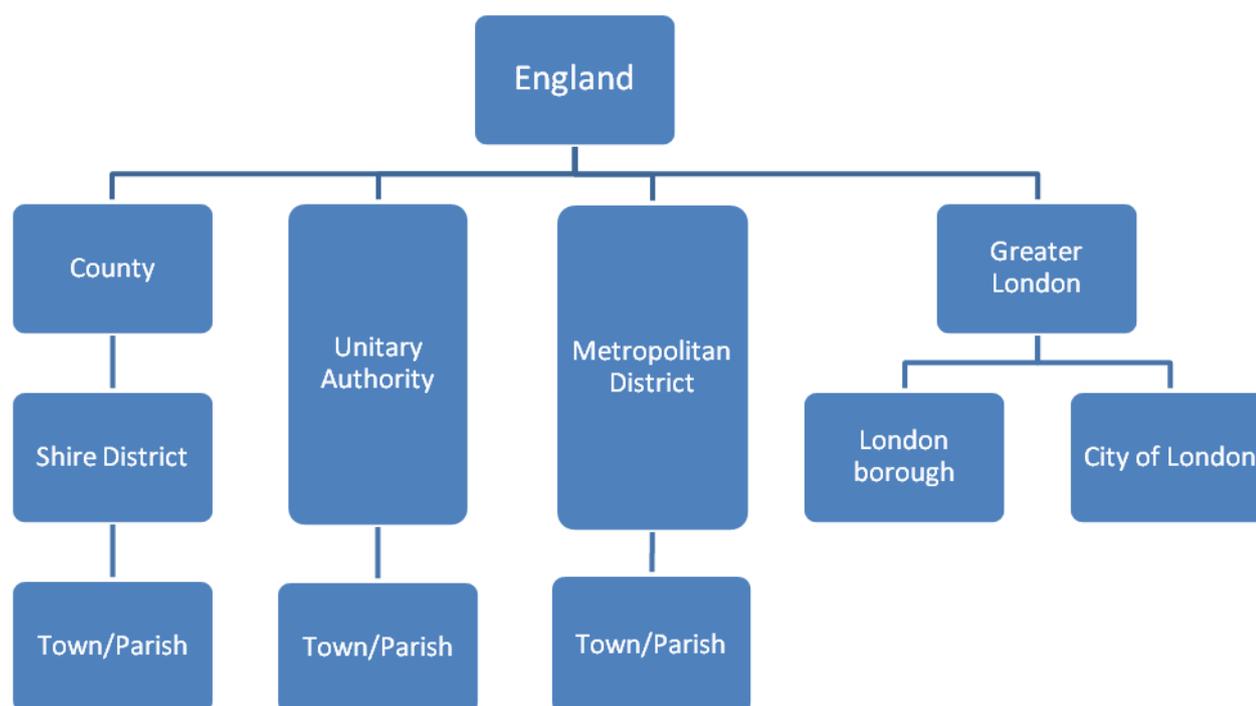
¹¹³ New York City Campaign Finance Board website, <www.nycfb.info/candidates/candidates/bonusSituation.aspx>

¹¹⁴ New York City Campaign Finance Board website, <www.nycfb.info/VSApps/WebForm_Finance_Summary.aspx?as_election_cycle=2013&sm=press_&sm=candidates_cfs>

¹¹⁵ There are approximately 9000 town and parish councils in England. <www.communities.gov.uk/documents/statistics/pdf/1622442.pdf>

¹¹⁶ Improvement and Development Agency for local government.2009. *Councillor's guide*, pp.11-12, <www.idea.gov.uk/idk/aio/18662645>

Diagram 1 - Local government structures in England



- 3.73 Members of councils are elected for 4 year terms, however the year when elections are held varies between authorities. In some authorities (including London boroughs, parish councils and all county councils) elections for the entire council are held every four years, while others elect a proportion of members in each year. In any given year, if a council election is to be held, it will occur on the first Thursday in May.¹¹⁷
- 3.74 Each local authority appoints a Returning Officer who is responsible for local government elections. The UK also has an independent Electoral Commission which provides information and advice about all government elections in the UK, as well as regulating the registration and finances of political parties.¹¹⁸
- 3.75 The regulated period for local government elections is the period between when a person becomes a candidate and polling day. A person becomes a candidate on the last date for publication of the notice of election, which must be no later than 25 working days before the poll.¹¹⁹ For example, the regulated period for the 2010 local government elections was from 29 March 2010 until 6 May 2010.¹²⁰
- 3.76 An election expenses return must be prepared by the candidate's agent and include the following:
- Statement of all payments made, with invoices or receipt for all items over £20

¹¹⁷ UK Department of Communities and Local Government website <www.communities.gov.uk/localgovernment/local/governanceelections/electoralarrangements/> accessed 1 November 2010.

¹¹⁸ UK Electoral Commission, *Guidance for candidates and agents: Local government elections in England*, 6 May 2010, 2009, pp.2 and 7.

¹¹⁹ UK Electoral Commission. *Guidance for candidates and agents: Local government elections in England*, 6 May 2010, 2009, pp.44 - 45.

¹²⁰ The Electoral Commission, *Sample combined election timetable for 6 May 2010*, www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0020/83171/UKPGEcombined-timetable.pdf, accessed 3 August 2010.

- Details and a declaration of value for all notional expenditure¹²¹
- Details of all donations
- Details of any unpaid or disputed invoices.¹²²

3.77 This return must be submitted within 35 days of the election result being declared for those contesting at county level, district level and unitary authorities,¹²³ and within 28 days of election day for those contesting parish or town council elections.¹²⁴

Donations

3.78 A donation is something given for the purposes of meeting election expenses, with a value over £50. Donations include money and items, services or loans that are not provided on commercial terms.¹²⁵

3.79 Donations can only be accepted from

- someone on a UK electoral register (including overseas electors)
- a company that is registered in the UK, incorporated in an EU member state, and carrying on business in the UK
- a registered political party
- trade unions, building societies, limited liability partnerships and friendly/industrial provident societies if registered in the UK
- a UK-based unincorporated association.¹²⁶

Expenditure

3.80 During the regulated period, candidates are subject to an expenditure limit of £600 plus 5p per elector in the division, ward, parish or town council.¹²⁷

3.81 For example, the Southcote Ward of Reading Borough Council has approximately 6,228 electors¹²⁸, and as such the expenditure limit for candidates in that ward would have been £911.40. The City and Hunslet Ward of Leeds City Council has 20702 electors¹²⁹, allowing an expenditure limit of £1,635.10.

¹²¹ Notional expenditure is the difference between what is paid and the full commercial value for items or services which are provided free of charge or at a discount of more than 10% and which are worth more than £50. The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, p.49.

¹²² The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, p.67.

¹²³ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, p.67.

¹²⁴ UK Electoral Commission, *Supplementary guidance for candidates: Parish, community and town council elections in England and Wales, 6 May 2010*, p.18.

¹²⁵ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, p.44.

¹²⁶ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, pp.54-55.

¹²⁷ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, p.44.

¹²⁸ Reading Borough Council, *Local Election: 6 May 2010*,

<http://www.reading.gov.uk/elections2010/staticwardboard.asp?ward=46>, accessed 25 November 2010.

¹²⁹ Leeds City Council, *Local Election results 2010*,

<http://www.leeds.gov.uk/page.aspx?pageidentifier=d124fadb-cb23-488d-a4bb-c2d5a9534b6e&cachedId=8332453&siteID=1&ward=CITY AND HUNSLET>,

accessed 25 November 2010.

Comparative models

- 3.82 Election expenses are those costs incurred for items used for promoting or procuring the candidate's election, including those items used to discourage people from voting for another candidate.¹³⁰
- 3.83 The following are considered to be election expenses:
- Advertising such as posters, print advertisements, and websites (and including design, print, delivery costs and any agency fees).
 - Any unsolicited mailed items (including design, print and distribution costs)
 - Transport costs such as public transport, hire cars, any means of transport not acquired by the owner for mainly personal use and any costs reimbursed to campaigners.
 - Public meetings organised for the promotion of the candidate, including costs such as venue hire, speaker's fees, refreshments and any costs reimbursed to attendees.
 - Staff costs (volunteer labour is not included)
 - Accommodation such as office accommodation, or any hotel or similar costs for campaign workers (the use of an individual's main home is not included if provided free of charge)
 - Administration costs such as telephone bills, stationery, postage, electricity and other utilities, photocopying or printing equipment and databases.¹³¹
- 3.84 Money spent before the regulated period on items used during the regulated period must be included in the expenditure limit, and can be proportionally attributed if partly used before the period and during.¹³²
- 3.85 Costs should also be split where the item is shared between more than one campaign or between the candidate and general party activity, for example a leaflet which contains information on the candidate for local government election and information on the party or general election candidates.¹³³
- 3.86 Candidates who do any of the following are considered joint candidates and thus have their individual expenditure limits reduced:
- Employ the same election agent
 - Use the services of the same clerks and messengers (except accidental, trivial or casual use)
 - Hire or use the same committee rooms at an election
 - Publish joint addresses, circulars or notices at elections.¹³⁴
- 3.87 In the case of two candidates the expenditure limit for each candidate is reduced by one quarter and by one third for three or more candidates running jointly.¹³⁵

¹³⁰ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, p.45.

¹³¹ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, p.46-7.

¹³² The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, p.45.

¹³³ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, pp.50-1.

¹³⁴ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England, 6 May 2010*, 2009, p.44.

Public funding

3.88 There is no public funding for local government elections in the United Kingdom.¹³⁶

Conclusion

3.89 The international jurisdictions examined in this chapter provide a variety of different models for the regulation of local government election funding, expenditure and disclosure. As outlined in the summary table below, all of the jurisdictions required some form of disclosure regarding campaign financing, however laws relating to donations, expenses and public funding varied between jurisdictions and even within some jurisdictions.

Table 4 - Summary of international jurisdictions

Jurisdiction	Disclosure Laws	Donation Limits	Expense Limits	Public Funding
Ontario	Yes	Yes	Yes	Determined by local bylaws
Quebec	Yes	Yes	Yes	Yes
Manitoba	Yes	Yes	Determined by local bylaws	Determined by local bylaws
New Zealand	Yes	No	Yes	No
New York City	Yes	Yes	Voluntary	Voluntary
United Kingdom	Yes	No	Yes	No

3.90 The structure of local government in these international jurisdictions is significantly different to the structure of local government in New South Wales. The United Kingdom, for example, has up to three different tiers of local government; while in New York City, the mayor is voted for by a population greater than the entire population of New South Wales.

3.91 As a result of these differences, some of the campaign finance models adopted in other jurisdictions can only be of limited relevance to an investigation of the public funding of local government election campaigns in New South Wales.

¹³⁵ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England*, 6 May 2010, 2009, p.44.

¹³⁶ The Electoral Commission, *Guidance for candidates and agents: Local government elections in England*, 6 May 2010, 2009, p.41.

Chapter Four - Reform proposals

- 4.1 This chapter examines options for the reform of the regulation and funding of local government election campaigns. During the course of its inquiry, the Committee has attempted to gauge whether there is sufficient justification for reform, and the level of support amongst stakeholders. The Committee has considered four elements of reform:
- 1) the capping of donations
 - 2) the introduction of expenditure caps
 - 3) the strengthening of disclosure requirements
 - 4) the introduction of public funding.

Support for reform

- 4.2 In its *Issues Paper*, published in August 2010, the Committee canvassed a number of arguments both for and against public funding for local government elections. The Committee sought feedback from inquiry participants on whether they supported public funding for local government elections.
- 4.3 A number of councils, candidates, local government registered parties and the Independent Commission Against Corruption supported the introduction of public funding for local government election campaigns.
- 4.4 For instance, Sutherland Shire Council¹³⁷, Liverpool City Council¹³⁸, Randwick City Council¹³⁹, Forbes Shire Council¹⁴⁰ and Port Stephens Council¹⁴¹ all expressed general support for the introduction of public funding.
- 4.5 Port Stephens Council considered that it could 'provide the opportunity for community members to stand as a candidate without the limitation of funds to support their campaign'.¹⁴² Port Stephens Council also indicated that public funding would 'reduce the impact of political parties and minimise the effect of political donations, particularly for areas where the Mayor is popularly elected'.¹⁴³ Forbes Council submitted that public funding would open up 'participation by candidates from varied walks of life, allowing a diversity of representation...'.¹⁴⁴
- 4.6 Registered political parties that supported public funding included the Greens, Residents Action Group for Auburn Area, and Australia First Party (NSW).¹⁴⁵ The Greens submitted that it would reduce the perception of influence:

The current system gives the appearance that many local government decisions are influenced by donations rather than based on the common good. This appearance erodes both the value of, and support for, our precious democracy. A modest degree of

¹³⁷ Sutherland Shire Council, *Submission 5*, p.1.

¹³⁸ Liverpool City Council, *Submission 22*, p.1.

¹³⁹ Randwick City Council, *Submission 23*, p.1.

¹⁴⁰ Forbes Shire Council, *Submission 24*, p.1.

¹⁴¹ Port Stephens Council, *Submission 25*, p.1.

¹⁴² Port Stephens Council, *Submission 25*, p.1.

¹⁴³ Port Stephens Council, *Submission 25*, p.1.

¹⁴⁴ Forbes Shire Council, *Submission 24*, p.1.

¹⁴⁵ Australia First Party (NSW) Inc, *Submission 1*, p.1.

public funding is a fair public investment to curb this practice and affirm that public, not private, interests direct local government decisions in this State.¹⁴⁶

- 4.7 The Greens also expressed support for public funding of local government election campaigns on the basis that it 'enhances democracy as it assists those who are not wealthy to engage in elections.'¹⁴⁷
- 4.8 The Residents Action Group for the Auburn Area expressed support for public funding on the basis that it 'makes for a more level playing field... [and] should reduce outside influences in the electoral process, and hence, unbiased decision making.'¹⁴⁸
- 4.9 Burwood Community Voice agreed with the arguments for public funding outlined in the Committee's *Issues Paper*, stating that private donations favour large parties:
As a local residents' group, we believe the existing private funding of local government election campaigns is unfair to groups like ourselves with limited resources and favours the large political parties who can call on resources at a state and federal level.¹⁴⁹
- 4.10 The Residents Action Network supported the introduction of public funding for local government elections on the basis that it would be 'an important tool to minimise the need for large corporate donations or private donations to political parties and candidates.'¹⁵⁰ They argued that such donations can 'create the perception of undue influence that may undermine the integrity of decision making by elected representatives'.¹⁵¹
- 4.11 The Independent Commission Against Corruption made a strong case for public funding. They gave evidence that the ICAC receives a number of complaints concerning allegations of corrupt conduct involving political donations.¹⁵² For instance, in 2009 the ICAC 'received 55 complaints where the allegations concerned political donations. This comprises approximately 2.5% of matters received in 2009'.¹⁵³
- 4.12 Of these 55 complaints, close to three-quarters related to local government.¹⁵⁴ They stated that complainants frequently make allegations about donations and the 'most common type of complaint is that an elected official has made a partial decision because of a political donation, which may or may not have been properly disclosed'.¹⁵⁵
- 4.13 The ICAC expressed their particular concern that:
...candidates for elected office have to wear competing hats: as a fundraiser and current or aspiring public official. This concern is heightened by the fact that persons with a stake in the decisions of a council, such as developers, are the most obvious fundraising targets.¹⁵⁶

¹⁴⁶ The Greens (NSW Branch), *Submission 21*, p.2.

¹⁴⁷ The Greens (NSW Branch), *Submission 21*, p.4.

¹⁴⁸ Residents Action Group for Auburn Area, *Submission 9*, p.1.

¹⁴⁹ Burwood Community Voice, *Submission 15*, p.1.

¹⁵⁰ Residents Action Network, *Submission 16*, p.1.

¹⁵¹ Residents Action Network, *Submission 16*, p.1.

¹⁵² Independent Commission Against Corruption, *Submission 13*, p.1.

¹⁵³ Independent Commission Against Corruption, *Submission 13*, p.1.

¹⁵⁴ Independent Commission Against Corruption, Answers to question taken on notice at public hearing 12 October 2010, p.1.

¹⁵⁵ Independent Commission Against Corruption, *Submission 13*, p.1.

¹⁵⁶ Independent Commission Against Corruption, *Submission 13*, p.1.

Reform proposals

4.14 Other complaints made to the ICAC include:

- Concealment of the true source or value of political donations by channelling through unconnected third parties, colleagues or in the form of in-kind contributions.
- Councillors using campaign funds raised in State election campaigns to campaign in local government elections and concealing the identity of the donor.¹⁵⁷

4.15 The ICAC submitted that many complaints are not investigated, however they reflect a perception that donations result in a conflict of interest:

majority of these allegations are not formally investigated,... typically because they are speculative, not capable of being proven, do not amount to corrupt conduct or because of unclear rules at a local government level.

... a culture of political donations involving individuals with a conflict of interest in council decision-making has fuelled perceptions of inappropriate conflicts of interest and undue influence and also represents a significant corruption risk.¹⁵⁸

4.16 Dr Robert Waldersee, ICAC, told the Committee that there were a number of factors relating to local government that increased the risk of corruption from donations, including:

...there is a large number of people involved... [There are]... questions about how knowledgeable these people are about the rules that apply to them and what they have to do. There are also many geographically dispersed micro bodies that are somewhat isolated...¹⁵⁹

Opposition to public funding

4.17 The Local Government Association of NSW and the Shires Association of NSW, indicated that they do not support public funding for local government election campaigns on the grounds that it is 'not affordable and would be inappropriate given the cost'.¹⁶⁰ They argued that 'a fair and equitable model would be difficult to ascertain due to the large number of candidates that nominate at any given election'.¹⁶¹ The LGSA also objected to public funding on the grounds that 'any public funding model would be a burden on any government especially Local Government'.¹⁶²

4.18 Cr Braybrooks, Treasurer of the Shires Association and Cr Ezzy, Vice President of the Local Government Association, gave evidence that the current regulatory regime for local government election campaigns is sufficient. Cr Ezzy stated:

There is a code of conduct, there is ICAC; there are a number of other things that govern the actions of people involved in local government. I think that there is sufficient in place at the moment...¹⁶³

¹⁵⁷ Independent Commission Against Corruption, *Submission 13*, p.2.

