

**REPORT OF PROCEEDINGS BEFORE**

**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS**

**INQUIRY INTO PUBLIC FUNDING OF LOCAL GOVERNMENT  
ELECTION CAMPAIGNS**

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**At Sydney on Tuesday 12 October 2010**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

Mr R. A. Furolo (Chair)

**Legislative Council**

The Hon. L. A. Foley  
The Hon. D. T. Harwin  
Dr J. Kaye

**Legislative Assembly**

Mr R. D. Coombs

**CHAIR:** This is the Committee's first public hearing as part of its inquiry into public funding of local government election campaigns. It follows on from the inquiry into public funding of election campaigns which was completed earlier this year. The Committee did not consider a model of public funding for local government in great detail as part of its original inquiry, but recommended that the issues relating to local government elections and election campaigns be considered separately.

On behalf of the Committee I would like to thank all witnesses for appearing today, as well as those individuals and organisations that have made submissions. We begin with the swearing in of witnesses. It is pleasing to have the Electoral Commissioner, Mr Colin Barry, and Mr Brian DeCelis here today.

**COLIN ANTHONY BARRY**, Electoral Commissioner and Chair, Election Funding Authority, Level 25, 201 Kent Street, Sydney, affirmed and examined:

**BRIAN VINCENT DeCELIS**, Director, Funding and Disclosure, New South Wales Electoral Commission, Level 25, 201 Kent Street, Sydney, sworn and examined:

**CHAIR:** Under the standing orders witnesses are examined on oath or affirmation upon the subject matter of the inquiry. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr BARRY:** No.

**Mr DeCELIS:** No.

**CHAIR:** As I said, I am very pleased that both of you could join us this morning for this part of the hearing. Mr Barry, would you like to make an opening statement before the commencement of questions?

**Mr BARRY:** I will, Mr Chair, thank you. I am pleased to be invited to make a further submission to the Committee on this inquiry. I note that the inquiry is to focus its attention on the application of funding and disclosure and the possible public funding of election campaigns to registered political parties which participate in local government elections.

The application of funding and disclosure to the local government sector was not considered in any detail by the Committee in its first inquiry. I note that in the report dated 10 March 2010 the Committee reported on the very important matter in connection with those that participate in parliamentary elections in New South Wales. The report was an extensive forensic analysis of issues that surround public funding disclosure and the possible public funding of political parties and made some 51 recommendations. I note also that the Government is yet to respond to that report, although there have been some public comments in the media from the Premier and the Leader of the Opposition regarding some of those recommendations and we may see some legislation in the not too distant future.

I would like to refer the Committee to my submission of 9 December 2009, where I proposed a framework for the Committee to consider any submissions regarding public funding and disclosure. I outlined at that time four pillars on which any scheme should be measured. A summary of those four pillars is that a scheme should protect the integrity of representative government, promote fairness in politics, support parties to perform their functions, and show respect for political freedoms. I submit that those four pillars are as relevant to local government as they are to parliamentary elections. I was very pleased to see that the Committee in its report endorsed those pillars or principles.

As I said, we are still waiting for the Government's response to the Committee's report. Consequently, we really do not have a firm basis on which to benchmark the applicability of any proposed scheme for local government. We are therefore limited to some extent in commenting on the Committee's recommendations and the potential impact of those recommendations in the local government sector. Of course, we can also comment on the operation of the current scheme in the local government sector.

I want to spend a moment sketching out the local government sector as we see it. It is worth noting that the local government registered political parties, candidates, groups and donors, and elected members, are already subject to the existing funding and disclosure provisions of the Funding and Disclosure Act. The only difference is that registered political parties, candidates and groups are ineligible for public funding for campaign expenditure. It is clearly a policy decision whether to provide public funding for those players in local government.

In considering the public interest issues that Committee members may want to turn their minds to, I would like to offer the following observations. Any disclosure requirement 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.

In our view it is important to note that council government differs from parliamentary government, as there is no opposition at council government. The elected councillors become the executive, and to some extent the government. It is very different to State and Federal Parliament. To some extent, in my view, this imposes an additional requirement: that the disclosure regime must be very strict to ensure public accountability. In terms of fairness in politics, especially in access to the public noticeboard, it is important that the scheme deal with third parties as they can take on a far more significant role in local government elections. They need to be regulated to ensure accountability, and to ensure that candidates are not hiding behind third party organisations.

The big policy question is: Should political parties, groups and candidates have access to reimbursement for campaign expenditure? The Committee might like to go back to the debates in 1981 and 1983, when such schemes were first introduced in New South Wales and at the Federal parliamentary level. This might provide the answer to whether there is sufficient reason to now make out the case for local government.

In making some further observations, I note that there is already a high level of participation on the part of parties and candidates at local government elections in New South Wales. The four main parties—the Australian Labor Party, the Liberals, The Nationals and the Greens—do not spend a large amount of money on local government elections. There is little, if any, television and radio advertising in the metropolitan area. The campaigns tend to be very localised, and this keeps the cost of running a campaign down to a minimum.

The argument that all parties, candidates and groups need public funding in order to get their message out in my view is not as strong at local government compared to at State and Federal elections. If there were a public reimbursement scheme operating, I think we may see an increase in the campaign expenditure. This may widen the gap between the big parties and the small parties, as well those independent candidates compared to endorse candidates. Indeed, there is a risk that public funding similar to that which operates at Federal and State elections 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.

There may be a sound public interest policy justification for introducing expenditure caps on parties, candidates, groups, and especially for third parties. If the Committee considers that expenditure caps are justified, further work needs to be undertaken on how this could be implemented at local government elections, because it is not as straightforward as it is at the parliamentary level.

The final point I wish to make is that if the Committee is so minded to recommend the introduction of a public funding scheme for reimbursement, or indeed public funding of political parties, the question remains as to who is going to pay for such a scheme and it needs to be addressed by this Committee. It seems to me that there are really only two options: the Government, in other words the State, or the council. Each of them has its own challenges. Thank you, Mr Chair.

**CHAIR:** Mr DeCelis, did you wish to make an opening statement?

**Mr DeCELIS:** No, thank you.

**CHAIR:** Mr Barry, what would you consider to be the main challenges in designing and implementing a public funding scheme for local government election campaigns?

**Mr BARRY:** I think the main challenge is the Committee turning its mind to recognising the difference between the construction of local government compared to the parliamentary environment. 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.

**CHAIR:** Do you wish to add anything, Mr DeCelis?

**Mr DeCELIS:** I just endorse what Colin says. My only additional point is that we have the view that 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.

**CHAIR:** One of the public funding options outlined in the Committee's issues paper is for public funding in the form of an allowance to fund auditing of disclosure reports or by funding the Election Funding Authority to conduct the audits in-house. What are your thoughts on these two options, Mr Barry?

**Mr BARRY:** I will ask Mr DeCelis to comment on that.

**Mr DeCELIS:** If I could raise a number of points in respect to that one. If the authority was asked to undertake the audits in-house in place of what is the current arrangement for a registered company auditor, then 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 roundabout or 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.