¹⁵⁸ Independent Commission Against Corruption, *Submission 13*, p.2.

¹⁵⁹ Mr Robert Waldersee, Executive Director, Corruption Prevention, Education and Research, Independent Commission Against Corruption, *Transcript of evidence*, 12 October 2010, p.10.

¹⁶⁰ Local Government Association of NSW and Shires Association of NSW, *Submission 17*, p.1.

¹⁶¹ Local Government Association of NSW and Shires Association of NSW, *Submission 17*, p.1.

¹⁶² Local Government Association of NSW and Shires Association of NSW, *Submission 17*, p.1.

¹⁶³ Cr Allan Ezzy, Vice President (Metropolitan), Local Government Association of NSW, *Transcript of evidence*, 12 October 2010, p.18.

- 4.19 A number of councils and councillors also opposed the introduction of public funding.¹⁶⁴ For instance, Cr Tiley submitted that the 'grass roots' nature of local government meant that it 'should be free of any sphere of government interference in respect of funding provision' and that 'continuation of relatively 'uncontaminated' local elections is essential to the ongoing integrity and public perception of the sector'.¹⁶⁵
- 4.20 Cr Tiley argued that there is no need for public funding in regional areas. He stated that while 'a case could be advanced for public funding in more largely populated metropolitan areas of NSW, it is unwarranted to have public funding in most if not all regional and rural areas of the state where there are comparatively small populations in local government areas and, as a consequence, candidates are usually known to electors'.¹⁶⁶
- 4.21 A number of inquiry participants argued that there is no need for public funding of local government election campaigns due to the low cost of campaigning.¹⁶⁷ Cr Tiley argued that in his experience there is 'commonly ample free publicity of candidates, issues and election platforms courtesy of the engaged, especially print and radio, local media'.¹⁶⁸ For instance:
- In past elections, local newspapers have provided free space (250 words max) for candidates to state their election platforms. Furthermore, Chambers of Commerce arrange "Meet the Candidates" forums which are usually well attended and reported. Other inexpensive mechanisms such as letter box drops, staffing of polling booths, street walks, meeting with community interest groups are also available and commonly used by candidates.¹⁶⁹
- 4.22 Cr Fogarty argued that self funding was appropriate given that councillors are payed fees once elected, and that campaign expenditure would comprise a small percentage of this fee over the term of a councillor. He explained:
- A successful candidate is compensated by way of a 'fee' ranging, for example, in 2007 from \$6,610 per year to \$29,080 per year depending on the size of the Council This means Councillors in NSW are compensated to the order of \$25,000 - \$120,000 over a four year term. For instance, in Willoughby a Ward Councillors receive a fees of around \$80,000 over a four year term for a servicing a Ward of 10,000 electors. If election expenditure was capped at 30 cents per elector the investment required by an aspirant to be elected equates to 3.75% of potential earnings.¹⁷⁰
- 4.23 Clarence Valley Council opposed public funding of election campaigns on the grounds that it 'will only encourage candidates to spend more on their campaigns'.¹⁷¹ Gloucester Shire Council considered that the issues raised in the Committee's Issues Paper 'had minimal relevance to Councils such as Gloucester Shire Council'.¹⁷²

¹⁶⁴ Cr Ian Tiley, *Submission 3*, p.1; Clarence Valley Council, *Submission 7*, p.1; Urana Shire Council, *Submission 28*, p.1.

¹⁶⁵ Cr Ian Tiley, *Submission 3*, p.1.

¹⁶⁶ Cr Ian Tiley, *Submission 3*, p.1.

¹⁶⁷ Mosman Council, *Submission 12*, p.1.

¹⁶⁸ Cr Ian Tiley, *Submission 3*, p.2.

¹⁶⁹ Cr Ian Tiley, *Submission 3*, p.2.

¹⁷⁰ Cr Terry Fogarty, *Submission 4*, p.10.

¹⁷¹ Clarence Valley Council, *Submission 7*, p.1.

¹⁷² Gloucester Shire Council, *Submission 18*, p.1.

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- 4.24 Bourke Shire Council opposed public funding of local government election campaigns as the 'Council is totally opposed to any party political tickets and Party political platforms for Local Government Elections'.¹⁷³
- 4.25 Mosman Council considered that the introduction of public funding 'would inevitably disadvantage genuine community-based individual candidates'.¹⁷⁴ They considered that public funding could 'attract a large number of nuisance candidates'.¹⁷⁵ Mosman Council also doubted 'whether members of the community would want to see their tax dollars used' for the public funding of local government election campaigns.¹⁷⁶

Committee comment

- 4.26 The Committee heard a number of arguments from inquiry participants, both for and against the introduction of public funding for local government election campaigns. The arguments largely mirrored those outlined in the Committee's *Issues Paper*.¹⁷⁷
- 4.27 Arguments for public funding focussed on:
- Equity and improved representation – lessening the financial inequalities of candidates and promoting greater participation by independent and minor party candidates.
 - Reducing actual or perceived undue influence – by minimising the need for large donations.
- 4.28 Arguments against public funding focussed on:
- Complexities of local government – including the large number of candidates, diverse local government areas, and differences between campaigning in small rural areas and large metropolitan areas.
 - Insufficient need for reform – due to the current regulatory regime being sufficient, and the low cost of campaigning for election to local government
 - Escalation of campaign expenditure – as a result of public funding being made available
 - 'Nuisance' candidates – could be encouraged to contest local government elections in order to access public funding.
- 4.29 On balance, the Committee considers that the arguments for the introduction of public funding outweigh those against. The Committee was persuaded by the strong case put forward by the Independent Commission Against Corruption supporting public funding for local government election campaigns. In particular, the ICAC gave evidence of:
- the significant number of allegations of corrupt conduct it receives each year regarding donations to local government election campaigns
 - their concern that candidates for local government 'have to wear competing hats as a fundraiser and current or aspiring public official'

¹⁷³ The Council of the Shire of Bourke, *Submission 26*, p.1.

¹⁷⁴ Cr Anne Connon, Mayor, Mosman Council, *Transcript of evidence*, 13 October 2010, p.2.

¹⁷⁵ Cr Connon, *Transcript of evidence*, 13 October 2010, p.2.

¹⁷⁶ Cr Connon, *Transcript of evidence*, 13 October 2010, p.2.

¹⁷⁷ Joint Standing Committee on Electoral Matters, *Public funding of local government election campaigns: Issues paper*, August 2010,

[http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/a24a92814d08ef68ca2577830009107a/\\$FILE/Issues%20paper.pdf](http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/a24a92814d08ef68ca2577830009107a/$FILE/Issues%20paper.pdf)

- the existence of a 'culture of political donations involving individuals with a conflict of interest in council decision-making' which has 'fuelled perceptions of inappropriate conflicts of interest and undue influence and ... represents a significant corruption risk.'¹⁷⁸
- 4.30 The Committee also considers that public funding has the potential to encourage diversity of participation and representation in local government elections by assisting candidates with limited means.
- 4.31 The Committee recognises that local government elections are complex, but does not believe that this should prevent the introduction of public funding. While the public funding system for state and federal government may be inappropriate for local government, there are a number of different ways in which public funding schemes can be designed and delivered to accommodate the complexity of local government (discussed below).
- 4.32 While the Committee heard evidence that the current system of regulation of local government election campaigns is sufficient to deter corruption, this does not accord with the evidence presented by the ICAC. The current regulations may be sufficient in most cases, but according to ICAC there are still a number of corruption risks including the large number of candidates; lack of knowledge of the rules and regulations; and donations from those seeking to influence council decision-making.
- 4.33 The Committee considers that the introduction of expenditure caps could address the potential problem of public funding leading to an escalation in campaign expenditure. The Committee also considers that the issue of 'nuisance' candidates could be dealt with by the adoption of a public funding model that incorporates a threshold linked to primary votes and reimbursement of actual electoral expenditure. These issues are discussed in further detail below [paragraphs 4.173 – 4.180].

RECOMMENDATION 2: The Committee recommends that the Premier introduce legislation to reform the political finance regime for local government election campaigns, including the introduction of a public funding scheme.

Donations

- 4.34 One of the areas of inquiry undertaken by the Committee was into the sources of funding in local government elections, the extent to which candidates rely on donations to fund their campaigns, whether caps on donations should be introduced, and if any caps should be the same or lower than for state elections.

Sources of funding

- 4.35 Inquiry participants indicated that local government election campaigns are typically funded by donations, self-funding and in-kind support. In particular, a number of inquiry participants indicated that candidates for local government election largely self-fund their campaigns.¹⁷⁹
- 4.36 Cr Ezzy, Vice-President of the Local Government Association stated that in his 36 years as a member of Holroyd Council

¹⁷⁸ Independent Commission Against Corruption, *Submission 13*, p.2.

¹⁷⁹ Cr Terry Fogarty, *Submission 4*, p.3 and Cr Ezzy, *Transcript of evidence*, 12 October 2010, p.16.

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'I have funded my own campaigns as an independent and, just about everyone I know who is not involved in a political party, who are independents, generally funded their own campaigns.'¹⁸⁰

- 4.37 Cr Mannoun, Councillor, Liverpool City Council, gave evidence that the majority of Liberal Party campaign expenditure for Liverpool Council elections was self-funding, coupled with a fundraiser and 'a couple of donations from members of the community.'¹⁸¹
- 4.38 Cr Connon, Mayor of Mosman Council, indicated that for the 2008 local government elections, she relied entirely on self-funding for her campaign expenses.¹⁸²
- 4.39 The Residents Action Group for the Auburn Area indicated that their funding 'has been through small donations and small functions, such as bbqs.'¹⁸³ They also submitted that they 'rely heavily on people donating their time', though the 'nil invoice' requirement is problematic, as some people might be happy, for example, to donate a room at their place, for a small function to take place, but don't want to get involved in 'invoicing'.¹⁸⁴
- 4.40 Forbes Council stated that they are 'not aware of any sources of funding for local government elections other than by the personal contribution made by the candidates'.¹⁸⁵

Caps on donations

- 4.41 The Electoral Commissioner told the Committee that, in his view, the cap on donations recommended in the Committee's previous report (\$2,000 per candidate or political party) would be too high for local government.¹⁸⁶
- 4.42 The ICAC argued that 'the local government ward structure means that even a small donation can have a significant impact on a campaign'.¹⁸⁷ The ICAC define 'small donations' as 'those that are less than \$1000 each or multiple donations from the same donor in one financial year that total less than \$1000'.¹⁸⁸ They submitted that in small wards, for instance those with less than 1,000 voters, even a 'small donation could be sufficient to fund campaign activities such as the sending of direct mail to every voter...'¹⁸⁹
- 4.43 Dr Waldersee argued that the smaller scale of local government may mean that even small donations can have a significant effect. He stated that:
- If there are, for example, six anti-development candidates and five pro-development candidates, only one person needs to be changed at the election to change the policy of the local government area. I can think of a number of councils where that sort of fine balance exists. We are primarily talking about developers. Ultimately, the pay-off is quite large for a local to medium sized developer. As a combination of factors, they

¹⁸⁰ Cr Ezzy, *Transcript of evidence*, 12 October 2010, p.16.

¹⁸¹ Cr Ned Mannoun, Deputy Mayor, Liverpool City Council, *Transcript of evidence*, 12 October 2010, p.22.

¹⁸² Cr Connon, *Transcript of evidence*, 13 October 2010, p.4.

¹⁸³ Residents Action Group for Auburn Area, *Submission 9*, p.3.

¹⁸⁴ Residents Action Group for Auburn Area, *Submission 9*, p.3.

¹⁸⁵ Forbes Shire Council, *Submission 24*, p.2.

¹⁸⁶ Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 12 October 2010, p.8.

¹⁸⁷ Independent Commission Against Corruption, *Submission 13*, p.2.

¹⁸⁸ Independent Commission Against Corruption, *Submission 13*, footnote 3, p.2.

¹⁸⁹ Independent Commission Against Corruption, *Submission 13*, p.3.

highlight the risks and incentives for people to try to achieve some outcome from a donation. However, they also highlight the difficulty of controlling the situation.¹⁹⁰

- 4.44 Cr Fogarty recommended that all donations over \$1,000 be banned.¹⁹¹ The Greens submitted that there be a 'ban on all political donations from corporations and other entities' and that donations from individuals 'be limited to \$1,000, with an exemption for party compulsory levies on parliamentarians.'¹⁹²
- 4.45 Cr Mannoun, Deputy Mayor of Liverpool Council, expressed the view that businesses should not be able to make donations and that 'only individuals on the electoral roll should be able to donate.'¹⁹³
- 4.46 The Liberal Party contended that for local government election campaigns donations should be limited to those from individuals. They stated that a lower cap for donations for local government elections compared to donations for state government elections could be facilitated by the creation of 'hypothecated Local Government Campaign Account(s)'.¹⁹⁴

Ban on donations from property developers

- 4.47 The Committee received evidence from a number of inquiry participants on the matter of the current ban on donations from property developers.
- 4.48 In their submission the ICAC recommended that 'in the absence of a blanket ban on all but small donations in local government elections, the current ban on donations from property developers remain'.¹⁹⁵
- 4.49 During evidence to the Committee, Dr Waldersee was questioned about the corruption risks, aside from donations from developers, which might be conducive to corrupt conduct at a local government level. He stated:
- The corruption in local government outside this area of campaign funding covers a broad area. So, you have licensing and inspections and those sorts of things. Most of those do not appear to have much benefit for the person interested in obtaining a licence or a clearance in funding a candidate. To pay off staff there is a single issue item. In those ones we tend to see bribes, very often straight bribes, money to an inspector. So, we believe the development issue is probably the single biggest because that is the one where a change in policy or a shift in the council will have payoffs worth millions potentially, and that is why our last recommendation is, regardless, we would support a continuation of those changes that were made last year [regarding a ban on donations from developers].¹⁹⁶
- 4.50 Dr Waldersee gave evidence that donations from developers are the main concern for ICAC regarding local government elections, and that this differs from state government elections in that at the 'state level you can look at a broader range of big decisions that might affect potential donors.'¹⁹⁷
- 4.51 The ICAC submitted that 'almost all the Commission's past investigations involving corruption in local government planning decisions involve parties likely to meet the

¹⁹⁰ Mr Waldersee, *Transcript of evidence*, 12 October 2010, p.10.

¹⁹¹ Cr Terry Fogarty, *Submission 4*, p.10.

¹⁹² The Greens (NSW Branch), *Submission 21*, p.6.

¹⁹³ Cr Mannoun, *Transcript of evidence*, 12 October 2010, p.24.

¹⁹⁴ Liberal Party of Australia (NSW Division), *Submission 29*, p.1.

¹⁹⁵ Independent Commission Against Corruption, *Submission 13*, p.7.

¹⁹⁶ Mr Waldersee, *Transcript of evidence*, 12 October 2010, p.14.

¹⁹⁷ Mr Waldersee, *Transcript of evidence*, 12 October 2010, p.15.

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definition of "property developer".¹⁹⁸ They stated that political donations 'to both sides of politics were central to the Commission's North Coast land development investigation' and 'also featured heavily in the Rockdale inquiry, Wollongong inquiry, the Brian Bourke and Julian Grill inquiries in WA'.¹⁹⁹

4.52 The Greens expressed support for the retention of the ban on donations from property developers.²⁰⁰

4.53 The Residents Action Group for Auburn Area indicated that they refuse, on principle, 'to accept any donations from developers or such people with an obvious 'vested interest'.²⁰¹

4.54 Cr Fogarty expressed concern that the term 'developer' is 'a bit restrictive'. He stated:

It is not just developers. Local government by its nature is so broad in the things it does, perhaps over 350 types of services, many times people will often seek to donate to election campaign, not just a developer, and I think that is a mistake. So that is one of the reasons why I suggest we do not allow any large-scale donations. It is too difficult to determine who is a developer and who is not.²⁰²

4.55 When questioned about corruption risks and the public perception of undue influence in relation to donations from developers, Cr Braybrooks, Mayor of Cootamundra Shire, stated that 'there is absolutely no need for any form of coercion or corruption as far as development goes in most rural councils because we are honestly desperate for it [development]'.²⁰³ Cr Ezzy of Holroyd Council stated:

From what I read and see on media, yes, there certainly is and there is certainly evidence of that through ICAC investigations, not only towards councillors but involving council officers as well, so yes, there is a perception and yes, it does happen sadly, but I guess it is no more prevalent than in some other industries, some other disciplines.²⁰⁴

Committee comment

4.56 The Committee supports a cap on donations to candidates, groups and parties contesting local government election campaigns in order to protect the integrity of local government by reducing the potential for undue influence and corruption.

4.57 An issue which emerged during the course of the inquiry was whether caps on donations to local government election campaigns should be the same or lower than for donations to state government campaigns.

4.58 Both the ICAC and the Electoral Commissioner stated that a cap on donations for local government elections should be significantly lower than caps on donations for state government elections. For instance, the ICAC argued that 'the local government ward structure means that even a small donation can have a significant impact on a campaign'.²⁰⁵ The Liberal Party submitted that a separate cap for

¹⁹⁸ Independent Commission Against Corruption, *Submission 13*, p.7.

¹⁹⁹ Independent Commission Against Corruption, *Submission 13*, p.6.

²⁰⁰ The Greens (NSW Branch), *Submission 21*, p.6.

²⁰¹ Residents Action Group for Auburn Area, *Submission 9*, p.1.

²⁰² Cr Terry Fogarty, *Transcript of evidence*, 12 October 2010, p.29.

²⁰³ Cr Michael Braybrooks, Treasurer, Shires Association of NSW, *Transcript of evidence*, 12 October 2010, p.18.

²⁰⁴ Cr Ezzy, *Transcript of evidence*, 12 October 2010, p.18.

²⁰⁵ Independent Commission Against Corruption, *Submission 13*, p.2.

donations to local government election campaigns could be facilitated by the creation of a separate 'local government campaign account'.²⁰⁶

- 4.59 Conversely, the Committee recognises that the adoption of different caps for state and local government election campaigns may create administrative difficulties for political parties that contest both state and local government elections, and might lead to confusion for all candidates as to which regulations apply to them. While a lower donation cap may be desirable in local government areas or wards with a small number of electors, it may not allow sufficient resources for those candidates in contesting wards and council areas with a large number of electors.