What it would also require for the audit to be conducted would be for the authority to have full and unrestricted access to each party's funding and campaign records. I do not know how practical that would be. We currently have registered for local government, for instance, 45 registered parties and my figures are around about 400 groups, 330 candidates. To 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. I notice in the proposal it talks about some allowance or funding to the participants to assist them to have the audits completed. That may well be a more practical approach. We discussed at the State level in the earlier discussions with the Committee about perhaps moving from a registered company auditor conducting those audits to an approach where a CPA or a chartered accountant might be a better approach, as opposed to a registered company auditor.

I am not sure if the question in itself poses the question as to whether you are seeking from us suggestions as to types of funding other than just for auditing that may be appropriate. I might suggest a couple of matters here in that respect. My experience over a long period of time with the smaller parties is that I often get three matters raised with me by the smaller parties. I often have raised with me, and it is clearly evident to us at the authority, that where the smaller parties have difficulties is in their administration. They are not familiar with what is required of them at the administration level and we experience that in respect to their financial disclosures and their record keeping for that. They obviously suffer difficulties. The other matter raised with me is that they do feel somewhat disadvantaged, if you like, in election campaigns at their lack of expertise in how to manage and conduct an election campaign. They do not have the expertise or the resources to compete with the larger registered political parties. The only other matter that goes with that that is commonly raised with me is the fact that they do not have the funding to do either of those things.

**CHAIR:** Do members have any questions arising from the answers?

**Dr JOHN KAYE:** Mr Barry, in your opening remarks you talked about who pays if this Committee were to recommend a public funding regime for local government election campaigns. You

envisaged two possibilities—and I think you are correct—that is, State or local government paying for the reimbursement, or whatever the mechanism is. You said that each of these has its own challenges. Could you tell us what the challenge would be associated with the State Government being the source of funds?

**Mr BARRY:** I think the challenge is obvious. The challenge is getting the Government to agree.

**Dr JOHN KAYE:** That is just a matter of policy?

**Mr BARRY:** Sure.

**Dr JOHN KAYE:** But there are no intrinsic barriers there?

**Mr BARRY:** That is the easiest one for us to administer. That is simple, if the Government funds it. The challenge is within the council area. For us it would be that each council would have to provide the appropriate amount of public funding for reimbursement of candidates. The challenge there would be: What about political parties, who is going to pay for them? You might end up with a hybrid. You get some political parties that operate only in a particular council area. Is the council going to be happy then—I guess it is not a question of whether they are happy; it is a question of whether you consider it appropriate for the council to be paying for that political party to operate. As the Committee is well aware, we already have challenging relationships with councils over the conduct of these elections. We do not want to be left with another challenging matter where we have to go around to each of the councils and deal directly with the General Managers over reimbursement of candidates' expenses.

**Dr JOHN KAYE:** On that argument, that would mitigate in favour of State-based funding?

**Mr BARRY:** It is an element that the Committee needs to consider.

**Mr ROBERT COOMBS:** I am trying to get an idea of the overall cost. Has any modelling been done? I know it would be pretty rough, but you might base it on those candidates who got more than 4 per cent of the primary vote maybe get 50¢ or \$1. Can you give us an idea of the overall cost involved in going to a public funding model?

**Mr DeCELIS:** No, there has not been any modelling done at this stage. The most substantial difficulty we have is that the disclosure obligations cover now a six-month period. I have figures that can tell me that for the disclosure period 1 July to 31 December 2008 what their full expenditure and income was for the six months. If you want to draw assumptions that that is all local government general election related, that might in itself have difficulties because that is probably not the case with parties.

**CHAIR:** It would be good if we had the evidence.

**Mr DeCELIS:** I can give those figures and then I can go back and extract figures as to who got 4 per cent. If you happen to draw the correlation between the two I can construct those, but I do not have them at the moment. I do have the figures for the disclosure amounts but we have not gone back and extracted and related those as to who did or did not get 4 per cent.

**CHAIR:** Mr Barry, in a model where local government would be responsible for reimbursing the cost of campaigns for candidates, would the amount that was to be reimbursed be determined by the Election Funding Authority and subsequently paid by the councils or would the councils have to assess the returns?

**Mr BARRY:** 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.

**CHAIR:** The Independent Commission Against Corruption (ICAC) recommended in its submission that the compliance audit function of the Election Funding Authority be sufficiently

resourced to ensure that it is an appropriate deterrent to the submission of incomplete or false returns. Can you explain to the Committee how the current auditing process operates?

**Mr BARRY:** I will let Brian talk more particularly about it, but I will refresh the Committee's memory. The Committee did make recommendations in its previous report that the Authority be funded, appropriately resourced, to bolster its capacity on a number of fronts. Because there has been no legislation introduced, we have provided the Government with an outline of the sort of structure for the Authority and the money that would be required. At the moment the Authority has a very limited auditing capacity. Brian can probably outline what that it is.

**Mr DeCELIS:** There are obviously the two layers of auditing. There is still this initial audit conducted by a registered company auditor. We do have a great reliance on these disclosures being accompanied by a registered company auditor. This goes back to this matter of having full and unrestricted access to their records. When these disclosures are received in the office we have in the legislation now a provision for compliance audits, but, as Colin has pointed out, 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. They are really the two levels that we have at the moment.

**CHAIR:** Do you consider that the current auditing system is sufficient in local government or do you believe, as ICAC does, that it could be strengthened?

**Mr DeCELIS:** To be frank, I think our major issue at this point is the relationship between the candidate or the group and the person required to complete the disclosure. There is an obligation in that relationship not to withhold any information between the group and the candidate and their agent. We often or at times receive matters in our office, at times in the press, of matters that perhaps were not disclosed. They are, in fairness, not probably obvious to the auditor and they are not obvious to us. We rely on people bringing those matters to our attention. So I would suggest that the area that seems to be presenting the greatest problem is that relationship and the openness between the candidate and the group and their agent.

**CHAIR:** Is there any reform that you could recommend to overcome those challenges? Is the registered agent arrangement an effective way of requiring candidates to disclose their expenditure?

**Mr DeCELIS:** Again, if we went back to the previous matters that we raised at the Committee, we raised some matters that we saw as being necessary changes to the legislation. One that I proposed was that at the moment you are not required to register with the authority unless you satisfy certain criteria, one being, for instance, that you do not need to register unless you raise a donation. If you spend a million dollars but take no donations you are not in fact required to register with the Authority until such time as you become a candidate.

We did seek compulsory registration; we thought that was the one issue. The other one—and I know Colin has raised it many a time—is what the deterrent is in that relationship between the candidate and their agent or the group and the agent to be compelled to give open and full information in order for the disclosure to be properly completed? Again I would suggest, and Colin might wish to obviously speak for himself, but I think the deterrent needs to be not just for the agent. We have this issue with the legislation, and this relates to both the agent and the electoral participant in this provision in the Act which prevents us from prosecution, this being what we refer to as the knowing provision in the Act, which we are aware at the Authority, and I am sure we have raised it in a number of forums now, is preventing us from quite a number of prosecutions in that we are unable to prove this knowing arrangement in the legislation, that somebody has knowingly performed some act that has resulted in a disclosure not being complete.