RECOMMENDATION 3: The Committee recommends that a cap on donations to local government election campaigns be introduced.

FINDING 1: That in developing legislation for donation caps consideration be given to:

- consistency with the donation caps applicable for state election campaigns; and
- the arguments made by the Independent Commission Against Corruption and the Electoral Commissioner for lower donation caps than those adopted for state government election campaigns.

Expenditure caps

- 4.60 A number of inquiry participants expressed support for the introduction of expenditure caps for local government election campaigns.²⁰⁷
- 4.61 The ICAC supported expenditure caps on the basis that 'a combination of public funding and donation limits will create incentives to work around the system in ways that may be corrupt in the absence of any cap on direct expenditure by candidates, groups and parties.'²⁰⁸
- 4.62 The ICAC argued that limiting spending is an effective way of reducing the need for donations:
- While a ban on all but small donations would affect the supply of donations from those with an interest in council decision-making, a limitation on campaign expenditure remains the most effective way of curtailing the demand for donations. For this reason any public funding model should also be accompanied by expenditure caps on parties, groups and candidates.
- 4.63 The ICAC also submitted that the public nature of campaign expenditure means that it is easier to quantify than donations, 'which take place in private and rely on the additional step of compliance with disclosure laws to be placed in the public domain.'²⁰⁹

²⁰⁶ Liberal Party of Australia (NSW Division), *Submission 29*, Appendix p.1.

²⁰⁷ Sutherland Shire Council, *Submission 5*, p.1; Randwick City Council, *Submission 23*, p.2; Cr Mannoun, *Transcript of evidence*, 12 October 2010, p.23; Cr Connon, *Transcript of evidence*, 13 October 2010, p.5; Mr Peter Gesling, General Manager, Port Stephens Council, *Transcript of evidence*, 13 October 2010, p.5.

²⁰⁸ Independent Commission Against Corruption, *Submission 13*, p.4.

²⁰⁹ Independent Commission Against Corruption, *Submission 13*, p.5.

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- 4.64 Dr Waldersee gave evidence to the Committee that expenditure caps alone would not be a sufficient deterrent to corrupt conduct, explaining that:
- ... to have an expenditure cap alone would mean that you can find that money anywhere. Even if the cap was only \$5,000, that is the sort of amount of money that a developer could easily offer, so they could fully fund your campaign within the expenditure cap, not under the change of last year... The reason we see expenditure caps working with public funding is that public funding alone does not meet the demand of candidates, because candidates are in a competitive arrangement and they are always trying to outspend or many believe if they can outspend they will outperform. So you can provide the money to the candidates but that will not stop them wanting more money. The two work together.²¹⁰
- 4.65 The Greens submitted that expenditure caps were 'an effective way to bring fairness to the system of electoral funding and reduce the corrupting influence of large donations'.²¹¹
- 4.66 The Residents Action Group for the Auburn Area supported limiting spending by candidates, particularly those 'with a vested personal or business interest, such as developers, real estate agents and builders [who] often self fund their campaigns (or it is funded by their 'business')' and are able to 'flood the campaign with their literature, greatly improving their chances of being elected'.²¹²
- 4.67 The Residents Action Network submitted that the introduction of a low expenditure cap would 'introduce more equality into the system which currently discriminates in favour of candidates, parties or groups with strong business or developer affiliations'.²¹³
- 4.68 Action on Health and Smoking (ASH) supported a 'cap on election expenditure to avoid the legitimate concerns that political parties could exploit public funds by "writing a blank cheque" to cover the rising costs of election funding'.²¹⁴
- 4.69 Cr Hannan supported expenditure limits in order to promote competition and ensure that 'financial status should not be an advantage or disadvantage to being elected to local government'.²¹⁵
- 4.70 Cr Mannoun stated that expenditure caps are very important as:
- We want to ensure that politicians are no longer seen in a negative light; they should be seen as community leaders. The combination of funding, money and developers taints us all.²¹⁶
- 4.71 The Local Government Association and the Shires Association supported expenditure caps, as long as they are set at a low level.²¹⁷ In relation to metropolitan councils, Cr Ezzy, Vice-President (Metropolitan) of the LGA, stated:
- I think that if you are going to stand, those who generally get elected are those who are known in the community and are known for their work in the community. That is what local government should be about, and has been about in the past: being known in the

²¹⁰ Mr Waldersee, *Transcript of evidence*, 12 October 2010, p.12.

²¹¹ The Greens (NSW Branch), *Submission 21*, p.7.

²¹² Residents Action Group for Auburn Area, *Submission 9*, p.1.

²¹³ Residents Action Network, *Submission 16*, p.2.

²¹⁴ Action on Smoking and Health Australia (ASH), *Submission 20*, p.1.

²¹⁵ Cr Judith Hannan, *Submission 2*, p.1.

²¹⁶ Cr Mannoun, *Transcript of evidence*, 12 October 2010, p.24.

²¹⁷ Cr Ezzy, *Transcript of evidence*, 12 October 2010, pp.19-20; Cr Braybrooks, *Transcript of evidence*, 12 October 2010, pp.19-20.

community—rather than someone who just rides into town, spends a massive amount just before an election, with newspaper ads and bill posters on every telegraph pole, and floods every household in the district five times before the election. There is no need for that. So, I would agree with a cap for metropolitan councils.²¹⁸

Factors affecting expenditure

4.72 A number of inquiry participants pointed to the differences between campaigning in rural, regional and metropolitan local government areas. For example, Cr Tiley submitted that:

In coastal rural and regional local government electorates, the cost of campaigning is impacted by the large number of discrete and often remote population centres. For example, Clarence Valley Council local government area has 43 towns (including Grafton City) and villages dispersed over an area of 10.440 sq km. This creates distributive and travel costs as well as logistical matters concerning, for example, staffing of a large number of polling booths. Many such costs are met by friends, relatives and supporters who voluntarily support the election campaign.²¹⁹

4.73 Cr Tiley gave evidence that 'in rural and regional areas, where you have comparatively small populations, most candidates and their merits and demerits are usually well known to the electors'.²²⁰

4.74 Port Stephens Council submitted that the following factors impact on the costs of local government election campaigns:

- Size of the local government area, including the number of electors and the physical size of the local government area.
- Increase in costs by print media due to the election.
- Loyalty of print media to advertisers.
- Socio-economic of the community
- Limitations of advertising by the electoral commission.²²¹

4.75 The Residents Action Group for Auburn Area indicated that the following factor impact on the costs of campaigning for local government:

The number of wards... as multiple wards mean separate advertising; geographical area of the Council; number of voters; no restriction on the amount of advertising material, or number of 'helpers' at booths; number of booths; changing demographics mean that there are many newspapers for other languages that need to be considered to help reach voters.²²²

4.76 Randwick City Council identified the following factors, specific to local government elections:

Factors to be considered include the large number of election candidates, the large number of independent candidates, the large variation in local government areas in terms of population, area, financial capacity etc.²²³

4.77 Forbes Shire Council submitted demographics and the size of the local government area impact on the costs of campaigning for local government elections:

²¹⁸ Cr Ezzy, *Transcript of evidence*, 12 October 2010, pp.19-20.

²¹⁹ Cr Ian Tiley, *Submission 3*, p.3.

²²⁰ Cr Ian Tiley, *Transcript of evidence*, 12 October 2010, p.34.

²²¹ Port Stephens Council, *Submission 25*, p.3.

²²² Residents Action Group for Auburn Area, *Submission 9*, p.2.

²²³ Randwick City Council, *Submission 23*, p.2.

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- i. The demographics of the LGA – the Forbes LGA has a predominantly aging population that is most effectively reached by paying for traditional print and radio media; free social-networking opportunities only reach a small part of local population able to vote.
- ii. The area of the LGA – the Forbes LGA covers 4717 sq/km and comprises one major town, located in the middle of the LGA, four villages and many localities spread throughout the LGA. A significant number of eligible voters reside outside the town area, making the cost of travel into the regions a factor for many candidates.²²⁴

Level of expenditure

- 4.78 The current level of expenditure by candidates, groups and parties in local government elections is difficult to accurately determine. The Committee received evidence from inquiry participants on the level of expenditure incurred by themselves, their members or councillors.
- 4.79 Cr Tiley submitted that his personal expenditure on election campaigns has generally been less than \$1,000. He stated:
- At the 2008 election, when I was well known in the electorate, I incurred nil election expenses. However, at the first Clarence Valley Council election in 2005 I considered it necessary to expend around \$5000.²²⁵
- Cr Tiley is a councillor on Clarence Valley Council which is an undivided council with nine councillors and 30,102 electors.
- 4.80 The Residents Action Group for Auburn Area submitted that the party spent approximately \$4,000 for two wards in the 2004 local government elections, and approximately \$4,500 across two wards in the 2008 local government elections.²²⁶ Auburn Council has two wards with five councillors per ward and an average of 15,644 electors per ward.
- 4.81 Cr Ezzy, who is a councillor on Holroyd Council, gave evidence that he spent \$5,000 on his campaign, which included 'two letterbox drops and how-to-vote cards on the day' and 'refreshments for a bbq' after the election to thank his campaign workers.²²⁷ Holroyd Council is divided into four wards, with three councillors in each ward and West Ward (which Cr Ezzy ran in) had 12,306 electors.
- 4.82 Cr Mannoun, Deputy Mayor, Liverpool City Council, indicated that the total Liberal Party expenditure across Liverpool Council elections, including wards and for directly elected mayor, was in the vicinity of \$30,000 to \$40,000.²²⁸ Liverpool City Council has two wards with five councillors in each and an average of 44,015 electors in each ward. Liverpool City Council also has a popularly elected mayor who is elected by 87,951 electors.
- 4.83 Cr Connon, Mayor of Mosman Council indicated that she spent 'about \$1,500' on her campaign for the 2008 local government election.²²⁹ Mosman Council has three wards with three councillors per ward and an average of 4,461 electors per ward.

²²⁴ Forbes Shire Council, *Submission 24*, p.2.

²²⁵ Cr Ian Tiley, *Submission 3*, p.3.

²²⁶ Residents Action Group for Auburn Area, *Submission 9*, p.1.

²²⁷ Cr Ezzy, *Transcript of evidence*, 12 October 2010, p.17.

²²⁸ Cr Mannoun, *Transcript of evidence*, 12 October 2010, p.23.

²²⁹ Cr Connon, *Transcript of evidence*, 13 October 2010, p.4.

- 4.84 Mr Gesling, General Manager of Port Stephens Council stated that it is his understanding that expenditure for Port Stephens council elections 'has ranged from a few hundred dollars to a significant amount, in the tens of thousands of dollars at times... on average... in the order of \$5,000.'²³⁰ Port Stephens Council has three wards with four councillors per ward and an average of 12,737 electors per ward.
- 4.85 Clarence Valley Council, an undivided council with nine councillors and 30,102 electors, stated that:
- At the last Clarence Valley Council elections no candidate spent more than \$1000 on his/her campaign expenses and this has been the trend over the years, with most spending considerably less. Doubtless this experience is one that is shared by the vast majority of regional and rural local government areas.²³¹
- 4.86 Cr Braybrooks, Mayor of Cootamundra Shire, an undivided council with nine councillors and 4,755 electors, gave similar evidence on the low level of spending in rural councils. He stated:
- Rural councils are very, very different insomuch as I believe almost the vast majority of rural councillors would spend less than the magic \$1,000, which obviously is the threshold for auditing, et cetera. I am aware of two councillors on the present Cootamundra Council who spent absolutely nothing on their election. I know this comes as a bit of a surprise certainly to the other levels of government and certainly to city councillors but the reality is that in a country council it is being known around town rather than advertising which gets you elected. Last election I decided to make a little bit of an effort and I spent the grand total of \$800 on a few leaflets and a few advertisements, but the person who is now my Deputy Mayor spent absolutely nothing on his election other than the fact that he is well known around town.²³²
- 4.87 The Electoral Commissioner gave evidence that the main parties do not spend a great deal of money on local government elections and that there is 'little, if any, television and radio advertising in the metropolitan area'.²³³ He stated that 'campaigns tend to be very localised, and this keeps the cost of running a campaign down to a minimum'.²³⁴
- 4.88 As an answer to a question taken on notice at the public hearing on 12 October 2010, the NSWEC provided a table of candidates from the 2008 local government elections, which included the expenditure disclosed by each candidate. This document listed the total expenditure of candidates in the 2008 local government elections at \$3,687,985.85.²³⁵ This figure only includes the expenditure disclosed by individual candidates and, as such, may not include expenditure incurred by groups or parties, which is disclosed separately. The figures provided for each candidate can also include any political donations made by the candidate, which are recorded as expenditure by the EFA, but are not considered to be electoral expenditure under the Act.
- 4.89 The amount of expenditure incurred by individual candidates varies from \$81,376.54 to nil. Nil expenditure disclosures accounted for 2,765 of the 4,245 returns received from individual candidates by the EFA.

²³⁰ Mr Gesling, *Transcript of evidence*, 13 October 2010, p.4.

²³¹ Clarence Valley Council, *Submission 7*, p.1.

²³² Cr Braybrooks, *Transcript of evidence*, 12 October 2010, p.16.

²³³ Mr Barry, *Transcript of evidence*, 12 October 2010, p.3.

²³⁴ Mr Barry, *Transcript of evidence*, 12 October 2010, p.3.

²³⁵ NSW Electoral Commission, Answer to question taken on notice at public hearing 12 October 2010.

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4.90 The type of election being contested and the size of the council or ward appears to have some effect on the level of expenditure. Out of the top ten spending candidates, seven ran as popularly elected mayoral candidates in metropolitan councils, with only one of those not contesting a councillor position as well (see Appendix 1 for further details of the ten candidates with the highest expenditure and ten other candidates). The candidate with the highest declared expenditure of \$81,376.54 was a candidate for popularly elected mayor in a council with 91,149 electors. This candidate also contested a councillor position in a ward as part of a group. The expenditure per elector for this candidate was 89 cents per elector. Another example of expenditure is the lead candidate of a group contesting councillor positions in a ward for a metropolitan council, who disclosed expenditure of \$34,029, which works out at \$3.38 per elector in the ward.

Methods for calculating expenditure caps

4.91 Port Stephens Council considered that Local Government classifications of councils could be used to set expenditure caps.²³⁶ In their submission and evidence Port Stephen put forward a model of \$2.50 to \$3.00 per vote for the quota required to get elected:

... it is related to the quota required to get elected and that is more related to an individual candidate. So in that case a bit over 2000 is the quota for within a ward [in Port Stephens], and that gives round about the \$5,000 to \$6,000 figure [as an expenditure cap].²³⁷

4.92 Port Stephens Council were of the view that, if public funding is introduced, expenditure should be capped, and that this cap could be determined by: the number of electors; density of population; and size of the electorate.²³⁸

4.93 Cr Fogarty submitted that electoral expenditure by a group should be capped at 30 to 50 cents per elector, and for a mayoral candidate at \$1 or less per elector.²³⁹ He considered that there 'may be a need due to inefficient economies of scale to provide a higher capped threshold for smaller Councils'.²⁴⁰ Cr Fogarty also submitted that for an 'undivided area, a case can be made that the cost of an election campaign is higher than for a Council divided by Wards' as it is 'less cost effective to market to a larger audience rather than a small one'.²⁴¹

4.94 Cr Mannoun, Deputy Mayor of Liverpool City Council, stated that an expenditure cap should be 'linked to per voter because the reality is that the candidate has a message; that message then needs to be communicated and that communication then incurs a cost'.²⁴² On this basis, he indicated that an appropriate amount per elector would allow for two or three letters to electors, how-to-votes, t-shirts, refreshments for campaign volunteers on election day, and other similar expenditure.²⁴³

4.95 The Greens proposed the following method for determining expenditure caps:

²³⁶ Port Stephens Council, *Submission 25*, p.1.

²³⁷ Mr Gesling, *Transcript of evidence*, 13 October 2010, p.10

²³⁸ Port Stephens Council, *Submission 25*, p.3.

²³⁹ Cr Terry Fogarty, *Submission 4*, p.3.

²⁴⁰ Cr Terry Fogarty, *Submission 4*, p.4.

²⁴¹ Cr Terry Fogarty, *Submission 4*, p.7.

²⁴² Cr Mannoun, *Transcript of evidence*, 12 October 2010, p.23.

²⁴³ Cr Mannoun, *Transcript of evidence*, 12 October 2010, p.23.

4.1 Place a cap on local government election expenditure by candidates and a group of candidates at whichever is the greater amount of: 50 cents per voter, calculated on per capita basis according to the number of voters on the electoral roll in the local government area/ward, or \$10,000; or

A suitable alternative formula could be a base cap of \$5,000 plus 50 cents per voter, calculated on per capita basis according to the number of voters on the electoral roll in the local government area/ward (similar to the UK model).

4.2 For a ballot for a popularly elected Mayor an additional expenditure cap for mayoral candidates should apply. The additional amount would be 25 cents for each voter in the local government area (i.e. 50% above the councillor expenditure cap).

4.3. Party expenditure for state registered parties for local government elections should be capped at \$500,000. This amount is to be treated as separate from campaign expenditure incurred by the party's candidate or group of candidates for a local council area or ward. Expenditure claimed under this cap must not be targeted at specific local government areas.

4.4. Local government expenditure by associated entities of political parties for the purposes of implementing an election expenditure cap are to be treated as expenditure by the political party itself, or if spent locally, as expenditure by the local group of candidates or candidate in the ward or council area.²⁴⁴

4.96 The Liberal Party supported the determination of an expenditure cap based on a dollar amount per elector.²⁴⁵

4.97 The Electoral Commissioner expressed concern about an expenditure cap that was solely based on an amount per elector, telling the Committee that '[y]ou have got some councils where there are 800 electors. The amount per vote in that council has got to be different to the amount where you have got 170,000 electors'.²⁴⁶

4.98 The Electoral Commissioner considered that the implementation of two separate expenditure caps, one for those candidates running councillor positions and another, higher cap for candidates for popularly elected mayor, could be problematic. For instance, it could create an incentive for candidates to run as mayor to take advantage of higher expenditure caps and increased amounts of public funding:

Mr BARRY: ...You might have a council where there are four wards and you have got a popularly elected Mayor. Clearly, the popularly elected Mayor may very well be able to claim reimbursement based on the number of electors in the municipality. What are you going to end up with?