They are the two issues with the legislation. One is this knowing clause in the legislation that is preventing prosecution and one is, we believe, a deterrent for the relationship from the candidate to their agent in disclosing everything that is required for a complete disclosure.

**The Hon. LUKE FOLEY:** Just on expenditure caps, Mr Barry, given the environment you spelt out earlier of very large councils through to very small councils, councils with wards, councils without wards—

**The Hon. DON HARWIN:** Councils with popularly elected Mayors, councils without.

**The Hon. LUKE FOLEY:** Would you see any option in calculating expenditure caps other than tying it to an amount per elector? Surely that is the only way it could properly work, would you not say?

**Mr BARRY:** I would not say it is the only way but I think that in itself has some challenges. You 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.

**The Hon. LUKE FOLEY:** Would you have a minimum amount and then be on that number of cents per elector, for example?

**Mr BARRY:** I think with all of these things it is not possible for us here today to give you anything other than to say this is an extremely complex area and it would need a fair bit of time for somebody to sit down and work through a raft of options and to consider the consequences of those options. I will just give you something to think about. 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? The one that Don just raised is the obvious one, but any scheme that you come up with is going to be very, very complex to ensure that it does not have unintended consequences, and it has got to be simple to administer and simple for people to understand.

**Mr DeCELIS:** And in that model, as Colin points out, anyone who runs for popularly elected Mayor is entitled to also run in any ward or the council area as a councillor. 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.

**The Hon. DON HARWIN:** Then if they have a group voting ticket, if it is a ward of four and they have got three candidates underneath them, they have effectively got four candidates plus popularly elected Mayor and the poor old ungrouped independent, who has only got one person—how fair is that?

**Mr BARRY:** You see this is where I come back to what I established back in December of last year: four pillars. What is attempting to be addressed here? I think that is where the Committee needs to start. What is the matter that needs remedying? Is it participation? There are 4,500 candidates and, as Brian says, there are 40-odd registered political parties. Is it fairness not having access to the public noticeboard? Brian pointed out that the main parties are not spending an awful lot of money on local government elections. We can give you a spreadsheet that shows you—it would be interesting to read—who spent the most: which elected councillors, candidates, spent the most at local government elections. Out of the 4,500 candidates only 50—thereabouts—spent more than \$10,000.

My fear in all of this is that, first of all, is there a problem that needs to be addressed, and I am not sure that there is, but if there is, what are the consequences of introducing public funding? My concern is that the consequences will be that all you will do is notch up the amount of spending that everybody will spend, save for those people who probably will not get access to public funding. So the main parties will benefit from all of this and endorsed candidates of those parties will benefit but I do not think anyone else is going to benefit from it if it is a scheme modelled on a similar basis to that which applies at the State level.



**The Hon. DON HARWIN:** Obviously, the issue of public funding and expenditure limits is quite complex and if we were going to go down that track there would be a need to have a different arrangement to what applies at a State level. On the other hand, in terms of donation caps and disclosure, it is not necessarily that complex. Do you see any policy reason why a scheme that was adopted at a State level in terms of donation caps and/or disclosure should be inherently different from the one adopted at a local level?

**Mr BARRY:** I agree with your comment that the two things are separate in terms of the funding and the disclosure side of the equation and the players in local government are already subject to the provisions relating to disclosure. In terms of the Committee's recommendations and what the Government's response may be to those recommendations in terms of legislation, I think the Committee would want to have a careful look at any legislation that comes along as to whether that is applicable to local government. But even based on what the Committee has recommended, the amounts of money in there for local government would not be appropriate, in my view; I think they are too high.

**The Hon. DON HARWIN:** You mean too high in terms of what has been speculated about in the media as being appropriate?

**Mr BARRY:** Yes. But the concern for us is the relationship between candidates and third parties and it is the regulation of the third parties that 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.

**Mr ROBERT COOMBS:** I suppose we will learn this from Genia McCaffrey from the Local Government Association of New South Wales when she comes, but what is their approach? Have they lobbied you or your group to go to public funding? Is it a particular issue?

**Mr BARRY:** I have heard nothing.

**Dr JOHN KAYE:** Is there a specific problem with local government with respect to either public funding or expenditure caps with the fact that you have political parties that have a variety of different bodies within them—different accounts, different structures within them? Is it currently creating a specific problem? Would that problem get worse if we went to a system of expenditure caps and even a system of public funding?

**Mr BARRY:** Each of the political parties has its own internal arrangements as to how they organise their finances and so forth. But my observation would be that in the last 18 months the main political parties have come quite a long way in terms of maturing their internal accountability with respect to finances of campaigns and so forth. One of the biggest challenges, of course, of local government is that we have quite a number of political parties who are no more or no less, from our observation, well-intentioned people sitting around a table on a Sunday afternoon playing an election campaign.

That is a very different thing from talking about the strategies and approaches that might be put in place by a party that participated at the State and Federal levels. Indeed, in our view, if the Committee were so minded as to recommend public funding anywhere in the scheme, the area where there is a call for modest public funding is emerging political parties at the local government level. Many of the queries and issues that come through to Brian DeCelis and his team relate to political parties which do not have the benefit of participating in public funding at State and Federal levels but which are required to comply with the same disclosure regimes.

Some seeding for those emerging political parties would be in the public interest and it would be a good thing. Again, the amount of money involved should be closely analysed. There could be a pot of money available whereby emerging political parties that were not the beneficiaries of funding from state election campaigns could make submissions to the Authority to obtain funding to assist them, not so much for running campaigns but for informing themselves, having access to financial advice to be able to understand their compliance, and even perhaps to undertake some training.

**Dr JOHN KAYE:** Are there situations emerging at the moment where political party candidates are putting in nil returns and the expenditure is happening at the party level?

**Mr DeCELIS:** Absolutely. One of the most common issues we have raised with us at the Authority is the lack of transparency of endorsed candidates, particularly at the last State election. The parties have now moved all the financial arrangements for their local endorsed candidates to the head office level. Now all donations and expenditure are channelled through the party's head office. 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.

**Dr JOHN KAYE:** In the case of local government elections, do you see an argument for changing the regime so that parties must declare the money at the local level?

**Mr DeCELIS:** 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.

**CHAIR:** On behalf of the Committee, I thank you for your attendance this morning and for sharing your expertise. If the Committee has any further questions, they will be forwarded to you so that you can provide a response.

**(The witnesses withdrew)**

**ROBERT WILLIAM WALDERSEE**, Executive Director, Corruption Prevention, Education and Research, Independent Commission Against Corruption, Level 21, 133 Castlereagh Street, Sydney 2000, affirmed and examined:

**CHAIR:** Welcome to this morning's hearings. The Committee has received a submission from the Independent Commission Against Corruption (ICAC). Is it your wish that the submission be included as part of your sworn evidence?

**Dr WALDERSEE:** Yes.

**CHAIR:** Under the standing orders, witnesses are examined under oath or affirmation on the subject matter of the inquiry. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Dr WALDERSEE:** No.