The Hon. DON HARWIN: Everyone running for popularly elected Mayor.

Mr BARRY: Exactly. That is the issue you are going to get. So whatever scheme you come up with I think one has to then have the white-hat test applied to it. How can people circumvent this scheme? How can people make use of this scheme for an outcome that was not contemplated?²⁴⁷

4.99 Mr Brian DeCelis also identified a potential problem where there are two separate caps for councillor and mayoral contests. He stated:

²⁴⁴ The Greens (NSW Branch), *Submission 21*, pp.7-8.

²⁴⁵ Liberal Party of Australia (NSW Division), *Submission 29*, Appendix, p.1.

²⁴⁶ Mr Barry, *Transcript of evidence*, 12 October 2010, p.7.

²⁴⁷ Mr Barry, *Transcript of evidence*, 12 October 2010, p.7.

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So do they in fact get two spending caps? They can run as popularly elected Mayor to get the greater spending entitlement and they can also run as councillor in a ward and get a second spending cap.²⁴⁸

Time period

4.100 The ICAC commented that 'if an expenditure cap is implemented too close to an election, the impact of the cap would be minimal as the majority of expenditure would have already been incurred prior to the cap.'²⁴⁹ The Greens advocated for an expenditure cap 'to apply for the four month period up to and including an election to all candidates, registered political parties, third parties and associated entities.'²⁵⁰

4.101 The Liberal Party submitted that 'the regulated period should be the beginning of the financial year in which the general election is held.' They opposed 'having a longer regulated period because ... third parties must also have expenditure limits during the regulated period.'²⁵¹

Committee comment

4.102 The Committee heard evidence from a number of inquiry participants expressing support for the introduction of expenditure caps for local government election campaigns. The following arguments were advanced in support of expenditure caps:

- to increase integrity of the public funding system, by curtailing the demand for donations
- to ensure that the introduction of public funding does not lead to a dramatic increase in spending on local government campaigns
- to retain the 'grass roots' nature of local government campaigns
- to promote competition and equality amongst candidates.

RECOMMENDATION 4: The Committee recommends that expenditure caps be introduced for local government election campaigns.

Expenditure caps for candidates and groups

4.103 The Committee considers that an expenditure cap based on an amount per elector is the most logical way to accommodate the large variations in the number of electors per local government area. The Committee considered the expenditure caps in operation in a number of comparable international jurisdictions [see Chapter 3]. In all those jurisdictions considered by the Committee, the expenditure cap is based on either the number of electors or the population of the local government area.

4.104 The Committee recognises that the cost of campaigning in each local government area can vary, based on factors such as geography, demographics and advertising costs. However, given that unique factors will affect campaigning in most electorates, the Committee considers that a simple cap based on the number of electors should not unduly disadvantage any candidates.

²⁴⁸ Mr Barry, *Transcript of evidence*, 12 October 2010, p.7.

²⁴⁹ Independent Commission Against Corruption, *Submission 13*, p.5.

²⁵⁰ The Greens (NSW Branch), *Submission 21*, p.8.

²⁵¹ Liberal Party of Australia (NSW Division), *Submission 29*, Appendix, p.2.

- 4.105 An expenditure cap based on the number of electors also accommodates the ward system that is employed for some local government areas, as separate expenditure caps can be adopted for each ward based on an amount per elector in the ward.
- 4.106 The Committee considers that the expenditure caps for grouped and ungrouped candidates should be the same, so as not to disadvantage ungrouped candidates.

RECOMMENDATION 5: The Committee recommends that expenditure caps for local government election campaigns be based on an amount per elector and that there be consistent caps on expenditure for grouped and ungrouped candidates.

Expenditure caps for mayoral candidates

- 4.107 The Committee supports a separate expenditure cap for candidates for popularly elected mayor. The information provided by the Electoral Commission on spending levels by candidates seems to indicate that expenditure levels for mayoral candidates are higher than for other candidates and groups. In local government areas that are divided into wards, mayoral candidates are required to campaign across the whole local government area and thus their costs are likely to be significantly higher than those contesting councillor positions. A number of the international models examined by the Committee included separate expenditure caps for mayoral and councillor candidates [see paragraphs 3.12, 3.27, 3.41 and 3.64].
- 4.108 During evidence to the Committee, the Electoral Commissioner outlined a potential issue regarding the establishment of two separate expenditure caps, one for those candidates running for councillor positions and another, higher cap, for candidates for popularly elected mayor. He stated that this could encourage candidates to run for mayor in order to take advantage of higher expenditure caps and increased amounts of public funding. Mr Brian DeCelis also raised a potential issue concerning the creation of two separate spending caps, whereby a candidate may contest both mayoral and councillor election to access both expenditure caps.
- 4.109 The Committee considers that a popularly elected mayoral candidate who is also contesting a councillor position should only have access to the mayoral expenditure cap, and the amount per elector be consistent with the amount for candidates to councillor positions.

RECOMMENDATION 6: The Committee recommends that there be a separate expenditure cap for candidates for the position of popularly elected mayor, based on an amount per elector across the local government area.

Expenditure caps for registered political parties

- 4.110 The Committee heard evidence that local government campaigns tend to be based around local issues and organised locally. There is a trend within local government for a large number of independent candidates. Local government registered political parties, or micro parties, also tend to operate across a small number of local government areas, rather than across the entire state. This is in contrast to state election campaigns in which the main political parties spend large amounts on state-

wide campaigning and policy development. This issue could be subject to further consideration following implementation of any reforms arising from this report. However, it is recognised that if expenditure by candidates and groups is capped in local government areas, then in an effort to overcome these caps, expenditure could be shifted to a State level. Consequently, a separate expenditure cap may be required for registered political parties. In formulating a separate expenditure cap for registered political parties, the Committee considers that non-endorsed candidates should not be unduly disadvantaged and that the overall cap for endorsed and non-endorsed candidates should be consistent. For instance, where a political party expends funds on a local government campaign in a local government area, the endorsed candidate's cap could be reduced by the amount expended by the registered political party.

RECOMMENDATION 7: The Committee recommends that there be a separate state-wide expenditure cap for registered political parties contesting local government elections.

Level of expenditure caps

4.111 The Committee considers that expenditure caps for local government election campaigns should be lower than for state government elections. Evidence to the Committee indicated that candidates for local government elections generally spend a lower amount per elector than those contesting state or federal elections. For instance, the Electoral Commissioner stated that 'the main parties do not spend a great deal of money on local government elections' and there is 'little, if any, television and radio advertising in the metropolitan areas'.²⁵²

4.112 The Committee has examined a number of expenditure caps for local government elections operating in other jurisdictions. For instance, in Ontario (Canada), candidates for mayor are limited to \$C7,500 plus \$0.85 cents per elector and candidates for councillor are limited to \$C5,000 plus \$0.85 cents per elector.²⁵³ In Quebec, in those municipalities with more than 5,000 electors, candidates for mayor are limited to \$C5,400 plus \$0.42 per voter, for first the 20,000 voters; \$0.72 per voter, for 20,001 to 100,000 voters; \$0.54 per voter, for over 100,000 voters. Candidates for councillor are limited to \$C2,700, plus \$0.42 per voter.²⁵⁴ Expenditure limits in New Zealand are based on the population of each local government area (rather than number of electors), and range from \$3,500 for populations of less than 5,000, up to \$70,000 for populations over 250,000.

RECOMMENDATION 8: The Committee recommends that the expenditure cap for local government election campaigns reflect the reasonable cost of communicating with electors in a local government area or ward.

²⁵² Mr Barry, *Transcript of evidence*, 12 October 2010, p.3.

²⁵³ British Columbia Local Government Elections Task Force, *Report of the Local Government Elections Task Force*, 2010, pp.53-54.

²⁵⁴ Directeur général des élections du Québec website, <www.electionsquebec.qc.ca/english/municipal/media/frequency-of-elections.php> accessed 1 November 2010.

Time period

4.113 The Committee received little evidence regarding the time period during which expenditure caps should apply. The expenditure cap for state elections will operate for nearly three months for the forthcoming 2011 election, and nearly 6 months for elections thereafter. The Committee considers that the regulated period for electoral expenditure for local government campaigns should be consistent with that adopted from state government campaigns – ie. 6 months.

RECOMMENDATION 9: The Committee recommends that the regulated period for expenditure caps for local government election campaigns should be consistent with that implemented for state election campaigns, that is, 6 months.

Third party expenditure caps

4.114 Third parties include individuals or organisations that are not candidates, groups of parties, such as lobby groups, local action groups or corporations.

4.115 Given the Committee's previous recommendations to regulate expenditure by third parties in state election campaigns, the Committee sought evidence on the regulation of spending by third parties in local government election campaigns.

4.116 The ICAC submitted that the 'effect of a ban on all but small donations and a cap on direct expenditure would... be negated in the absence of corresponding reforms on third party expenditure'.²⁵⁵ As well as reaffirming their earlier submission regarding greater disclosure of third party expenditure, the ICAC favour 'the publishing of third party expenditure disclosures on the EFA website in a similar manner to which disclosures are published for candidates and groups'.²⁵⁶

4.117 The ICAC recommended that:

Any entity who, within a specified time incurs expenditure for political purposes, that is capable of benefiting a political party, group or candidate must:

- Identify that he, she or it has incurred that expense, and
- Disclose the source of the financing of that expense.²⁵⁷

4.118 The Electoral Commissioner also stated that third parties 'can take on a far more significant role in local government elections.' Consequently, he argued that third parties 'need to be regulated to ensure accountability, and to ensure that candidates are not hiding behind third party organisations'.²⁵⁸

4.119 The Electoral Commissioner expressed concern about the relationship between candidates and third parties. He stated that 'regulation of the third parties... would need to be closely examined to ensure that those expenditure caps are quite modest and that they will not steal part of the public noticeboard that would otherwise be left for candidates who are trying to run for quite modest campaigns'.²⁵⁹

²⁵⁵ Independent Commission Against Corruption, *Submission 13*, p.5.

²⁵⁶ Independent Commission Against Corruption, *Submission 13*, p.5.

²⁵⁷ Independent Commission Against Corruption, *Submission 13*, p.6.

²⁵⁸ Mr Barry, *Transcript of evidence*, 12 October 2010, p.3.

²⁵⁹ Mr Barry, *Transcript of evidence*, 12 October 2010, p.8.

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- 4.120 The Greens also supported an expenditure cap for third parties and recommended a cap of \$5,000 for local government elections.²⁶⁰
- 4.121 Cr Fogarty recommended that all third party advertising endorsing local government candidates be banned.²⁶¹

Committee comment

- 4.122 The Committee recommends that if expenditure caps are introduced for candidates and groups, then electoral expenditure by third parties should also be regulated. Third parties include individuals or organisations that are not candidates, groups of parties, such as lobby groups, local action groups or corporations.
- 4.123 During the Committee's previous inquiry regarding public funding for state election campaigns, the Committee found the following arguments regarding the introduction of third party expenditure caps to be persuasive:
- They preserve the integrity of expenditure caps, by preventing political parties and candidates from using 'front organisations' to circumvent caps
 - They prevent political communication by parties and candidates from being 'swamped' by third party advertising and other communication.
- 4.124 The Committee considers that these arguments are equally applicable for local government expenditure caps. The level of expenditure should be lower, to reflect the primary role of candidates in election contests. A ratio of spending that reflects that adopted for state government campaigns, being 20%, would seem reasonable and sufficient. As with state regulations, third party groups that spend over a particular amount should be subject to registration and disclosure requirements.

RECOMMENDATION 10: The Committee recommends that if candidates in local government elections are subject to expenditure caps, then advertising and communication by third parties also be regulated.

Disclosure and auditing

- 4.125 The Committee received evidence on the operation of the disclosure scheme as it applies to local government candidates, groups and parties. Some inquiry participants suggested that the current disclosure requirements are adequate and transparent.²⁶² Others expressed concerns with the adequacy, transparency and compliance monitoring of the current system.
- 4.126 The Electoral Commissioner argued that any system of disclosure at a local government level should:
- ...be robust; it should protect the integrity of local government elections. It should also ensure transparency, and should contribute to minimising corruption in the election process, and hopefully underpin a corruption-free decision-making process at council.²⁶³

²⁶⁰ The Greens (NSW Branch), *Submission 21*, p.8.

²⁶¹ Cr Terry Fogarty, *Submission 4*, p.8.

²⁶² Liverpool City Council, *Submission 22*, p.2.

²⁶³ Mr Barry, *Transcript of evidence*, 12 October 2010, pp.1-2.

- 4.127 The Electoral Commissioner told the Committee that this was significant in local government elections because of the ways in which local government differs from state government, emphasising that 'there is no opposition at council government.' He explained that '[t]he elected councillors become the executive, and to some extent the government. It is very different to State and Federal Parliament.'²⁶⁴
- 4.128 The Electoral Commissioner indicated that 'this imposes an additional requirement: that the disclosure regime must be very strict to ensure public accountability'.²⁶⁵
- 4.129 The Greens considered that the current disclosure system is not adequately transparent as it does not allow for the easy tracking of donations from political parties through to candidates. They stated:
- A shortcoming in the current electoral financial disclosure requirements is that when a reportable donation is made to a political party, but the purpose of the donation is for it to be utilised in a particular local election campaign, then that is not always revealed. While the party may disclose the donation and then spend it or pass it on to a local campaign, there is no way to link the donor with the local campaign. The local candidate or group of candidates simply declares receipt of funds from the party.²⁶⁶
- 4.130 The Greens submitted that this presented problems in that local donations 'can have an influence on the decision making of a local councillor and the true source and beneficiary of the donation should be revealed'.²⁶⁷ Consequently, the Greens recommended that:
- 3.4 The EFA disclosure forms be amended to require those who make reportable donations, parties and candidates to reveal whether a particular reportable donation was made to a party with the intention that the money be spent or subsequently donated to benefit a particular local campaign.
- 3.5 Donations disclosed in registered party returns should be considered to have the capacity to create conflicts of interest for all elected councillors and mayors nominated by that party who have benefited from campaign expenditure disclosed in that party's return, as if the donation had been made individually to each councillor or mayor. Further, candidates or candidate groups who have received a donation from a candidate or group in another council area or ward should be treated as if they had directly received a donation from the original donors to the donor group.²⁶⁸
- 4.131 Port Stephens Council submitted that 'the current level of disclosure surrounding local government elections is sufficient, however consideration needs to be given... to the matter of "creative accounting" and ways to avoid such situations'.²⁶⁹
- 4.132 However, the Residents Action Group for Auburn Area considered that the current disclosure regime is insufficient 'particularly for large parties, as the money can be funnelled through head office, or the branch, or the state arm'.²⁷⁰ They indicated that this means that 'significant funds were raised and expended by various candidates at prior elections, which were not declared'.²⁷¹ Other issues identified by the Residents Action Group for Auburn Area were that expenditure, 'such as negative campaigns, can be funded using an alias or third party' and the 'many examples to be found on

²⁶⁴ Mr Barry, *Transcript of evidence*, 12 October 2010, p.3.

²⁶⁵ Mr Barry, *Transcript of evidence*, 12 October 2010, p.3.

²⁶⁶ The Greens (NSW Branch), *Submission 21*, p.5.

²⁶⁷ The Greens (NSW Branch), *Submission 21*, p.5.

²⁶⁸ The Greens (NSW Branch), *Submission 21*, p.6.

²⁶⁹ Port Stephens Council, *Submission 25*, pp.2-3.

²⁷⁰ Residents Action Group for Auburn Area, *Submission 9*, p.2.

²⁷¹ Residents Action Group for Auburn Area, *Submission 9*, p.2.

Reform proposals

the Election Funding website of declarations that are reported by the donor, but not by the recipient, and vice versa.²⁷²

4.133 Cr Mannoun expressed concern that in some instances, donations are made from party branches to individual candidates. He stated:

We do not know who donated that money to the branch. I am not saying there is anything suspect about it. However, the branch as a whole raises funds and then donates the money. Where does it come from? That is not disclosed.²⁷³

4.134 Mr Brian DeCelis gave evidence that one of the most common issues raised with the Election Funding Authority is 'the lack of transparency of endorsed candidates, particularly at the last state election' as 'the parties have now moved all the financial arrangements for their local endorsed candidates to the head office level.'²⁷⁴ He stated that as a result:

... when we receive the disclosures from the endorsed candidates, or from the party agent on behalf of the endorsed candidate, they are substantially nil returns. All the donations and expenditure are channelled through the head office. When we inspect the party return we cannot extract from that any one individual candidate's financial expenditure.²⁷⁵

4.135 When questioned on whether the current arrangements should be changed so that donations and expenditure received at a local level are declared, Mr DeCelis stated:

The argument is that it does not honour the transparency intent of the legislation; it has removed the transparency of a local campaign for donations in and expenditure out. They are not transparent at a district level; they are aggregated through party disclosure, and anyone inspecting that disclosure would not be able to identify a particular district's activity.²⁷⁶

4.136 The Residents Action Group argued that voters should 'have access to consistent, comparable data on which they can base their support, and exercise their freedom to vote accordingly.'²⁷⁷ They submitted that:

Both campaign donations and expenditure should be declared one week prior to an election, in order for voters to have all financial information available to them prior to that election. No donations or expenditure should occur within the final week of an election unless it has already been declared.²⁷⁸

4.137 The issue of monitoring compliance with the disclosure regime was raised by a number of inquiry participants, such as the Greens who recommended that, to promote compliance with funding and expenditure regulations, 'compliance auditing should be compulsory' and that there should be 'continuous disclosure of electoral expenses... for the four month period up to and including any election.'²⁷⁹

4.138 The ICAC submitted that 'the key issue is not the adequacy of disclosure requirements ... but the oversight of disclosures and appropriate penalties for non-

²⁷² Residents Action Group for Auburn Area, *Submission 9*, p.2.

²⁷³ Cr Mannoun, *Transcript of evidence*, 12 October 2010, p.25.

²⁷⁴ Mr Brian DeCelis, Director, Funding and Disclosure, NSW Electoral Commission, *Transcript of evidence*, 12 October 2010, p.9.

²⁷⁵ Mr DeCelis, *Transcript of evidence*, 12 October 2010, p.9.

²⁷⁶ Mr DeCelis, *Transcript of evidence*, 12 October 2010, p.9.

²⁷⁷ Residents Action Network, *Submission 16*, p.2.

²⁷⁸ Residents Action Network, *Submission 16*, p.2.

²⁷⁹ The Greens (NSW Branch), *Submission 21*, p.9.

compliance'.²⁸⁰ They argued that the Election Funding Authority's powers to conduct compliance audits 'should be maintained and adequately resourced to ensure that it is a real deterrent to the submission of incomplete and/or false returns'.²⁸¹

4.139 Cr Forgarty recommended that the EFA should be tasked to 'quality assure ledged election returns'.²⁸² He stated:

The current disclosure requirements are not unreasonable. What appears to be lacking is a consistency in the audit process and on-line visibility of attachments to the lodged return. There is a likely lack of familiarity of commercial auditors with the requirements of the Act.²⁸³

4.140 The Committee sought evidence from the EFA on the current auditing process for disclosure forms. Mr DeCelis outlined the two stages of auditing currently in place, the first of which is the audit undertaken by a registered company auditor, which is the responsibility of the candidate, group or party. Mr DeCelis indicated that the EFA relies heavily on this auditing process, as the registered company auditor has full and unrestricted access to the records of the candidate group or party. The second stage outlined by Mr DeCelis is compliance audits by the EFA, provided for in the *Election Funding and Disclosures Act 1981*. Mr DeCelis informed the Committee of problems the EFA has encountered in trying to implement this audit power:

what did not come with the legislation was the resource to have any comprehensive and thorough audit regime for compliance audits or investigation and, for that matter, prosecution, to go about it in any substantial way. We have designed and we have implemented what we are calling in the office the desktop audit. It is trying, at best, to at least identify matters where there is failure to at least comply in respect to matters that we are able to identify by no more than perhaps perception because we do not have access to all their accounting and records.²⁸⁴

4.141 Mr DeCelis raised a number of issues with disclosures relating to the relationship between candidates, groups, parties, and their agents, including the:

- requirement for openness in the relationship between the candidate, group, party and their agents.
- difficulty in identifying situations where information may have been withheld, either intentionally or unintentionally, from the candidate, group, party or agent by any of those participants in the election.
- inability to prosecute where disclosures are incomplete because it can not be proved that 'someone knowingly performed some act that has resulted in a disclosure not being complete'.²⁸⁵

4.142 Each of these issues was raised in the Committee's previous report on *Public funding of election campaigns*.²⁸⁶

²⁸⁰ Independent Commission Against Corruption, *Submission 13*, p.4.

²⁸¹ Independent Commission Against Corruption, *Submission 13*, p.4.

²⁸² Cr Terry Fogarty, *Submission 4*, p.7.

²⁸³ Cr Terry Fogarty, *Submission 4*, p.7.

²⁸⁴ Mr DeCelis, *Transcript of evidence*, 12 October 2010, p.6.

²⁸⁵ Mr DeCelis, *Transcript of evidence*, 12 October 2010, p.6.

²⁸⁶ Joint Standing Committee on Electoral Matters, *Public funding of election campaigns*, March 2010.

Committee comment

- 4.143 The Committee agrees with the Electoral Commissioner that disclosure requirements should be robust and transparent in order to protect the integrity of local government elections and underpin corruption-free local government decision-making processes.
- 4.144 Evidence to the Committee indicated that the current disclosure system is not adequately transparent or consistent. Candidates and groups representing political parties are not required to account for their individual expenditure or donations. In some cases, expenditure and donations for individual local government areas cannot be separated from total state-wide expenditure by political parties. In some instances, donations and expenditure are disclosed by individual candidates and in others by the group. The Committee considers that the current disclosure system does not allow for accurate identification of donations and expenditure for particular local government areas.
- 4.145 The Committee considers that the disclosure requirements for local government should be strengthened so that donations and expenditure are attributed to a particular local government area. An adequate disclosure regime for donations should allow donations to be directly linked to local candidates and groups to ensure that contributions are transparent. This would also enable the monitoring of compliance with conflict of interest provisions in *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979* relating to donations and development applications [see paragraph 2.38]. An adequate disclosure regime for electoral expenditure should allow expenditure to be directly linked to the particular local government campaigns of groups or individual candidates. This is also a prerequisite in ensuring compliance with expenditure caps.
- 4.146 The Committee also heard evidence concerning the need to bolster the compliance mechanisms associated with disclosure requirements, including the Election Funding Authority's powers to conduct audits, as well as penalties for non-compliance. The Committee considered these issues as part of its previous inquiry into public funding for state government elections, and made a number of recommendations, some of which were implemented by the Election Funding and Disclosures Amendment Act 2010.

RECOMMENDATION 11: The Committee recommends that disclosure requirements be strengthened so that donations and expenditure are required to be attributed to a candidate or group in a particular local government area.

Public funding model

- 4.147 The Committee received evidence from a number of inquiry participants on factors specific to local government which might impact on the development of a public funding scheme.
- 4.148 The ICAC submitted that 'care needs to be taken to ensure that public funding does not have uneven effects on local government campaigns'.²⁸⁷ They argued that due to the 'relative greater number of independents, micro parties and grouping participating in local government elections' that 'any model that advantaged candidates and

²⁸⁷ Independent Commission Against Corruption, *Submission 13*, p.3.

parties that received support across a number of wards within a LGA, or across LGAs, would be unfair.²⁸⁸

4.149 The Electoral Commissioner expressed concern about transplanting a public funding model from state or federal government to local government. For instance, he stated that such a model:

...may in fact have a reverse impact on participation of small parties and independent candidates at local government elections. The reason for this view is that it is possible that the major beneficiaries of a public funding scheme for local government, if it were similar to that which operates at State and Federal elections, will be the main political parties, which are already participants at the State elections. In my view this may make it more difficult for emerging parties and independent candidates.²⁸⁹

4.150 Mr DeCelis also expressed concerns about applying a state or federal government scheme to local government. He stated:

... perhaps it would be difficult to get a one size fits all here. It is not unlikely that a scheme different to that which applies to State government may be the best fit. What we would end up with then would be one scheme for local government and one for the State that would not mirror each other. That might cause confusion with the candidates, groups and parties contesting to have two entirely different schemes, if that is where this heads.²⁹⁰

4.151 The Electoral Commissioner gave evidence on the difference between political parties operating at a state and local government level. He outlined the high level of organisation that often exists in a state registered political party, which operate in an ongoing manner, with access to greater staffing and financial resources and well developed internal processes for campaign organisation, accountability and financial management. Mr Barry compared this to local government registered political parties, who were often groups of people organising smaller campaigns with little infrastructure.²⁹¹

4.152 Mr Barry also argued that in developing a model of public funding for local government the more complex structure of elections for local government when compared to state government needs to be recognised. He outlined the relative complexity of local government elections:

Whereas in the parliamentary environment we have 93 electoral districts returning one member, at local government we have a completely different environment. We have councils that range from 800 or thereabouts voters up to nearly 170,000 voters. We have councils that are divided into wards. We have councils that are undivided into wards. We have councils where there are Mayors that are popularly elected and Mayors that are elected by the council. It is a very complex environment compared to what we are dealing with at State and Federal levels. To answer the question, I would say that, indeed, identifying the difference and how any scheme could operate in that different environment is going to be the biggest challenge.²⁹²

4.153 The Liberal Party (NSW) submitted that separate funding for political parties would not be necessary, as the ongoing administrative requirements are not the same with local government as with state government.²⁹³

²⁸⁸ Independent Commission Against Corruption, *Submission 13*, p.3.

²⁸⁹ Mr Barry, *Transcript of evidence*, 12 October 2010, p.3.

²⁹⁰ Mr Barry, *Transcript of evidence*, 12 October 2010, p.4.

²⁹¹ Mr Barry, *Transcript of evidence*, 12 October 2010, p.8.

²⁹² Mr Barry, *Transcript of evidence*, 12 October 2010, pp.3-4.

²⁹³ Liberal Party of Australia (NSW Division), *Submission 29*, Appendix, p.1.

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Threshold

- 4.154 The Greens advocated for public funding to be provided to 'those candidates and groups who gain four per cent or more of the primary vote and those who are elected'.²⁹⁴ Australia First Party (NSW) also supported a threshold of 4% of the primary votes.²⁹⁵
- 4.155 Although the Liberal Party (NSW) supported a threshold of 4, they observed that a low expenditure cap and no public funding may be preferable, given the large number of elections in local government.²⁹⁶
- 4.156 Cr Tiley gave evidence to the Committee that 'public funding should only be available if a person is elected to council' in order to avoid nuisance candidates seeking to profiteer from public funding.²⁹⁷
- 4.157 According to information provided by the NSWEC, of 4,245 candidates in the 2008 local government elections, 3,757 gained more than 4% of the primary vote. 2,483 of these candidates had disclosed expenditure.²⁹⁸

Reimbursement or entitlement

- 4.158 Most inquiry participants supported a reimbursement model for the public funding of local government election campaigns.²⁹⁹ The ICAC argued that the 'the variable nature of local government election campaigns may... lead to a significant number of candidates holding unspent funds' and that such funds could be 'misappropriated for personal use, depending on the public funding model chosen'.³⁰⁰ They recommended that public funding for local government elections '... be directly linked to campaign expenditure that is verified by records such as receipts'.³⁰¹
- 4.159 However, the Australia First Party (NSW) expressed a contrary view, arguing that:
Candidates and registered parties have burdens of reporting expenditure to qualify for State funding. It may be far better for the present purpose to simply pay the money to the candidate or party once the 4% threshold is crossed. That eliminates parts of the audit and other processes with considerable savings of time and money. If a candidate or a party did 'profit' from the election, it would hardly be excessive and that circumstance (if it occasionally occurred) would be more than balanced by those general savings achieved by all.³⁰²

Calculation/model

- 4.160 The ICAC argued that 'a public funding model that took into account the number of electors would help ensure that expenditure reimbursement levels were reasonable'.³⁰³
- 4.161 The Greens submitted that:

²⁹⁴ The Greens (NSW Branch), *Submission 21*, p.4.

²⁹⁵ Australia First Party (NSW) Inc, *Submission 1*, p.1.

²⁹⁶ Liberal Party of Australia (NSW Division), *Submission 29*, Appendix, p.1

²⁹⁷ Cr Tiley, *Transcript of evidence*, 12 October 2010, p.33.

²⁹⁸ NSW Electoral Commission, Answer to question taken on notice at public hearing 12 October 2010.

²⁹⁹ Independent Commission Against Corruption, *Submission 13*, p.3; Residents Action Group for Auburn Area, *Submission 9*, p.2; Cr Mannoun, *Transcript of evidence*, 12 October 2010, p.26.

³⁰⁰ Independent Commission Against Corruption, *Submission 13*, p.3.

³⁰¹ Independent Commission Against Corruption, *Submission 13*, p.3.

³⁰² Australia First Party (NSW) Inc, *Submission 1*, pp.1-2.

³⁰³ Independent Commission Against Corruption, *Submission 13*, p.3.

The size of the funding pool for each council or ward should be the same as applies for Legislative Assembly seats in a general election, adjusted according to the number of voters on the electoral roll for each council or ward.³⁰⁴

- 4.162 The Greens also considered that the 'maximum funding entitlement of a candidate or group to be calculated by reference to the number of votes or percentage of vote obtained' and that no candidate or group 'receive more than half of the total pool of potential funding available for the council or ward contested'.³⁰⁵ In terms of the payment of public funding, they considered that:
- ...in relation to candidates or groups of candidates endorsed by state registered political parties [funding] should be paid to the registered political party unless the political party advises the Election Funding Authority to make the payment to the bank account of the relevant group of candidates or candidate.
- 4.163 The Residents Action Group for Auburn Area indicated that 'if the intention is to reimburse on a 'per vote' figure... an amount of \$2 per vote allows for an adequate campaign, but ... there should be an upper limit of say \$10,000'.³⁰⁶
- 4.164 The Australia First Party (NSW) suggested that a reasonable amount of public funding for local government election campaigns 'may be half that which in (sic) paid by the State of New South Wales for elections to the Parliament'.³⁰⁷
- 4.165 Tamworth Regional Council submitted that while it did not have a firm position in relation to a model for public funding, 'any funds provided to the candidate should be capped at a maximum amount based on a monetary amount per primary vote recorded by the candidate...'.³⁰⁸
- 4.166 Cr Hannan suggested that 'public funding should cover the minimum 'no frills' campaign' which may include 'one mailout to electors, how to votes and a reasonable number of corflutes'.³⁰⁹
- 4.167 Dr John Lusk and Mrs Ruth Lusk submitted that 'up to a maximum of two thousand dollars for campaign use should be supplied to each candidate and paid for from public funds' and that 'no additional sources of funding should be allowed'.³¹⁰
- 4.168 Liverpool City Council submitted that public funding for local government candidates could be in two forms. Firstly, 'the provision of candidate/platform information across an electoral area through a defined communication campaign which removes as far as possible partisan political messages'.³¹¹ Secondly, 'an allowance, based on an agreed per elector quantum, for candidates to promote their messages'.³¹²

Source of funding

- 4.169 All inquiry participants that addressed the question of whether state or local government should pay for public funding for local government election campaigns

³⁰⁴ The Greens (NSW Branch), *Submission 21*, p.4.

³⁰⁵ The Greens (NSW Branch), *Submission 21*, p.4.

³⁰⁶ Residents Action Group for Auburn Area, *Submission 9*, p.2.

³⁰⁷ Australia First Party (NSW) Inc, *Submission 1*, p.1.

³⁰⁸ Tamworth Regional Council, *Submission 19*, p.1.

³⁰⁹ Cr Judith Hannan, *Submission 2*, p.1.

³¹⁰ Dr John and Mrs Ruth Lusk, *Submission 10*, p.2.

³¹¹ Liverpool City Council, *Submission 22*, p.1.

³¹² Liverpool City Council, *Submission 22*, p.1.

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indicated that the state government should bear responsibility for the provision of funding.³¹³

4.170 Forbes Shire Council submitted that:

Many regional and rural councils have an insufficient tax base to raise additional funds to finance local government elections. In contrast to State Government revenue opportunities, councils primary source of income is through rates levy, which is subject to regulatory rate-pegging caps. Grassroot governments should spend their limited resources on providing core services to their local communities and not on the funding of electoral spending imposed by State Government legislation.³¹⁴

4.171 The Electoral Commissioner stated that the provision of funding by the State Government for candidates in local government elections would be the 'easiest' option to administer.³¹⁵ The Electoral Commissioner raised a number of issues concerning requiring local councils to pay for public funding, concerning how funding would be centrally administered, who would be responsible for the funding for political parties operating in more than one local government area and the 'challenging relationship' the NSWEC already has with councils in relation to the conduct of local government elections.³¹⁶

4.172 When questioned on the administrative arrangements for a scheme if local government were to be responsible for public funding of local government elections, the Electoral Commissioner stated:

I would prefer that the legislation deal with it by formula as to how much candidates are to be reimbursed. I would prefer that the Authority did the reimbursing and the councils pay us.³¹⁷

Committee comment

4.173 The Committee supports the introduction of public funding for local government election campaigns [see paragraph 4.26 - 4.33 and Recommendation 2].

4.174 In considering an appropriate public funding model, the Committee has examined public funding schemes in a number of other jurisdictions [Chapter 3]. A number of Canadian provinces provide public funding in the form of tax credits or rebates for donors [see paragraphs 3.15 – 3.16, 3.31, and 3.43 – 3.44].

4.175 A scheme has been adopted in Quebec (Canada) for local government elections, whereby those who receive 15% of the primary vote are eligible for reimbursement of 50% of their campaign expenses (subject to a cap on expenditure). This is a similar model to the new public funding scheme for New South Wales state elections, which will commence on 1 January 2011, which is based on reimbursement of a percentage of campaign expenditure, provided a candidate or group meets a threshold of 4% of primary votes.

³¹³ Cr Ian Tiley, *Submission 3*, p.2; Port Stephens Council, *Submission 25*, p.2; Residents Action Group for Auburn Area, *Submission 9*, p.2; Sutherland Shire Council, *Submission 5*, p.1; Lane Cove Council, *Submission 6*, p.1; Clarence Valley Council, *Submission 7*, p.1; Campbelltown City Council, *Submission 11*, p.1; The Hills Shire Council, *Submission 14*, p.1; Residents Action Network, *Submission 16*, p.3; Liverpool City Council, *Submission 22*, p.2; Randwick City Council, *Submission 23*, p.2; Forbes Shire Council, *Submission 24*, p.1; Cr Mannoun, *Transcript of evidence*, 12 October 2010, p.26; Cr Connon, *Transcript of evidence*, 13 October 2010, p.2.

³¹⁴ Forbes Shire Council, *Submission 24*, p.1.

³¹⁵ Mr Barry, *Transcript of evidence*, 12 October 2010, p.5

³¹⁶ Mr Barry, *Transcript of evidence*, 12 October 2010, p.5.

³¹⁷ Mr Barry, *Transcript of evidence*, 12 October 2010, p.5.

- 4.176 The system of matching funds employed in New York City is very different from the public funding schemes currently in operation in Australia. As part of the Committee's previous inquiry into public funding for state government elections, the ICAC submitted that a system based on matching funds 'would create an incentive to maximise such funding by splitting donations, or otherwise working around the donation limit to come within the designated threshold'.³¹⁸ The Committee agrees with ICAC that a local government campaign funding system based on 'matching funds' would not be appropriate for New South Wales.
- 4.177 Of the formulas proposed by inquiry participants, the Committee supports a public funding model based on reimbursement for a percentage of expenditure (subject to an expenditure cap), provided that a candidate or group achieves a certain percentage of primary votes.
- 4.178 The Committee notes that the eligibility threshold for public funding for state government campaigns is 4% of the primary vote. According to information provided by the Electoral Commissioner, at the last NSW local government elections, 3,757 candidates achieved above 4% of the primary vote, which is 88.5% of total candidates. Of those candidates who received over 4% of the primary vote, 34% did not declare any expenditure.
- 4.179 The Committee agrees with the overwhelming evidence from inquiry participants that public funding should be based on reimbursement of electoral expenditure, rather than entitlement.
- 4.180 The Committee also agrees that the state government should bear the responsibility for financing the public funding of local government elections.