**CHAIR:** Would you like to make an opening statement before members proceed to questions?

**Dr WALDERSEE:** As we stated in our submission, the ICAC supports public funding at the State level as a way to reduce the risk of corruption. We support transparency, expenditure limits and disclosure. We also recognise that a number of issues in the local government arena increase the risk factors. They are structural and human, and they are what we would see in other areas, such as procurement, occurring at low levels or with regard to licensing behaviour. That is, there is a large number of people involved—we have just heard the figure of 4,500. We have 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 and coherent in and of themselves in the ward structure and in the local government authorities themselves.

It is important to note that small sums of money can make quite a big difference to someone. It does not take much in a small ward to go from struggling to having a letterbox drop of everybody—you can do that for \$1,000. In some cases we are looking at small numbers of people having to be influenced to change the balance in a local government area. 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 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.

**CHAIR:** Paragraph 2f of the ICAC submission states:

The majority of these allegations [about political donations] are not formally investigated by the Commission, 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.

Can you elaborate on the difficulties experienced in investigating allegations of corrupt conduct concerning political donations?

**Dr WALDERSEE:** We get 2,500 complaints a year, of which most fall into that category. The problem is that when a donation has been made and a decision is made or a certain person is elected it becomes very hard to show that there was ever any link. That has changed somewhat in the developer scenario since the 2009 amendment regarding developer donations. There might be some agreement, cash changing hands or an allegation, but it has been turned down. When I was on the North Coast recently a councillor told me that they had been offered campaign funding because it was thought they would be pro-development. That complaint was never made to the ICAC. If it had been, we do not know who it was and we think they were in Queensland. Nothing has happened, but the attempt has been made and there is not really much that the Commission can do to take that forward.

**CHAIR:** Do you see public funding of local government election campaigns as a way to prevent or minimise the risks of corrupt conduct?

**Dr WALDERSEE:** Yes, if it can be done in a way where people understand the rules and there is some system of checking compliance and disclosure. If you decide to allow some donations and there is disclosure and transparency about what is left, that can be beneficial, in conjunction with capping of expenditure.

**CHAIR:** The ICAC submission also talks about the number of complaints received about political donations. I think the number was 55, which represents 2.5 per cent of all matters received. Do you have an idea of what proportion of those relate to local government election campaigns?

**Dr WALDERSEE:** I do not have that information, but I can obtain it if the Committee wishes.

**CHAIR:** That would be useful. Do you consider the risks of undue influence and corrupt conduct relating to political donations to be greater for local governments than for state governments?

**Dr WALDERSEE:** I think in my opening statement I said that the risk factor is greater because of the structural arrangements. As I said, we have geographic isolation and small sums of money making a big difference. We are talking about scenarios where it does not take much to swing the balance in a council—you might need to swing only one person—and the pay-offs to those providing the funding can be very large. I highlight the very small the sums of money required to make that change. It also makes the audit process very difficult.

**Dr JOHN KAYE:** You stated the reasons for your belief that local government is more sensitive to corrupt behaviour than state government. Do you have any evidence or hard data suggesting that there is more corruption at the local government level?

**Dr WALDERSEE:** As a result of donations?

**Dr JOHN KAYE:** Yes.

**Dr WALDERSEE:** No, I do not have any hard data. That goes back to the earlier question of the difficulty of investigating these issues. However, we do have enough to concern us. We have the history of places such as Tweed, which had very significant problems, and Wollongong. That is two out of roughly 150 local government areas. However, what happened in those two places was very significant. Both of them were tied to donations relationships and that bigger web of linkage between developers and councillors, of which donations are part.

**CHAIR:** When the Electoral Commissioner was in earlier we talked a little about caps on expenditure, and some suggestions were put about some of the problems associated with caps on expenditure, being that it might encourage candidates to nominate for multiple positions within the one council. ICAC has recommended caps on expenditure. Do you see any challenges or problems in a system that would include caps on expenditure?

**Dr WALDERSEE:** I think Commissioner Barry identified many of the problems of the real workings of it. I like to call it the white hat. You have to look at it and say, "How could you pervert this?" He raised a lot of the concerns that would go with any system where it would be quite impossible to say, or, as he said, quite unfair to link expenditure, say, to the number of voters because you would find areas such as the far west of the State had very few voters but enormous costs of campaign because of the travel that is involved. So if the system starts to become very complex, then complexity becomes a corruption risk. People find ways through it, they find ways around it. So a very simple system is the best approach to prevent corruption but a very simple system is also problematic in such a complex arrangement as local government. It does not quite answer your question.

**The Hon. LUKE FOLEY:** If the objective is preventing corruption, would expenditure caps do the job? Why do you also see a need for public funding? Would not expenditure caps go all the way or almost all the way to eliminating the corruption risk?

**Dr WALDERSEE:** There are two parts. The expenditure cap we see as playing an anti-corruption role in conjunction with public funding, and 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. So that would not stop that problem. It would stop the size of the expenditure. 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. You say, "Okay, that's all you can spend and we'll provide the money so you don't have to raise the money off developers or any other interest group that may be trying to influence you, and there is no benefit in obtaining additional money because you are capped." So the two work together.

**CHAIR:** The report of this Committee into public funding for State elections made recommendations about caps on donations. The Committee recommended a cap of \$2,000 being available to any candidate or political party. In the local government context do you think that cap is appropriate, and do you think caps should be introduced at local government level as well?

**Dr WALDERSEE:** We believe there should be a cap system if the Committee can find a way to make it workable. As I said, if it is extraordinarily complex it creates opportunity rather than reduces corruption, which is the last thing we want to do. But ideally you would want to cap donations. You cannot tell people they cannot make any donation. I am not a constitutional lawyer but I think you would struggle with such a concept. But the question is: cap it at what? You would have the same trouble with public funding that you hit with the capping. Is somebody in a highly isolated place that has only a few constituents entitled to more per voter than somebody in a place where it is a lower cost? What would you do with caps on donations in the scenario that we heard under Commissioner Barry where you have elected Mayors and a ward system? If you can solve those problems then the capping of donations would be the way to go. Again the issue I want to repeat is that the amount of money involved here to make a difference can be very small. Again, if you cap it, how do you track it? How do you track what has been given? I think we heard the difficulty of doing that at the State level, but you do not want a toothless tiger where people are going underground and working around complex systems.

**Dr JOHN KAYE:** In your submission you recommended that comprehensive public funding for local government elections be introduced in New South Wales. Can you tell us what you mean by "comprehensive" in that recommendation?

**Dr WALDERSEE:** Sorry, this is recommendation number?

**Dr JOHN KAYE:** Recommendation No. 1 on page 3.

**Dr WALDERSEE:** It is very much an overarching recommendation of what follows. The funding system is that donations are capped as much as possible, that the costs of the candidate are reimbursed up to a point but there has to be an expenditure limit on the actual campaign that is run, and that there are disclosure requirements on third party expenditure. That is what we meant by that system. So that recommendation is a summary that says we support all of this.