RECOMMENDATION 12: The Committee recommends that the public funding model for local government election campaigns be based on the reimbursement of a percentage of expenditure (subject to an expenditure cap), provided that a candidate or group achieves a certain threshold percentage of primary votes.

RECOMMENDATION 13: The Committee recommends that the State government be responsible for financing the public funding of local government election campaigns.

Other forms of public funding

- 4.181 Some inquiry participants supported different types of public funding apart from reimbursement of campaign expenses. For instance, while Cr Fogarty did not support public funding in the form of reimbursement of electoral expenditure, he recommended that public funding be restricted 'to meeting the costs of statutory audits, preferably to be undertaken by the Election Funding Authority on behalf of candidates from their Electoral Expenditure Returns'³¹⁹
- 4.182 Cr Fogarty also recommended that:

³¹⁸ See Joint Standing Committee on Electoral Matters, *Public funding of election campaigns*, March 2010, at paragraph 7.107.

³¹⁹ Cr Terry Fogarty, *Submission 4*, p.4.

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The Election Funding Authority could provide low or no-interest loans to candidates to assist with campaigns. Any public funding or loan should only be paid to an individual candidate, Official Agent or Group Leader of a Group ticket.³²⁰

- 4.183 One of the main alternatives to public funding that was raised throughout the inquiry was the provision of some form of support for candidates, groups and local government registered parties to complete the disclosure auditing requirements.
- 4.184 The Residents Action Group for Auburn Area submitted that the current auditing process for disclosure is 'an onerous problem for small groups', in that it is 'difficult to find an auditor who can complete the job within the 6 week timeframe.'³²¹ They also submitted that the costs of auditing are 'probably more than our income, particularly as it has to be done every six months.'³²²
- 4.185 The Residents Action Network considered that local government candidates could be assisted by 'provision for the Election Funding Authority to conduct audits in-house, which would be more impartial than private auditing.'³²³
- 4.186 Liverpool City Council submitted that 'assistance for auditing financial reports' should be offered as a form of public funding.³²⁴
- 4.187 The Australia First Party (NSW) submitted that public funding 'could be extended such that a small nominal payment be made annually to registered parties to assist with meeting the costs of their reporting obligations.'³²⁵
- 4.188 The Committee took evidence from Mr Brian DeCelis on the option of having the Election Funding Authority conduct the audit of disclosures in-house. Mr DeCelis expressed concern about the logistical feasibility of such a plan, highlighting the increase in resources this would require:
- ...the audit function within the authority would need to substantially increase to cope with that demand. I have here some numbers in front of me. At the last local government general election, that would have constituted ... close to 800 audits of disclosures. That is how many were required by the authority at the last local government general election—800 audits. That would be quite a demand to audit them to the same extent as a registered company auditor would be required to.³²⁶
- 4.189 Mr DeCelis also argued that centralising the audit function within the EFA would be impractical because undertaking the audit requires 'full and unrestricted access' to the funding and campaign records of parties, groups or candidates. He informed the Committee that for the 2008 election this would have included 45 registered parties, approximately 400 groups and 330 candidates.³²⁷ Mr DeCelis argued that:
- [t]o have full and unrestricted access to their records, geographically to have to either visit each of those or have them bring their records to us would present practical difficulties.

³²⁰ Cr Terry Fogarty, *Submission 4*, p.10.

³²¹ Residents Action Group for Auburn Area, *Submission 9*, p.2.

³²² Residents Action Group for Auburn Area, *Submission 9*, p.2.

³²³ Residents Action Network, *Submission 16*, p.2.

³²⁴ Liverpool City Council, *Submission 22*, p.1.

³²⁵ Australia First Party (NSW) Inc, *Submission 1*, p.2.

³²⁶ Mr DeCelis, *Transcript of evidence*, 12 October 2010, p.4.

³²⁷ Only groups and candidates with expenditure or donations over \$2,500 were required to have their disclosures audited by a registered company auditor, see paragraph 2.37.

- 4.190 Mr DeCelis stated that providing funding to candidates, groups and parties to assist with the cost of an audit 'may well be a more practical approach'. He also suggested that changing the requirement for an audit to be conducted by a registered company auditor to allow Certified Practising Accountants or chartered accountants may also assist in this issue.
- 4.191 The Electoral Commissioner suggested that 'seeding' funding could be provided for emerging political parties who are not beneficiaries of state election public funding. This funding could help smaller political parties access advice and assistance to understand compliance and disclosure obligations, develop campaign strategies or skills and establish administrative systems. These areas were identified as areas of concern for smaller parties by the Electoral Commissioner and Mr DeCelis in evidence to the Committee.³²⁸

Committee comment

- 4.192 The Committee considers that public funding could be provided to candidates in the form of an allowance for compliance with auditing requirements. The Committee heard evidence that the current auditing process for disclosure forms places an onerous burden on small political parties, groups and independent candidates. While the Election Funding Authority may be the most impartial and expert organisation to conduct the audits, the Committee has noted the number of practical difficulties with this proposal.

RECOMMENDATION 14: The Committee recommends that, to ensure compliance with disclosure requirements, public funding could be introduced in the form of an allowance to candidates and groups to assist with the costs of auditing as required under the *Election Funding and Disclosures Act*.

Compliance and enforcement

- 4.193 As part of its previous inquiry into a public funding model for state election campaigns, the Committee made a number of recommendations relating to compliance and enforcement of electoral funding laws. A number of these recommendations were implemented in the *Election Funding and Disclosures Amendment Act 2010*. The Committee considers that compliance monitoring and penalties for breaches applying to local government campaigns should be consistent with those applying to state government election campaigns.

RECOMMENDATION 15: The Committee recommends that compliance monitoring and penalties for breaches are consistent with those applying at a State level.

Other regulation

- 4.194 A number of inquiry participants suggested further regulation of campaign activity to reduce the cost of campaigns and create a more level playing field. The Residents Action Group for Auburn Area suggested that the following measures could be introduced to reduce the cost of campaigning:

³²⁸ Mr Barry, *Transcript of evidence*, 12 October 2010, p.8; and Mr DeCelis, *Transcript of evidence*, 12 October 2010, p.4.

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... allow all parties to display a 'How to Vote' electronically and also have available an area, within the polling area or even in the booths, where candidates can electronically display their platform, should voters be interested in checking; this way you would not need posters, how to votes, or thousands of people handing out lots of paper outside the election booths, which might make for a more pleasant experience for many voters who have 'run the gauntlet'. These should be available in community languages.

Otherwise, or as well, it would be a good idea to limit the number of posters and/or campaign workers per polling station either outright or related to the anticipated turn out of voters thereat.³²⁹

4.195 Burwood Community Voice suggested that a 'public funding model will only be successful if there is a new model for how local government campaigns are conducted'.³³⁰ They propose the following regulations for local government election campaigns:

- No candidate could independently issue any election campaign material including pamphlets, advertisements, posters and corflute signs.
- An independent authority, such as the Local Council or the NSW Electoral Commission, would issue an 'election campaign paper' in every local government area two to four times during the election campaign... The printing and delivery of the paper would be publicly funded.
- Space would be allocated in the election campaign paper for candidates to present their election campaign information...
- Similarly, a website could be established for each local government area to display information about each candidate...
- The independent authority would arrange for candidate forums...
- ... the independent election authority would advertise the election and provide information for the community to pick up election material...
- Candidates would still be able to doorknock and stand at various locations such as shopping centres and train stations. However, they would only be allowed to hand out the election paper and not their own pamphlets.
- On Election Day, no signs or posters for candidates would be allowed at polling booths,... Candidates or their representatives could hand out approved 'how to vote' material for their candidacy or group.
- Public funding would be provided for all candidates to have 'how to vote' material printed...³³¹

4.196 Cr Fogarty proposed that in order to contain the costs of campaigning for local government, brochures, how-to-vote cards and posters could be limited to two-colour printing. He also contended that:

...consideration be given to tasking NSW Procurement to issue a Tender for the distribution and delivery of promotional materials so candidates for LG Elections could secure services at a group discounted price from accredited sources...

...the Returning Officer at Local Government Elections assume responsibility for the distribution of How-to-vote cards on election day and the placement of a limited number of candidates' posters outside polling booths.³³²

³²⁹ Residents Action Group for Auburn Area, *Submission 9*, p.2.

³³⁰ Burwood Community Voice, *Submission 15*, p.1.

³³¹ Burwood Community Voice, *Submission 15*, p.2.

4.197 Port Stephens Council considered that 'assistance could be provided to candidates by way of limiting the type and quantity of advertising candidates can display.'³³³

Committee comment

4.198 The Committee recognises that the regulatory measures outlined above would limit local government campaign expenditure, thus lessening the need for donations and public funding and increasing competition between candidates. However, the Committee is concerned that such measures would interfere with freedom of political communication. The Committee considered this issue extensively as part of its earlier inquiry into the public funding of state election campaigns³³⁴.

Research Report on local government election finance

4.199 On 23 November 2010, the Committee received a letter from the Electoral Commissioner requesting that the Committee delay its inquiry report 'pending a report from Dr Joo-Cheong Tham, Senior Lecturer in Law at the University of Melbourne, on public funding with respect to Local Government elections' [see Appendix 2]. The Electoral Commissioner advised the Committee that he had commissioned Dr Tham to write a report on the public interest issues surrounding public funding and disclosure with respect to local government registered political parties, candidates and donors. He advised that Dr Tham's report will be completed and published on the Electoral Commission website shortly. The Electoral Commissioner also stated that he recognises that 'time is of the essence and I understand that you may wish to finalise the report before the end of the year.'

Committee comment

4.200 The Committee would have preferred to have had time to consider and deliberate on Dr Tham's report, which will make an important contribution to the debate concerning political finance reform for local government elections. However, given the time constraints faced by the Committee, it is unable to delay publishing the report of its inquiry. The Committee is of the view that, in considering the recommendations arising from the Committee's inquiry, the Premier should have regard to the report to be published by the Electoral Commissioner.

RECOMMENDATION 16: The Committee recommends that, in considering the above recommendations, the Premier have regard to the forthcoming research report to be published by the Electoral Commissioner.

³³² Cr Terry Fogarty, *Submission 4*, p.3.

³³³ Port Stephens Council, *Submission 25*, p.2.

³³⁴ Joint Standing Committee on Electoral Matters, *Public funding of election campaigns*, March 2010.

Appendix 1 – Detail of candidate expenditure

Top spending candidates

Name of candidate	Council	Expenditure	Metropolitan or regional	Council Structure	Mayoral Candidate	Number of candidates	Number of electors	Part of Group of party	Expenditure for group	Did Candidate get elected?	Did others in the group get elected	Expenditure per elector
Candidate 1	Hornsby (Ward C)	\$81,376.54	Metropolitan	Popularly elected mayor. Three wards of three councillors	Yes	Ward C – 18 Mayoral - 2	Ward C – 30,354 Mayoral – 91,149	Group C Three candidates Candidate 1 was in second position for the group	Total expenditure for group: \$81,376.54 ³³⁵	No	One from Group C (Not candidate 1)	Combined candidate and group spend – 89 cents per elector
Candidate 2	North Sydney (Victoria Ward)	\$50,985.61	Metropolitan	Popularly Elected mayor. Four wards of three councillors	Yes	Victoria Ward – 7 Mayoral – 3	Victoria Ward – 6,761 Mayoral – 28,690	Group B Four Candidates	Expenditure by individual candidates total \$999 Group disclosure lists \$999 expenditure	Yes - Mayor	Second and third candidates from Group B	Mayoral Candidate spend - \$1.78 per elector Group spend – 29 cents per elector for the ward.

³³⁵ Candidate was the only candidate from Group C in Ward C that lodged a disclosure. Candidate 1 lists \$18,058.01 as donations made by candidate to three other candidates that ran with Candidate 1. On their Declaration of Political Donations and Electoral Expenditure for a Candidate, Candidate 1 indicated that these 'donations' were costs paid by Candidate 1 for electoral materials, and which he had expected to be reimbursed by the candidates. Candidate 1 indicated that legal action was pending for recovery of these costs from the other candidates.

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Name of candidate	Council	Expenditure	Metropolitan or regional	Council Structure	Mayoral Candidate	Number of candidates	Number of electors	Part of Group of party	Expenditure for group	Did Candidate get elected?	Did others in the group get elected	Expenditure per elector
Candidate 3	Willoughby (Middle Harbour Ward)	\$45,671.28 ³³⁶	Metropolitan	Popularly elected mayor. Four wards of three councils	No	Middle Harbour Ward – 11	Middle Harbour Ward - 8,979	Group C Four Candidates	The Group C disclosure lists \$22,835.64 of expenditure	No	No	Candidate spend - \$5.09 per elector in the ward Group spend – \$2.54 per elector in the ward ³³⁷
Candidate 4	Hornsby (Ward B)	\$39,098.86 ³³⁸	Metropolitan	Popularly elected mayor. Three wards of three councillors	Yes	Ward B – 20 Mayoral- 2	Ward B – 31,585 Mayoral – 91,149	Group B Six candidates	Group B disclosed expenses \$38,522.88 Second candidate for Group B - \$268.04	Yes – Mayor	Second and third candidates from Group B	Mayoral candidate spend – 19 cents per elector. Group spend - \$1.23 per elector in the ward ³³⁹

³³⁶ Candidate 3's disclosure lists a total of \$22,835.64 as the candidate's individual expenditure, and a further \$22,835.64 as a political donation by the candidate to Group C (of which he was lead candidate). As the items, suppliers and amounts attributed as a donation by the candidate were identical to that listed under expenditure, and no explanation is provided, it is unclear as to whether Candidate 3 has halved the costs and divided it between them and the group, or if the political donation by candidate 3 to Group C is the electoral expenditure in whole. Group C disclosed an amount of \$22,835.64, which matches the amount disclosed as a donation to the group by Candidate 3.

³³⁷ This figure may have been included in the candidate expenditure – see footnote 2.

³³⁸ This amount is from Candidate 4's original disclosure, which included group expenditure as well as expenditure incurred by the candidate's in relation to the mayoral elections. Candidate 4 lodged an amendment to their disclosure, as well as an additional, separate disclosure for Group B. According to the amended disclosure Candidate 4's expenses totaled \$17,144.49.

³³⁹ These figures are calculated from information contained in amended disclosures, see footnote 4.

Public funding of local government election campaigns

Name of candidate	Council	Expenditure	Metropolitan or regional	Council Structure	Mayoral Candidate	Number of candidates	Number of electors	Part of Group of party	Expenditure for group	Did Candidate get elected?	Did others in the group get elected	Expenditure per elector
Candidate 5	Liverpool	\$35,702.68	Metropolitan	Popularly elected mayor. Two wards of five councillors	Yes – did not contest a ward	Mayoral – 8	Mayoral – 87,951	No		No		Candidate spend – 41 cents per elector
Candidate 6	Marrickville (West Ward)	\$34,029	Metropolitan	Four wards of two councillors	N/A	West Ward – 14	West Ward – 10,067	Group A Three candidates	Third candidate for Group A - \$572	Yes	No	Candidate spend - \$3.38 per elector in the ward Combined group spend - \$3.44 per elector in the ward
Candidate 7	Liverpool (North Ward)	\$33,582.23	Metropolitan	Popularly elected mayor. Two wards of five councillors	Yes	North Ward – 28 Mayoral - 8	North Ward – 43,276 Mayoral – 87,951	Group D Five candidates	Group D disclosed expenses \$2,271.50 Fourth candidate for Group D - \$589.83	Yes – as councillor	No	Mayoral candidate spend – 38 cents per elector Group spend – 7 cents per elector in the ward.

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Name of candidate	Council	Expenditure	Metropolitan or regional	Council Structure	Mayoral Candidate	Number of candidates	Number of electors	Part of Group of party	Expenditure for group	Did Candidate get elected?	Did others in the group get elected	Expenditure per elector
Candidate 8	Fairfield (Parks Ward)	\$33,298.51	Metropolitan	Popularly elected mayor. Three wards of four councillors	Yes	Parks Ward – 21 Mayoral – 3	Parks Ward – 36,582 Mayoral – 106,402	Liberal Party	The Liberal Party Parks Ward Group disclosed expenditure of \$5,037.50	Yes – as councillor	Second from Liberal Party Group in Parks Ward	Mayoral candidate spend – 31 cents per elector. Group spend – 14 cents per elector in the ward.
Candidate 9	North Sydney (Wollstonecraft Ward)	\$32,983.79	Metropolitan	Popularly Elected mayor. Four wards of three councillors	Yes	Wollstonecraft – 9 Mayoral – 3	Wollstonecraft – 7,571 Mayoral – 28,690	Group B Three candidates	Group B disclosed expenses \$9,238	Yes – as councillor	No	Mayoral candidate spend - \$1.15 per elector Group spend - \$1.22 per elector in the ward.
Candidate 10	Orange	\$32,968.03	Regional	Undivided Twelve councillors	N/A	43	21,436	Group A Six candidates	A separate disclosure for Group A was lodged, but with identical expenditure	Yes	Second from Group A	Candidate spend - \$1.54 per elector.

Random selection from other candidates with disclosed expenditure

Name of candidate	Council	Expenditure	Metropolitan or regional	Council Structure	Mayoral Candidate	Number of candidates	Number of electors	Part of Group of party	Expenditure for group	Did Candidate get elected?	Did others in the group get elected	Expenditure per elector
Candidate a	Griffith	\$8,552.29	Regional	Popularly elected mayor. Undivided Eleven councillors	No	23	13,571	Ungrouped		No		Candidate spend – 63 cents per elector
Candidate b	Coffs Harbour	\$1,886.68	Regional	Popularly elected mayor. Undivided, eight councillors	No	38	38,968	Ungrouped		No		Candidate spend – 5 cents per elector
Candidate c	Muswellbrook	\$760	Regional	Undivided, twelve councillors		20	8,376	Ungrouped		Yes		Candidate spend – 9 cents per elector
Candidate d	Tenterfield (Ward A)	\$262.36	Regional	Five wards of two councillors		3	740	Ungrouped		Yes		Candidate spend – 35 cents per elector in the ward
Candidate e	Port Stephens (Central Ward)	\$16,737.80	Regional	Three wards of four councillors		30	13,176	Group E	The Group E disclosure listed \$18,148.47 of expenditure	Yes	Second candidate from Group E.	Candidate spend - \$1.27 per elector in the ward. Group spend - \$1.38 per elector in the ward.