**Dr JOHN KAYE:** So "comprehensive" in that sentence means public funding but also accountability and caps.

**Dr WALDERSEE:** Yes, that is what comprehensive means.

**Dr JOHN KAYE:** Do you think all of those three have to go together to address the corruption risk?

**Dr WALDERSEE:** Yes, otherwise you do not change the incentives very much. If you just provide funding—

**Dr JOHN KAYE:** You distort them without getting rid of them.

**Dr WALDERSEE:** Yes.

**CHAIR:** In general terms, in your experience of allegations of inappropriate behaviour or corrupt conduct in local government, is it your view that issues surrounding donations and the perception of influence is the greatest area of corrupt conduct or allegations thereof? Is it mainly related to donations and decisions arising from that?

**Dr WALDERSEE:** In local government?

**CHAIR:** Yes.

**Dr WALDERSEE:** Is that the main corruption risk?

**CHAIR:** Yes. In terms of complaints and allegations that have been made to the Commission, do the majority of them relate to donations and decisions?

**Dr WALDERSEE:** I cannot give you an accurate answer without an analysis of our data.

**CHAIR:** Just anecdotally?

**Dr WALDERSEE:** Anecdotally, I would say probably not. It tends to be relationships in other areas. So rather than the benefit coming from a donation, the benefit is coming from some other relationship that has formed in the area.

**CHAIR:** Can you elaborate on that?

**Dr WALDERSEE:** Wollongong would be the classic where we had all sorts of relationships going on. There was gift giving, there were promises of future employment, there were relationships. All those things were going on, and those are usually the sort of complaints we see. There were conflicts of interest. We had people with other businesses, business arrangements or they have relatives with businesses that they have not declared or people think that something has happened because of that. They would make up the bulk of the complaints. If you are asking me is this category of donation any bigger than, say, the category of giving a gift or having a business relationship or any one of those single items, I would have to look that up. As a rule, the bigger set of problems is these relationships outside the specific donation.

**The Hon. DON HARWIN:** That raises a lot of other questions which are not strictly relevant, but I will try one of them anyway. Do you think the fact that the office of councillor is essentially a part-time office rather than a full-time office—I notice that has been raised in other submissions that we have had—is part of the problem in terms of that suite of corruption risks that you have raised?

**Dr WALDERSEE:** We have no evidence that either a token payment or payment only for attendance is a causal factor in the behaviour of councillors, whether appropriate or inappropriate. We have no evidence on that. I have heard that argument, though, that if only they were paid properly they would not have to resort to this. Many of them have proper jobs.

**CHAIR:** Is there any comparative data between the number of complaints of corrupt behaviour between councillors, for example, in Queensland which are full-time compared to New South Wales?

**Dr WALDERSEE:** We have not done that analysis. I am not saying it does not exist but we have not done it. I do not know if it does.

**The Hon. DON HARWIN:** I note in your submission you talk about the potential problem that arises from the issue of holding unspent funds, which I imagine is more of a problem with Independents than major party candidates. With unspent funds, obviously there is a possibility that they might end up being used for personal uses after the campaign is over. How large is that problem, do you think? What are the implications of that problem in terms of how we should design the various elements of a comprehensive regime?

**Dr WALDERSEE:** At the moment without public funding there is no holding of public money after the election.

**The Hon. DON HARWIN:** I think I am actually referring to campaign funds that are raised by independent candidates and then held. I will let you continue.

**Dr WALDERSEE:** We were referring to the issue of when people are receiving public money; if it was not a reimbursement-based scheme but essentially a block payment—

**The Hon. DON HARWIN:** I see.

**The Hon. LUKE FOLEY:** An entitlement scheme. The Pauline Hanson scheme.

**Dr WALDERSEE:** Yes, where it is alleged that she was running for Parliament simply to generate an income.

**Dr JOHN KAYE:** Do you see that as corruption or just a bad scheme design?

**Dr WALDERSEE:** It would probably come down to the intent. If somebody went into it with the intent of taking money from the Government that was not intended for that, then it probably would look—

**Mr ROBERT COOMBS:** It is pretty easy to get over, though, because you would just put in a clause that prevents profiteering. So you can only claim to the maximum of your expenditure.

**Dr WALDERSEE:** That was our recommendation that it is an expenditure-based reimbursement model.

**The Hon. DON HARWIN:** A reimbursement model rather than an entitlement model.

**Dr WALDERSEE:** Yes.

**The Hon. DON HARWIN:** That would be potentially a real problem in terms of local elections particularly in small areas if you went with the entitlement model. It would depend on the thresholds, I imagine.

**The Hon. LUKE FOLEY:** Can I just go back to donations? You have made a number of comments about developers and the balance on many councils—pro-development, anti-development—and the legislature has tried to address the issue of developer donations in the past year. What other predatory interests has ICAC identified other than developers that contribute to a climate of corruption in local government, particularly when it comes to donations?

**Dr WALDERSEE:** 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.

**CHAIR:** And bound by developers?

**Dr WALDERSEE:** Yes, at the local government level.

**Dr JOHN KAYE:** The issue you did not mention there, is contracts and supply. There have been a couple of famous cases—I do not know whether they made it to your desk—in the media of contracts being awarded under suspicious circumstances. Do you see that as another form of potential corruption that could be played out through campaign donations?

**Dr WALDERSEE:** That would be the next most probable. Outside just the relationship, the common one we see is where someone was employed as an engineering firm who happened to be the brother of someone,—the allegations do not support them being donation-based problems but rather other relationship problems. But there are occasions, as you referred to as being in the media, where there are question marks as to whether large contracts make it worth trying to influence the election of one councillor over another, but that would be the next biggest worry after development. Development is far in front, and our primary concern. That makes it somewhat different to the State level. At the State level you can look at a broader range of big decisions that might affect potential donors but not so much at the local level.

**CHAIR:** Dr Waldersee, if the Committee receives further evidence that requires a comment from or a question of ICAC, would you mind if we contact you again and seek your advice on those issues?

**Dr WALDERSEE:** No, that would be fine.

**(The witness withdrew)**

**(Short adjournment)**



**ALLAN GORDON EZZY**, Vice-President (Metropolitan) Local Government Association of New South Wales, and Councillor, Holroyd City Council, 28 Margaret Street Sydney, and

**MICHAEL PAUL BRAYBROOKS**, Treasurer, Shires Association of New South Wales, and Mayor, Cootamundra Shire, 28 Margaret Street Sydney, sworn and examined:

**CHAIR:** Under standing orders witnesses are examined on oath or affirmation on the subject matter of the inquiry. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr EZZY:** No sir.

**Mr BRAYBROOKS:** No, I do not, sir.

**CHAIR:** We have received submissions from your organisations. Is it your wish that the submissions be included as part of your sworn evidence?

**Mr EZZY:** Yes.

**Mr BRAYBROOKS:** Yes.

**CHAIR:** Would either of you like to make an opening statement before we commence questions?

**Mr EZZY:** No sir.

**Mr BRAYBROOKS:** No.

**CHAIR:** Did either of you manage to hear the evidence from either the Electoral Commissioner or Dr Waldersee from the ICAC?

**Mr EZZY:** No.

**Mr BRAYBROOKS:** No. We arrived and you were in recess.

**CHAIR:** Have you had a chance to look at the submissions made by either of those organisations?

**Mr EZZY:** No.

**Mr BRAYBROOKS:** No.

**CHAIR:** While it is difficult to generalise on local government election campaigns, drawing on your experience and knowledge of Local Government and Shires Associations member councils, what do you consider to be the minimum amount needed to mount a local government election campaign expressed as an amount per elector?

**Mr EZZY:** Personally speaking, I do not see the need for public funding for local government elections. I have contested and been a member of Holroyd City Council for 36 years and in that time 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 fund their own campaigns.

**Mr BRAYBROOKS:** 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.

**CHAIR:** So he did not produce a how to vote?

**Mr BRAYBROOKS:** No. He did not even attend the voting booth and he still did extremely well.

**Mr EZZY:** For my input, my city has something like just over 90,000 people and, as I said, I think my total was \$5,000 and that included two letterbox drops and how-to-vote cards on the day and I think included in that was an amount of money which I spent on refreshments for a barbecue, I think on the Sunday or the Sunday after the election to the workers who helped me.

**CHAIR:** Did you contest a ward in your city?

**Mr EZZY:** Yes.

**CHAIR:** How many people in your ward?

**Mr EZZY:** Three in each ward and there are four wards.

**CHAIR:** How many voters?

**Mr EZZY:** I think there are 20,000 in the ward—just under 20,000 from memory.

**CHAIR:** Councillor Braybrooks, is your council divided into wards?

**Mr BRAYBROOKS:** No, it is a single entity and there are about 3,500 voters.

**The Hon. DON HARWIN:** Does it have a popularly elected Mayor?

**Mr BRAYBROOKS:** No. The Mayor is re-elected each year. You asked me about how-to-vote cards. The simple fact is that because there are no groupings—we all stand as individuals and my understanding and the current thinking is that when you do a how-to-vote card, you have to actually specify the complete range rather than just vote 1, me, vote 2, this person, and in a country town that can be really quite embarrassing because I would have known every single candidate that was standing and some of them extremely well, so people tend to shy away from how-to-vote cards.

**CHAIR:** Before your evidence this morning we heard from the Independent Commission Against Corruption. They have made a submission in addition to their evidence today. I will quote some of their submission:

The fact that candidates for elected office have to wear competing hats: as a fundraiser and current or aspiring public official, is of particular concern. This concern is heightened by the fact that persons with a direct stake in the decisions of council, such as developers, are the most obvious fundraising targets ...

Nevertheless, the Commission is of the view that a culture of political donations involving individuals with an interest in council decision-making has fuelled perceptions of inappropriate conflicts of interest and undue influence and also represents a significant corruption risk.

Does any of that ring true for you?

**Mr EZZY:** Not so far as I am concerned, it does not.

**CHAIR:** I am not talking about you as an individual but your understanding of it?

**Mr EZZY:** My understanding of the industry, if I could use that term, no. There are always people trying to approach you about issues, not necessarily developers, and I think it comes from common sense, from your own understanding of people and dealing with people to sort the sheep from the goats and not expose yourself to that.

**CHAIR:** From your experience in a metropolitan council which, I suspect, has some development pressures?

**Mr EZZY:** Yes.

**CHAIR:** Those in favour of it and those against it, has there ever been an allegation or a perception amongst the community that decisions have been influenced by political donations?

**Mr EZZY:** I cannot speak for the general public but to my knowledge, no, not in the area I represent, that has not been raised as an allegation against any councillor in my time in local government.

**CHAIR:** Councillor Braybrooks?

**Mr BRAYBROOKS:** In all fairness, development is the sort of thing we encourage. We do not need to be persuaded. If a developer came and offered to do something fairly major in a country town, we would take him out to dinner. We would not expect him to pay the bill.

**Dr JOHN KAYE:** You would bribe him.

**Mr BRAYBROOKS:** Whilst that is a little flippant, my point I think is a legitimate point, 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.

**CHAIR:** Thinking beyond the experiences at your own council, Councillor Ezzy, do you accept that there is the perception of influence from donations to candidates and political parties of councils and the perception that those donations have an influence on decisions of councils?

**Mr EZZY:** 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.

**CHAIR:** Given that the State Government is looking at significant reform to political donations and public funding State elections to address the perception that exists about the role of donations influencing decisions, do you think that there is a need to do something similar at local government as well?

**Mr EZZY:** Local government is certainly oversighted by a lot of State legislation. 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 and as these individuals are unearthed as they occur, provided that they are exposed and dealt with through the court system, I think that in itself is a deterrent. From my experience in local government generally, there is probably a different type of person standing for local government nowadays than was the case when I first stood for local government, or even up until the last 10 years. There is now a different type of person standing.

**CHAIR:** Do you think there is any requirement for reform at all in local government, to address the perception of the influence of political donations on decisions?

**Mr EZZY:** As a general statement, no, I do not. I think there are sufficient procedures in place to govern it.

**CHAIR:** Councillor Braybrooks?

**Mr BRAYBROOKS:** Representing as I do the Shires Association, the simple answer is no.

**Mr ROBERT COOMBS:** At one of the previous hearings where we were dealing with these matters, a particular gentleman said basically your political actions come into play around an election period, and then when a council is elected councillors basically act like a board of directors. After that

they are an executive; there is no opposition or anything like that. I suspect that the two councils you represent probably act in a similar sort of way. However, the fellow from the ICAC who gave evidence this morning said that one of the matters that concerns the commission is that where there is continuous political bickering or a council is very divided—let us take planning as an issue; it might be six, five, four—it is only a matter of removing one person and having them replaced by an individual from the other side, and that then keeps the sway of the council back towards either a development council or a non-development council. That is where these issues, not only dealing with public funding but also donations and expenditure, come into play. It seems from his contribution this morning that the commission is anxious to get past this problem you have with some councils, albeit not all of them, whereby third parties basically decide, "We are going to support a candidate, and fund them to the point where they run very elaborate campaigns", and therefore the democratic process in itself becomes a bit corrupted.

In your experience as spokespersons for the local government group, is that an endemic problem? Do we need to address that problem and set in place both donation and expenditure limits, to overcome the problem or like problems?

**Mr EZZY:** I do not think so. I think that what exists at the moment is sufficient. I think there is disclosure upfront by councillors that they have an interest in a matter. If they are found not to have made a disclosure that they have an interest in a matter and then subsequently it is found that they did, I think systems should be in place to see that those people are dealt with accordingly for not telling the truth, or misleading the council, or whatever. But, generally, I do not think the industry needs more policing. You will always get a political party or group that has an interest wanting to stand behind their candidate, or their whatever, to get them into council. That will happen inevitably. But I think that for anyone who is genuine in their interest to stand in council, when they get there they find it is not an easy run; they have to make decisions. Apart from the decisions on development issues, they have to make other decisions. You will sometimes find that after 12 or 18 months people will decide that it is not for them and they will opt out, and there is then a by-election. There are those who go in there with that intention—and I am not saying it is there. But if they go in there with that intention to make a quid out of it, or to support their mates, their actions are going to bring them under notice. They will quickly come under notice, and the full system should come down on top of them and remove them. But, generally, I do not think it is a problem.