Joint Standing Committee on Electoral Matters

Name of candidate	Council	Expenditure	Metropolitan or regional	Council Structure	Mayoral Candidate	Number of candidates	Number of electors	Part of Group of party	Expenditure for group	Did Candidate get elected?	Did others in the group get elected	Expenditure per elector
Candidate f	Greater Taree	\$3,988.40	Regional	Popularly elected mayor. Undivided, eight councillors	Yes	Councillor – 18 Mayoral - 6	Council – 28,968 Mayoral – 28,871	Ungrouped		Yes – as councillor		Mayoral candidate spend – 14 cents per elector Councillor candidate spend – 14 cents per elector.
Candidate g	Mosman (Balmoral Ward)	\$2,043.80 ³⁴⁰	Metropolitan	Three wards of three councillors		10	4,444	Group A	Group A disclosure lists \$2,043.80 of expenditure ³⁴¹	Yes		Candidate spend – 46 cents per elector in the ward Group spend – 46 cents per elector in the ward Combined spend ³⁴² - 92 cents per elector in the ward.

³⁴⁰ The disclosure for Group A lists \$2,053.16 expenditure – the candidate noted on the form that the only invoice for expenditure was for \$2,043.80, but an additional \$9.36 was paid to cover late payment of the invoice.

³⁴¹ It is unclear as to whether the \$2,043.80 listed on the Group A disclosure is the same \$2,043.80 disclosed on Candidate g's individual candidate disclosure.

³⁴² Assuming the Group A disclosed expenditure is in addition to Candidate h's disclosed expenditure.

Public funding of local government election campaigns

Name of candidate	Council	Expenditure	Metropolitan or regional	Council Structure	Mayoral Candidate	Number of candidates	Number of electors	Part of Group of party	Expenditure for group	Did Candidate get elected?	Did others in the group get elected	Expenditure per elector
Candidate h	Sutherland (D Ward)	\$1,515.89	Metropolitan	Five wards of three councillors		12	26,168	Australian Labor Party	ALP Disclosure for D Ward lists \$7,162.56 of expenditure	Yes	No	Candidate spend – 6 cents per elector in the ward. Party spend – 27 cents per elector in the ward. Combined spend – 33 cents per elector in the ward.
Candidate i	Blayney	\$1,025.90	Regional	Undivided, seven councillors		14	4,218	Ungrouped		Yes		Candidate spend – 24 cents per elector
Candidate j	Newcastle (Fourth Ward)	\$100 ³⁴³	Regional	Popularly elected mayor. Four wards of three councillors	No	12	23,565	Australian Labor Party	ALP Disclosure for Fourth Ward lists \$2,134.98 expenditure	Yes	No	Party spend ³⁴⁴ - 9 cents per elector in the ward.

³⁴³ This was a political donation made by the candidate, not electoral expenditure.

³⁴⁴ Candidate spend was not calculated as it was a political donation made by the candidate, not electoral expenditure.

Appendix 2 – Letter from Electoral Commissioner



2004/313

23 November 2010

Mr Robert Furolo MP
Chair
Joint Standing Committee on Electoral Matters
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

FAXED
23/11/10

Dear Mr Furolo

Joint Standing Committee on Electoral Matters Inquiry into public funding of election campaigns (Local Government elections)

I write to recommend that the Committee delay finalising its report on the above matter pending a report from Dr Joo-Cheong Tham, Senior Lecturer in Law at the University of Melbourne, on public funding and disclosure with respect to Local Government elections.

By way of background, a few months ago I commissioned Dr Tham to write a report for me on the public interest issues surrounding public funding and disclosure with respect to Local Government registered political parties, candidates and donors. You may recall that Dr Tham previously wrote a report for me dealing with public interest issues surrounding public funding and disclosure with respect to political parties and candidates in the State election context.

I met with Dr Tham last week and he has advised me that he will have the report by the end of November or the first week in December. I propose to put the report on the Election Funding Authority's website and to make a copy available to your Committee.

As you are aware, Dr Tham has written extensively on the area of public funding and disclosure and, in particular, his writings have provided your Committee with substantial foundations upon which to recommend reforms. I recommend that you delay finalising your report until your Committee has had the opportunity to consider any issues that Dr Tham may wish to present.

I realise that time is of essence and I understand that you may wish to finalise the report before the end of the year.

If you would like to discuss anything regarding this matter please telephone me 9290 5910.

Yours sincerely

A handwritten signature in cursive script that reads 'Colin Barry'.

Colin Barry
Electoral Commissioner

Appendix 3 - Submissions

Submission No.	Organisation	Publication Status
1	Australia First Party (NSW) Inc.	Public
2	Cr Judith Hannan	Public
3	Mr Ian M Tiley	Partially confidential
4	Cr Terry Fogarty	Public
5 Supplementary 5a	Sutherland Shire Council	Public
6	Lane Cove Council	Public
7	Clarence Valley Council	Public
8	Ms Merrill Nugara	Public
9	Residents Action Group For Auburn Area	Public
10	Dr John and Mrs Ruth E Lusk	Public
11	Campbelltown City Council	Public
12	Mosman Council	Public
13	Independent Commission Against Corruption	Public
14	The Hills Shire Council	Public
15	Burwood Community Voice	Public
16	Residents Action Network	Public
17	Local Government Association of NSW and Shires Association of NSW	Public
18	Gloucester Shire Council	Public
19	Tamworth Regional Council	Public
20	Action on Smoking and Health (ASH) Australia	Public
21	The Greens (NSW Branch)	Public
22	Liverpool City Council	Public
23	Randwick City Council	Public
24	Forbes Shire Council	Public
25	Port Stephens Council	Public
26	The Council of the Shire of Bourke	Public
27	Division of Local Government, Department of Premier and Cabinet	Public
28	Urana Shire Council	Public
29	Liberal Party of Australia (NSW Division)	Public

Appendix 4 – Witnesses

Date	Witness	Position	Organisation
Tuesday, 12 October 2010 Parliament House, Sydney	Mr Colin Barry	Electoral Commissioner and Chair of Election Funding Authority	NSW Electoral Commission / Election Funding Authority
	Mr Brian DeCelis	Director, Funding and Disclosure	NSW Electoral Commission
	Mr Robert Waldersee	Executive Director, Corruption Prevention, Education and Research	Independent Commission Against Corruption
	Cr Allan Ezzy	Vice President (Metropolitan)	Local Government Association of NSW
	Cr Michael Braybrooks	Treasurer	Shires Association of NSW
	Cr Ned Mannoun	Deputy Mayor	Liverpool City Council
	Cr Terry Fogarty		
Cr Ian Tiley			
Wednesday, 13 October 2010 Parliament House, Sydney	Cr Anne Connon	Mayor	Mosman Council
	Mr Peter Gesling	General Manager	Port Stephens Council
	Mr Chris Maltby	Registered Officer	The Greens (NSW Branch)
	Ms Lee Rhiannon		
	Mr Laurie Gordon	Chairman and Party Agent	Residents Action Group for Auburn Area
	Mr Ian Hammerton	President	Burwood Community Voice

Appendix 5 - Minutes

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.27)

Friday 23 April 2010 at 10.00am
Room 1136, Parliament House

1. Attendance

Members present: Mr Furolo (Chair), Mr Coombs, Mr Harwin, Ms Rhiannon, Mr Veitch.

In attendance: Helen Minnican, Carly Sheen, Amy Bauder.

2. Apologies

Ms Beamer, Ms Gardiner.

3. Confirmation of the minutes

Resolved on the motion of Mr Veitch, seconded Mr Coombs, that the minutes of the deliberative meeting held on 24 March 2010 be confirmed.

4. ***

5. Inquiry into the Public Funding of Local Government Elections

The Chair addressed the Committee on this issue. Discussion ensued.

Mr Furolo moved that approval be sought by the Chair from the Speaker for a delegation of two Committee members and one staff member to undertake a study tour of Canada and the United States as per the attached proposal.

Ms Rhiannon moved instead that:

The decision on this trip be postponed until a thorough study is undertaken of the most useful way to access local government electoral funding regimes in overseas jurisdictions. This study should include a cost benefit analysis of an overseas study visit with audio/visual interviews and internet research.

Question put and passed.

As a result of Ms Rhiannon's motion being passed, the Chair's original motion was withdrawn.

The Committee agreed to meet by electronic means under Standing Order 295 on Friday 30 April.

The Committee adjourned at 10:27am, until 30 April 2010.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.28)

Thursday 29 April 2010 at 2.00pm
Room 1136, Parliament House

Proceedings conducted by electronic means pursuant to Standing Order 295.

1. Attendance

Members present: Mr Furolo (Chair), Ms Beamer, Ms Gardiner, Mr Harwin, Ms Rhiannon.

In attendance: Helen Minnican, Carly Sheen, Amy Bauder, Emma Wood.

2. Apologies

Mr Veitch, Mr Coombs.

3. Confirmation of the minutes

The Chair read proposed amendments to the minutes for the information of the Committee members.

Resolved on the motion of Ms Rhiannon, seconded Mr Harwin that the minutes of the deliberative meeting held on 23 April 2010, as amended, be confirmed.

4. Inquiry into the Public Funding of Local Government Elections

The Chair addressed the Committee on the cost benefit analysis relating to the proposed study tour, previously circulated. Discussion ensued. No objections were raised in relation to the proposal.

Resolved on the motion of Mr Furolo, seconded Ms Beamer, that approval be sought by the Chair from the Speaker for a delegation of two Committee members and one staff member to undertake a study tour of Canada and the United States, as per the attached proposal.

5. ***

There being no further items of general business, the deliberations concluded at 2:09pm and the Committee adjourned *sine die*.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.30)

Monday, 24 May 2010 at 11.05am

Room 1254, Parliament House

Proceedings conducted by electronic means pursuant to Standing Order 295.

1. Attendance

Members present at Parliament House: Mr Furolo (Chair), Ms Gardiner, Mr Harwin, Ms Rhiannon, Mr Veitch.

Member via teleconference: Ms Beamer

In attendance: Helen Minnican, Carly Sheen, Amy Bauder, Dora Oravec, Vanessa Pop.

2. Apologies

Mr Coombs.

3. Confirmation of the minutes

Resolved on the motion of Mr Harwin, seconded Mr Veitch, that the minutes of the meetings held on 29 April and 21 May 2010, be confirmed.

4. ***

5. Inquiry into the public funding of election campaigns – local government election campaigns

The Chair addressed the Committee on the deferred section of the Inquiry into the public funding of election campaigns relating to local government election campaigns. Discussion ensued.

Resolved on the motion of Ms Rhiannon, seconded Ms Veitch, that:

- That the Committee publish an issues paper outlining the issues associated with designing and implementing a public funding model for local government elections in NSW.
- That the Chair write to Local Councils and other stakeholders seeking their input to the inquiry.
- That public hearings for the inquiry be scheduled for late August, subject to the availability of a quorum and witnesses.

There being no further items of business, the deliberations concluded at 12.26pm and the Committee adjourned *sine die*.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.33)

Wednesday, 18 August 2010 at 10.32am

Room 1136, Parliament House

Proceedings conducted by electronic means pursuant to Standing Order 295.

1. Attendance

Members present at Parliament House: Mr Furolo (Chair), Mr Foley, Mr Harwin.

Member via teleconference: Mr Coombs.

In attendance: Carly Sheen, Dora Oravecz, Amy Bauder, Vanessa Pop, Rohan Tyler.

2. Apologies

Apologies were received from Ms Beamer and Ms Gardiner.

3. Confirmation of the minutes

Resolved on the motion of Mr Foley that the minutes of the meeting held on 14 July 2010, be confirmed.

4. ***

5. Local government public funding inquiry

The Committee discussed the inquiry program and the draft Issues Paper.

Resolved, on the motion of Mr Harwin, that the issues paper be authorised for publication and uploaded on the Committee's website.

The Committee considered a list of stakeholders for the Chair to write to inviting submissions to the inquiry and attaching the issues paper. It was agreed that the Chair write to the Independent Members of the Legislative Assembly, as well as those on the distribution list circulated previously

6. Correspondence

The Committee noted the correspondence from the Chair to the Electoral Commissioner, dated 20 July 2010, regarding the local government public funding inquiry and the response from Electoral Commissioner, dated 9 August 2010.

Resolved, on the motion of Mr Foley, that the draft response as circulated be adopted.

There being no further items of business, the deliberations concluded at 10.48am and the Committee adjourned *sine die*.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.34)

Friday, 24 September 2010 at 10.30am

Room 1136, Parliament House

1. Attendance

Members present at Parliament House: Mr Furolo (Chair), Mr Coombs, Mr Foley, Ms Gardiner, Mr Harwin, Dr Kaye.

In attendance: Helen Minnican, Carly Sheen, Dora Oravecz, Amy Bauder.

2. Apologies

Apologies were received from Ms Beamer.

3. Confirmation of the minutes

Resolved on the motion of Mr Coombs, seconded Mr Foley, that the minutes of the meeting held on 18 August 2010, be confirmed.

4. ***

5. Local government public funding inquiry

Appendix 5 - Minutes

The Chair updated the Committee on the distribution of the Issues Paper to numerous stakeholders, including state and local government registered political parties, academics, the Local Government and Shires Association, other interest groups, and all councils and shires in New South Wales. A press release was emailed to regional and suburban newspapers and radio stations.

The Committee discussed the publication of submissions.

Resolved, on the motion of Mr Coombs, that:

- The curriculum vitae attached to submission 3 remain confidential, and the submission be published without the attachment.
- That submission numbers 1.2 and 4-24 be authorised for publication and uploaded on the Committee's website.

The Chair spoke to the draft witness list for the inquiry hearings on 12 and 13 October.

Resolved, on the motion of Mr Foley, that the organisations and witnesses, as previously circulated, be invited to give evidence to the Committee in relation to its inquiry into public funding of local government election campaigns.

Resolved, on the motion of Mr Harwin, that where necessary the Chair write to the Speaker seeking approval to cover the cost of travel expenses for witnesses so as to enable them to attend public hearings on 12 and 13 October 2010 to give evidence in relation to the Committee's current inquiry.

The Committee noted the:

- Letter received 25 August 2010 from the Electoral Commissioner thanking the Committee for providing a copy of its issues paper on public funding of local government election campaigns
- Letter received 6 September from Australian Labor Party National Secretariat informing Committee that they would not be making a submission to the inquiry

6. ***

7. General Business

The Committee discussed the timetable for the public funding of local government election campaigns inquiry.

There being no further items of business, the deliberations concluded at 10.48am and the Committee adjourned *sine die*.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.35)

Thursday, 7 October 2010 at 10.31am

Room 1043, Parliament House

Proceedings conducted by electronic means pursuant to Standing Order 295

1. Attendance

Members present at Parliament House: Mr Furolo (Chair), Mr Foley.

Members via teleconference: Ms Beamer, Mr Coombs, Mr Harwin.

In attendance: Helen Minnican, Carly Sheen, Dora Oravec, Amy Bauder.

2. Apologies

Apologies were received from Ms Gardiner and Dr Kaye.

3. Confirmation of the minutes

Resolved on the motion of Mr Foley, that the minutes of the meeting held on 24 September 2010, be confirmed.

4. Local government public funding inquiry

Resolved, on the motion of Ms Beamer, that submission numbers 25-28 be authorised for publication and uploaded on the Committee's website.

The Committee noted the letter from Mayor Hoenig, Botany Bay Council, dated 29 September 2010, advising that he is unable to attend the hearing.

The Committee discussed forward planning for the hearings and inquiry.

5. ***

There being no further items of business, the deliberations concluded at 10.35am and the Committee adjourned until 12 October at 10am.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.36)

Tuesday, 12 October 2010 at 10.00am

Room 814-815, Parliament House

1. Attendance

Mr Furolo (Chair), Mr Coombs, Mr Foley, Dr Kaye, Mr Harwin.

In attendance: Helen Minnican, Carly Sheen, Amy Bauder, Vanessa Pop.

2. Apologies

Apologies were received from Ms Gardiner and Ms Beamer.

3. Public hearing, Inquiry into the public funding of local government election campaigns

Mr Colin Barry, Electoral Commissioner and Chairman of the Election Funding Authority, affirmed and examined, and Mr Brian DeCelis, sworn and examined.

Mr Barry made an opening statement.

The Chair commenced questioning of the witnesses followed by other members of the Committee.

Questioning concluded, the Chair thanked the witnesses and the witnesses withdrew.

Dr Robert Waldersee, Executive Director, Corruption Prevention, Education and Research, Independent Commission Against Corruption, affirmed and examined. The submission of the Independent Commission Against Corruption was incorporated as part of Dr Waldersee's evidence.

Dr Waldersee made an opening statement.

The Chair commenced questioning the witness followed by other members of the Committee.

Questioning concluded, the Chair thanked the witness and the witness withdrew.

The Committee took a short adjournment at 11.22am. The public hearing resumed at 11.35am.

Cr Allan Ezzy, Vice-President (Metropolitan) Local Government Association of New South Wales, and Cr Michael Braybrooks, Treasurer, Shires Association of New South Wales sworn and examined. The submission of the Local Government and Shires Association was incorporated as part of Cr Ezzy's and Cr Braybrooks' evidence.

The Chair commenced questioning the witness followed by other members of the Committee.

Questioning concluded, the Chair thanked the witnesses and the witnesses withdrew.

4. Deliberative meeting [12.03pm – 12.07pm]

i. Confirmation of the minutes

Resolved on the motion of Mr Coombs, seconded Mr Harwin, that the minutes of the meeting held on 7 October 2010, be confirmed.

ii. Publication of Submission 29

Resolved, on the motion of Mr Harwin, that submission number 29 be authorised for publication and uploaded on the Committee's website.

iii. Resolution to publish corrected transcript of evidence and tabled documents from the public hearing held 12 October 2010 (excluding any confidential evidence)

Resolved on the motion of Dr Kaye, that the corrected transcript of evidence given today and any tabled documents, which are not confidential, be authorised for publication and uploaded on the Committee's website.