**CHAIR:** You do not think that systems should be put in place to prevent corrupt conduct, but that the system should prosecute if corrupt conduct is determined?

**Mr EZZY:** I think there are sufficient systems in place now to safeguard the community against those sorts of actions, and to ensure that councillors act responsibly—and they do, in general. But where they do step outside that—and there are penalties, or whatever, there now—perhaps they need to be taken to their fullest extent. But I do not think you need more legislation to make their role that much more difficult.

**The Hon. DON HARWIN:** Councillors, both of you talked about the fact that you do not think public funding is required, and you have mentioned the small amount of money you spend on each of your respective campaigns. Should, nevertheless, we have caps on how much an individual or entity can donate to a candidate, and should we have caps on how much any candidate can spend?

**Mr BRAYBROOKS:** Assuming you make those caps for rural shires very small—again, I am representing the Shires Association—I would have no problems with that, because the reality is that people spend very little money. It really is a matter of having a profile in town beforehand, not just before the election—very much so. As such, obviously that may cost time, but it does not cost money.

**The Hon. DON HARWIN:** Councillor Braybrooks, you would not be opposed to a cap on donations or a cap on expenditure?

**Mr BRAYBROOKS:** As long as the cap is set at a very low figure.

**Mr EZZY:** Likewise, I do not have a problem with that for a metropolitan council at all. 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 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.

**Dr JOHN KAYE:** Gentlemen, are you talking on behalf of the Associations?

**Mr EZZY:** Yes.

**Dr JOHN KAYE:** These are the positions—?

**Mr BRAYBROOKS:** These are the positions of the Local Government Association and the Shires Association.

**The Hon. DON HARWIN:** It is not clear from the submission of the two Associations that that is their position, in terms of caps on donations and caps on expenditure.

**Mr BRAYBROOKS:** My memory of the submission is that it went just to whether there should be public funding, and that that is as far as it went. Yes, that is correct. My understanding is that what we have both just said would be quite acceptable to both Associations.

**Dr JOHN KAYE:** Councillor Braybrooks, my understanding is that what you say about development being welcomed and there being a desire in the community for more capital investment, particularly private capital investment in development, is probably relevant to areas like Cootamundra. Would it be fair to say, however, that for shires along the coast that would not be so true and that there would be significant bodies of people on the coast who are opposed to development, or opposed to the sorts of development that is coming in?

**Mr BRAYBROOKS:** That is probably true. I would not know. In all fairness, a lot of the larger coastal shires are members of the Local Government Association. Let us be honest, the Shires Association tends to represent the smaller councils, and certainly the rural councils, which are in a larger geographic area. So, really, the councils which come under the Shires Association would normally be welcoming of development. Probably the one that immediately comes to mind is Tweed council, which is a large coastal council but it is still a member of the Shires Association. But that is fairly unusual. Most of the large local government areas, even if they use the word "shire", are members of the Local Government Association.

**Dr JOHN KAYE:** So Byron, Bega and Coffs Harbour councils are not?

**Mr BRAYBROOKS:** They are members of the Local Government Association, yes. Off the top of my head, I think Tweed council is about the only larger coastal council which is still, by tradition and has remained, with the Shires Association.

**Dr JOHN KAYE:** I guess my question goes to you, Councillor Ezzy, with respect to those large coastal councils. You are not concerned that the amount of money that comes from various interests into candidate campaign coffers during the election is having an influence over the outcome? You spoke about your own situation, and you said you do not spend much money and it is all fine. But is it not true that there are local government areas within the Local Government Association where there is a lot of money going into campaigns from interests outside of the candidates themselves?

**Mr EZZY:** That is right, there probably is. But I can only speak generally, across the Association, about what the Association's view is. There may well be large amounts of money going behind some candidates. In the main, that is probably candidates that stand for a political party. It is a broad statement. And there are issues where these councillors would welcome development, and residents generally would welcome development, with provisos—that is, that they are getting development that is not ruining the way of life they have been used to, not blocking out their views, and the councillors are probably prepared to accept that. But what they do object to is being overruled by Macquarie Street with rules, through planning and everything, which take the issue outside their domain. If it is a significant development over a certain amount of money, as you would be well aware,

it is then taken out of their domain and goes to either a joint regional planning panel or the Minister, and therefore the council and the people have no say at all.

**CHAIR:** It is the view of the Local Government and Shires Associations that the perception of influence of donations to candidates and political parties does not warrant reform of the rules about donations or public funding?

**Mr BRAYBROOKS:** Yes. The existing structures through the Authority, with the requirement for auditing et cetera, should be sufficient.

**CHAIR:** Are there any recommended reforms of either of your Associations to the way in which candidates have to account for their expenditure and income?

**Mr EZZY:** Yes. I think it is quite evident within the Local Government Association—and I understand similarly with the Shires Association—that the process whereby every six months a candidate who has been successfully elected has to report back to the Electoral Funding Authority on what donations they have received in the last six months becomes a bit onerous, given that the form that you have to keep is several pages when you have not received anything. It is also quite onerous on local government generally, given the costs that have been put on local government to run local government elections. If I can give you an example—

**CHAIR:** That is probably not part of this inquiry.

**Mr EZZY:** I know, but it has a great impact on local government, because that is money that is being spent by the Local Government Authority on something that was done at a minimal cost but which is now costing hundreds of thousands of dollars to run.

**CHAIR:** On behalf of the Committee, I thank you for your evidence today. If we have further questions for either of the Associations, may we contact you to seek further advice?

**Mr EZZY:** Certainly.

**Mr BRAYBROOKS:** Certainly.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**NED MANNOUN**, Deputy Mayor, Liverpool City Council, 1 Hoxton Park Road, Liverpool, sworn and examined:

**CHAIR:** We welcome Ned Mannoun from Liverpool City Council. We thank you for coming to give evidence today. We have received a submission from Liverpool City Council. Is it your wish that the submission be included as part of your sworn evidence?

**Mr MANNOUN:** Yes.

**CHAIR:** Under standing orders, witnesses are examined on oath or affirmation upon the subject matter of the inquiry. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr MANNOUN:** Not specifically, but maybe as we go along.

**CHAIR:** Would you like to make an opening statement before we commence questioning?

**Mr MANNOUN:** I would just like to thank all involved in this process for establishing it and allowing councillors such as myself and our council to have a say and to provide our opinions.

**CHAIR:** I might start with some general questions. Perhaps you could tell us a little bit about Liverpool Council—the size of the council, the make-up, the election process, whether it is wards and popular Mayor and that sort of thing, the number of enrolled voters, that sort of information?

**Mr MANNOUN:** Liverpool Council has approximately 180,000 residents. It is a very ethnically diverse area with 60 per cent of people coming from a non-English-speaking background. It consists of 10 councillors divided into two wards, with one popularly elected Mayor. I think there are approximately 90,000 voters in the area and there are roughly around 45,000 to 50,000 in each ward.