The Committee adjourned for lunch.

The hearing resumed at 1.45pm.

5. Public hearing, Inquiry into the public funding of local government election campaigns (cont)

Cr Ned Mannoun, Deputy Mayor, Liverpool City Council, sworn and examined. The submission of Liverpool City Council was incorporated as part of Cr Mannoun's evidence.

The Chair commenced questioning of the witness followed by other members of the Committee.

Questioning concluded, the Chair thanked the witness and the witness withdrew.

Cr Terrence Fogarty, affirmed and examined. His submission was incorporated as part of his evidence.

Cr Fogarty made an opening statement.

The Chair commenced questioning the witness followed by other members of the Committee.

Questioning concluded, the Chair thanked the witness and the witness withdrew.

Cr Ian Tiley, sworn and examined. His submission was incorporated as part of his evidence.

Cr Tiley made an opening statement.

The Chair commenced questioning the witness followed by other members of the Committee.

Questioning concluded, the Chair thanked the witness and the witness withdrew.

The public hearing concluded at 3.14pm and the Committee adjourned until 13 October at 11.45am.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.37)

Wednesday, 13 October 2010 at 11.45am
Room 814-815, Parliament House

1. Attendance

Mr Furolo (Chair), Mr Coombs, Mr Foley, Dr Kaye, Mr Harwin.

Apologies: Ms Gardiner, Ms Beamer.

Committee staff: Helen Minnican, Carly Sheen, Amy Bauder, Vanessa Pop.

2. Public hearing, Inquiry into the public funding of local government election campaigns

Cr Anne Connon, Mayor, Mosman Council, sworn and examined. The submission of Mosman Council was incorporated as part of Cr Connon's evidence.

Mr Peter Gesling, General Manager, Port Stephens Council, sworn and examined. The submission of Port Stephens Council was incorporated as part of Mr Gesling's evidence.

Cr Connon made an opening statement.

Mr Gesling made an opening statement.

The Chair commenced questioning of the witnesses followed by other members of the Committee.

Questioning concluded, the Chair thanked the witnesses and the witnesses withdrew.

The Committee adjourned for lunch at 12.30pm.

The hearing resumed at 1.30pm.

Mr Chris Maltby, Registered Officer, The Greens, and Ms Lee Rhiannon, Member, The Greens, affirmed and examined. The submission of The Greens was incorporated as part of Mr Maltby and Ms Rhiannon's evidence.

Ms Rhiannon made an opening statement.

The Chair commenced questioning the witnesses followed by other members of the Committee.

Questioning concluded, the Chair thanked the witnesses and the witnesses withdrew.

Mr Lawrence Gordon, Chairman and Party Agent, Residents Action Group for Auburn Area, sworn and examined. The submission of the Residents Action Group for Auburn Area was incorporated as part of Mr Gordon's evidence.

Mr Ian Hammerton, President, Burwood Community Voice, sworn and examined. The submission of Burwood Community Voice was incorporated as part of Mr Hammerton's evidence.

Mr Gordon made an opening statement.

Mr Hammerton made an opening statement.

The Chair commenced questioning the witnesses followed by other members of the Committee.

Questioning concluded, the Chair thanked the witnesses and the witnesses withdrew.

3. Deliberative meeting

iv. Confirmation of the minutes

Resolved on the motion of Mr Coombs that the minutes of the meeting held on 12 October 2010, be confirmed.

v. Resolution to publish corrected transcript of evidence and tabled documents from the public hearing held 13 October 2010 (excluding any confidential evidence)

Appendix 5 - Minutes

Resolved on the motion of Mr Foley, that the corrected transcript of evidence given today and any tabled documents, which are not confidential, be authorised for publication and uploaded on the Committee's website.

There being no further items of business, the deliberations concluded at 2.57pm and the Committee adjourned *sine die*.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.38)

Wednesday, 10 November 2010 at 1:08pm

Room 1254, Parliament House

Proceedings conducted by electronic means pursuant to Standing Order 295

1. Attendance

Members present at Parliament House: Mr Furolo (Chair), Mr Foley, Mr Harwin, Ms Gardiner and Dr Kaye
In attendance: Carly Sheen, Amy Bauder, Vanessa Pop

2. Apologies

Apologies were received from Mr Coombs and Ms Beamer.

3. Confirmation of the minutes

Resolved on the motion of Dr Kaye, that the minutes of the meeting held on 13 October 2010, be confirmed.

4. Local government public funding inquiry

Resolved, on the motion of Dr Kaye, that supplementary submission number 5a (Sutherland Shire Council) be authorised for publication and uploaded on the Committee's website.

Resolved, on the motion of Dr Kaye, that the answers to questions taken on notice at public hearings on 12 and 13 October 2010 from the Independent Commission Against Corruption, Mosman Council and the NSW Electoral Commission be authorised for publication and uploaded on the Committee's website.

5. General Business

Dr Kaye requested that the table from the NSW Electoral Commission be provided as an excel spreadsheet.

There being no further items of business, the deliberations concluded at 1:10pm and the Committee adjourned until 26 November at 11.00am.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.39)

Monday, 29 November 2010 at 12.36 pm

Waratah Room, Parliament House

1. Attendance

Members present at Parliament House: Mr Furolo (Chair), Mr Coombs, Mr Foley, Mr Harwin, Ms Gardiner and Dr Kaye
Secretariat: Carly Sheen, Amy Bauder, Vanessa Pop, John Miller.

2. Apologies

An apology was received from Ms Beamer.

3. Confirmation of the minutes

Resolved on the motion of Dr Kaye, that the minutes of the meeting held on 10 November 2010, be confirmed.

4. Chair's draft report – Inquiry into public funding of local government election campaigns

The Committee proceeded to consider the Chair's draft report, as previously circulated on 22 November 2010, and schedules of amendments from the Chair and Committee members (Mr Harwin and Dr Kaye).

Discussion ensued.

Mr Harwin moved, seconded Ms Gardiner, the following amendments, in globo:

1. pages (v) and (vi)
delete: all words after "Recommendation 1:"
add: (new recommendation at the end of new Chapter 5 -see additional resolution 1 below)
2. page 30
delete: heading "Reform Proposals"
add: heading "Summary of Evidence"
3. pages 34 - 35
delete: heading Committee Comment, paragraphs 4.26 - 4.33 and recommendation 1
4. page 38 -39
delete: heading Committee Comment, paragraphs 4.56 - 4.59, recommendation 2 and Finding 1
5. pages 46 - 49
delete: heading Committee Comment, paragraphs 4.102 - 4.113 and recommendation 3 - 8
6. page 50
delete: heading Committee Comment, paragraphs 4.122 - 4.124 and recommendation 9
7. pages 54 - 55
delete: heading Committee Comment, paragraphs 4.143 - 4.146 and recommendation 10
8. pages 59 - 60
delete: heading Committee Comment, paragraphs 4.173 - 4.180 and recommendations 11 and 12
9. page 61
delete: heading Committee Comment, paragraph 4.192 and recommendation 13
10. page 63
delete: heading Committee Comment and paragraph 4.197

Insert additional Chapter 5 to be drafted by the Secretariat to support the following recommendation:

Recommendation 1: The Committee recommends that the NSW Government gives the JSCEM a reference in the 55th Parliament to make recommendations relating to the public funding of local government election campaigns, taking into account the operation of the new provisions of the Electoral funding, expenditure and Disclosure Act 2010 at the March 2011 State general election.

Discussion ensued. Dr Kaye foreshadowed a related amendment.

Question put that Mr Harwin's amendments be agreed to.
The Committee divided.
Ayes: Mr Harwin, Ms Gardiner
Noes: Mr Coombs, Mr Foley, Mr Furolo, Dr Kaye.
Question resolved in the negative.

Mr Furolo moved that the following amendments contained in the Chair's schedule of amendments, as previously circulated, be adopted and included in the Committee's report:

After para 3.12 insert:

3.13 For example, the City of Peterborough in Ontario had 53,557 eligible voters for the October 2010 election³⁴⁵, and as such the expenditure limit for candidates for mayor would have been \$53,023.

³⁴⁵ City of Peterborough, *Unofficial Election Results*,
<http://www.peterborough.ca/election%20results/results.html>, accessed 25 November 2010.

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After para 3.26 insert:

3.27 For example, the city of Thetford Mines has 21,213 eligible voters³⁴⁶, and as such the expenditure limit for candidates for mayor would have been \$14,673.36.

After para 3.78 insert:

3.79 For example, the Southcote Ward of Reading Borough Council has approximately 6,228 electors³⁴⁷, and as such the expenditure limit for candidates in that ward would have been £911.40. The City and Hunslet Ward of Leeds City Council has 20702 electors³⁴⁸, allowing an expenditure limit of £1,635.10.

After para 4.197 insert:

Research Report on local government election finance

4.198 On 23 November 2010, the Committee received a letter from the Electoral Commissioner requesting that the Committee delay its inquiry report 'pending a report from Dr Joo-Cheong Tham, Senior Lecturer in Law at the University of Melbourne, on public funding with respect to Local Government elections' [see **Appendix 2**].³⁴⁹ The Electoral Commissioner advised the Committee that he had commissioned Dr Tham to write a report on the public interest issues surrounding public funding and disclosure with respect to local government registered political parties, candidates and donors. He advised that Dr Tham's report will be completed and published on the Electoral Commission website shortly. The Electoral Commissioner also stated that he recognises that 'time is of the essence and I understand that you may wish to finalise the report before the end of the year.'³⁵⁰

Committee comment

4.199 The Committee is disappointed that it has not had the opportunity to consider and deliberate on Dr Tham's report, which will make an important contribution to the debate concerning political finance reform for local government elections. However, given the time constraints faced by the Committee, it is unable to delay publishing the report of its inquiry. The Committee is of the view that, in considering the recommendations arising from the Committee's inquiry, the Premier should have regard to the report to be published by the Electoral Commissioner.

<p>Recommendation 14: The Committee recommends that, in considering the above recommendations, the Premier have regard to the forthcoming research report to be published by the Electoral Commissioner.</p>

Insert after appendix 1:

Appendix 2 – Letter from Electoral Commissioner.

[Insert copy of letter]

Discussion ensued.

Dr Kaye moved an amendment to Mr Furolo's motion to delete the words "disappointed that it has not had the opportunity" and replace with "would have preferred to have had time". The amendment was acceptable to the mover.

Question put that Dr Kaye's amendment be agreed to.
The Committee divided.

Ayes: Mr Coombs, Mr Foley, Mr Furolo, Dr Kaye.

Abstentions: Mr Harwin, Ms Gardiner (Mr Harwin and Ms Gardiner requested that their abstentions be recorded).

Question resolved in the affirmative.

³⁴⁶ Ministère des Affaires municipales, des Régions et de l'Occupation du territoire Québec, *Résultats après le scrutiny*, http://www.mamrot.gouv.qc.ca/organisation/orga_elec_elec_2006_resu.asp, accessed 25 November 2010.

³⁴⁷ Reading Borough Council, *Local Election: 6 May 2010*, <http://www.reading.gov.uk/elections2010/staticwardboard.asp?ward=46>, accessed 25 November 2010.

³⁴⁸ Leeds City Council, *Local Election results 2010*, <http://www.leeds.gov.uk/page.aspx?pageidentifier=d124fadb-cb23-488d-a4bb-c2d5a9534b6e&cached=8332453&siteID=1&ward=CITY AND HUNSLET>, accessed 25 November 2010.

³⁴⁹ Letter from Mr Colin Barry, Electoral Commissioner to Mr Robert Furolo, MP, dated 23 November 2010.

³⁵⁰ Letter from Mr Colin Barry, Electoral Commissioner to Mr Robert Furolo, MP, dated 23 November 2010.

Question put that Mr Furolo's motion, as amended, be agreed to.
The Committee divided.
Ayes: Mr Coombs, Mr Foley, Mr Furolo, Dr Kaye.
Abstentions: Mr Harwin, Ms Gardiner.
Question resolved in the affirmative.

Dr Kaye moved the following foreshadowed amendment:

Insert comment after paragraph 1.5:

Recognising that there have been significant changes to electoral funding and the regulation of donations at a state level, there will be much to be learned that is relevant to this inquiry from analysing the operations of the new state system.

Recommendation OA. The Committee recommends that the findings of this inquiry be further reviewed based on an evaluation of the operation of November 2010 changes to the Election Funding and Disclosures Act 1981.

Discussion ensued. Question put that Dr Kaye's amendment be agreed to.
The Committee divided.
Ayes: Mr Coombs, Mr Foley, Mr Furolo, Dr Kaye.
Abstentions: Mr Harwin, Ms Gardiner.
Question resolved in the affirmative.

Dr Kaye moved the following amendment:

Recommendation OB The Committee recommends that NSW local government councillors allowance be increased to match an appropriate award wage based on an estimated work load of three days per week. That councils be financed by the NSW state government to meet this cost.

Discussion ensued. Dr Kaye withdrew the proposed amendment.

Recommendation 2 - Dr Kaye moved the following be inserted at the end of Recommendation 2:

2A The Committee recommends that there be a ban on all political donations from corporations and other entities.

2B The Committee recommends that political donations from individuals be limited to \$1,000, with an exemption for party compulsory levies on elected officials.

Discussion ensued. Question put that Dr Kaye's amendment be agreed to.
The Committee divided.
Ayes: Dr Kaye.
Noes: Mr Coombs, Mr Foley, Mr Furolo.
Abstentions: Mr Harwin, Ms Gardiner.
Question resolved in the negative.

Recommendation 9 - Dr Kaye moved that all words after Recommendation 9 be deleted and replaced with:

The Committee recommends that there be a third party expenditure cap of \$5,000 for local government elections.

Discussion ensued. Dr Kaye withdrew the proposed amendment.

Recommendations 4 and 5 - Dr Kaye moved the following be inserted after Recommendations 4 and 5 respectively:

Recommendation 4A: The Committee recommends that a cap is placed on local government election expenditure by candidates and a group of candidates at whichever is the greater amount of: 50 cents per voter, calculated on per capita basis according to the number of voters on the electoral roll in the local government area/ward, or \$10,000; or

Alternative formula: a base cap of \$5,000 plus 50 cents per voter, calculated on per capita basis according to the number of voters on the electoral roll in the local government . area/ward (similar to the UK model).

Recommendation 5A: The Committee recommends that for a ballot for a popularly elected Mayor an additional expenditure cap for mayoral candidates should apply. The additional amount should be 25 cents for each voter in the local government area (i.e. 50% above the councillor expenditure cap).

Discussion ensued. Question put that Dr Kaye's amendment be agreed to.

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The Committee divided.

Ayes: Dr Kaye.

Noes: Mr Coombs, Mr Foley, Mr Furolo.

Abstentions: Mr Harwin, Ms Gardiner.

Question resolved in the negative.

Recommendation 6 - Dr Kaye moved that Recommendation 6 be deleted and replaced with:

Recommendation 6: The Committee recommends that party expenditure for state registered parties for local government elections should be capped. This amount is to be treated as separate from campaign expenditure incurred by the party's candidate or group of candidates for a local council area or ward. Expenditure made under this cap must not be targeted at specific local government areas.

Discussion ensued. Motion lapsed.

Mr Furolo moved that Recommendation 6, 'The Committee recommends that a separate state-wide expenditure cap for political parties contesting local government election campaigns is unnecessary', be deleted and replaced with:

The Committee recommends that there be a separate state-wide expenditure cap for registered political parties contesting local government elections.

Dr Kaye moved that the first sentence of paragraph 4.110 be deleted.

Paragraph 4.110 – Dr Kaye moved that the following be inserted after 4.110:

However, it is recognised that if expenditure by candidates and groups is capped in local government areas, then in an effort to overcome these caps, expenditure could be shifted to a State level. Consequently, a separate expenditure cap may be required for registered political parties.

Discussion ensued. Question put, that that Mr Foley and Dr Kaye's amendments be agreed to, in globo. The Committee divided.

Ayes: Mr Coombs, Mr Foley, Mr Furolo, Dr Kaye.

Abstentions: Mr Harwin, Ms Gardiner.

Question resolved in the affirmative.

Dr Kaye moved that the following recommendations be inserted into the report:

Recommendation 14 The Committee recommends that an independent commissioner in the election funding authority, modelled on the statutory position of the Director of Public Prosecutions, be created with the role of general oversight of the scheme and standing to commence prosecutions for breaches.

Recommendation 15 The Committee recommends that penalties for breach include on the spot fines for minor breaches, total or partial loss of public funding, hefty fines, confiscation of unlawful donations; and in extreme cases of over expenditure disqualification as a candidate, or councillor.

Recommendation 16 The Committee recommends that penalties for more serious breaches to be imposed by a court modelled on the Court of Disputed Returns in cases where breaches of the electoral funding and expenditure rules are identified.

Discussion ensued. Motion lapsed.

Dr Kaye moved that the following recommendation be inserted into the report:

The Committee recommends that compliance monitoring and penalties for breaches are consistent with those applying at a State level.

Discussion ensued. Question put that Dr Kaye's amendment be agreed to.

The Committee divided.

Ayes: Mr Coombs, Mr Foley, Mr Furolo, Dr Kaye.

Abstentions: Mr Harwin, Ms Gardiner.

Question resolved in the affirmative.

The Committee agreed that the report, as amended, be circulated to Committee members, prior to being presented to the Houses.

Adoption of the report

Mr Furolo moved that:

- a. the draft report as amended be the Report of the Committee and that it be signed by the Chair and presented to the Houses.
- b. the Chair, the Committee Manager and the Senior Committee Officer be permitted to correct minor, stylistic, typographical and grammatical errors.

Question put.

The Committee divided.

Ayes: Mr Coombs, Mr Foley, Mr Furolo, Dr Kaye.

Noes: Mr Harwin, Ms Gardiner.

Question resolved in the affirmative.

The Chair thanked Committee members and Committee staff.

There being no further items of business, the deliberations concluded at 1.23pm and the Committee adjourned *sine die*.