**CHAIR:** This is your first term on council?

**Mr MANNOUN:** Yes, that is correct.

**CHAIR:** Thinking back to your election can you give us a little bit of information about your campaign, how it was funded and what sort of expenses you incurred in your campaign?

**Mr MANNOUN:** The majority of the expenditure from our campaign was self-funded. I think the top four candidates each put in \$5,000 and then the rest was just through a fundraiser and a couple of donations from members of the community.

**CHAIR:** Do you recall what your expenditure was for the campaign?

**Mr MANNOUN:** Not exactly but 30,000 to 40,000 I think is ringing a bell. I am not exactly sure on that; I would have to go back to the records.

**The Hon. DON HARWIN:** Was that for the entire campaign—both wards and the directly elected Mayor?

**Mr MANNOUN:** Yes.

**The Hon. LUKE FOLEY:** You are from the Liberal Party?

**Mr MANNOUN:** That is correct, yes.

**The Hon. LUKE FOLEY:** You ran a Liberal ticket?

**Mr MANNOUN:** Yes.

**CHAIR:** Have you had a chance to review the submission made by the council officers to the inquiry?

**Mr MANNOUN:** Yes, I have.

**CHAIR:** Do you want to make any comments about the submission that was made or do you want to share any opinions regarding it?

**The Hon. DON HARWIN:** Mr Chair, before he does that could I ask him to clarify whether this was a matter that was discussed at a council meeting and whether the actual submission that the General Manager has sent arises from a council discussion about what the position should be?

**Mr MANNOUN:** No it was not discussed at a council meeting. This is purely a recommendation from council staff and has nothing to do with the elected councillors.

**The Hon. DON HARWIN:** So it was the General Manager writing about the General Manager's and the staff's views?

**Mr MANNOUN:** That is correct.

**CHAIR:** Do you have a view about what was in the submission from the General Manager and the management team?

**Mr MANNOUN:** I agree with most of what is written in there but have a few questions. It starts off by saying that the council management is supportive in general terms of public funding. I would agree with that. However, the support is tempered by the lack of specific detail and I think that is where it is important, that if this is going to go ahead how would it actually work? There are other things that are mentioned in there—it is talking about an allowance and some of the ideas that he is mentioning there. But overall I am generally supportive of the majority of comments that are in there.

**CHAIR:** The ICAC made a submission to this inquiry and I will just read from some of what is included in its submission. It says, "The fact that candidates for elected office have to wear competing hats: as a fundraiser and current or aspiring public official, is of particular concern. This concern is heightened by the fact that persons with a direct stake in the decisions of a council, such as developers, are the most obvious fundraising targets". It also says, "Nevertheless, the Commission is of the view that a culture of political donations involving individuals with an interest in council decision-making has fuelled perceptions of inappropriate conflicts of interest and undue influence and also represents a significant corruption risk". Are they views that you would generally share?

**Mr MANNOUN:** Yes. Looking from the outside as a resident that perception does exist.

**CHAIR:** Is it your view that public funding reform, including maybe caps on expenditure and caps on donations at local government levels, would improve the perception in the community of the integrity of the decision-making process?

**Mr MANNOUN:** Yes, it would. The reality is that we live in a democracy and more and more democracy is being sold. Having a cap on expenditure I believe is essential to maintain our democratic system.

**CHAIR:** In a council like Liverpool with 180,000-odd residents, how would you propose to set a cap on how much is spent by a candidate contesting an election?

**Mr MANNOUN:** I think it would have to be an amount that is potentially 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. If you were to have a method of communication such as a direct mail-out where we are probably looking at around 50 to 60¢ per person, then I guess one would look at it and say, "What is an appropriate amount of letters to send out to someone?" Two letters, probably pushing to three, with a few other things like that, that puts it at around \$1.50 per person—because there is obviously the other expenditure with your how-to-votes and your shirts and on election day feeding the workers, all those other expenditures—then times that



by how many voters there are, but not being an exact amount. If you get around \$90,000 you round it up to \$100,000. It has to be linked to the size of the actual electorate.

Then taking into consideration the regional, a regional campaign in outer New South Wales will be a bit more expensive because you have further distances to travel. So I think that is worthwhile taking into consideration as well.

**CHAIR:** Your ward structure has five candidates per ward?

**Mr MANNOUN:** Yes.

**CHAIR:** I imagine that the Liberal Party put a ticket of five candidates per ward?

**Mr MANNOUN:** Yes.

**CHAIR:** Would a cap on expenditure apply to each of these individual candidates on that ticket or would it apply to the ticket as a whole?

**Mr MANNOUN:** I think, probably for simplicity, as a ticket. But I would have to give more thought to that as well. Just looking at the overall amount of money—I know there is a lot of confusion when you are submitting a group submission and then you have to do individual submissions; a lot of people were confused with that, especially people who ran with us and other people who were running in the election.

**Mr ROBERT COOMBS:** Our notes might need an amendment. If I read your answer to the Chair's question about expenditure caps correctly, you said you supported them. Is that correct?

**Mr MANNOUN:** Yes.

**Mr ROBERT COOMBS:** My notes on your submission say "expenditure cap not required".

**The Hon. DON HARWIN:** I think he explained that as being from the General Manager.

**Mr ROBERT COOMBS:** Again in relation to your answer to the Chair's question, we had one representative from the Local Shires Association and one from the Local Government Association here this morning. To be frank, they were dismissive of this. My reading is that they do not support any funding model—they were quite clear about that. They vaguely said that they could support some sort of donation and expenditure cap. I am trying to get to the bottom of this and to understand it. Do you know how much this has been debated or raised as an issue at the Local Government Association level? How much support is there in your council and in other councils—what have you heard from other councillors while undertaking your duties and responsibilities—for changes to the current model to allow for public funding and caps on donations and expenditure?

**Mr MANNOUN:** As a fairly new councillor—I have been on council for just over two years—I have been to only one Local Government Association conference. I will be going to the one to be held in Albury later this month. Generally speaking, there would be overwhelming support for this. That is true of our council, because transparency is very important. 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. It is very important that we have caps on expenditure.

I said that we do not want democracy for sale. I know the American example relates to a presidential election, but more than \$1 billion was spent by each candidate. That goes against the democratic principle because everyone then needs to spend that amount. One could argue that that sort of fundraising demonstrates community support. However, it is really the support of the business community. On that note, I do not think that businesses should be allowed to donate; only individuals on the electoral roll should be able to donate. That is the best way to keep it transparent. There should also be a limit on how much each individual can donate. That is important.

**Mr ROBERT COOMBS:** I respectfully put it to you that that sort of message must be made known to the Association. The representatives who appeared before the Committee this morning

clearly did not indicate that that had been considered or that any communication or consultation was going on.

**Mr MANNOUN:** An election for the Association will be held this year. I will be putting that question to the candidates; I will be asking for their opinion and stance on this issue. It is a valid point. Hopefully something is going to be done, because some people are losing hope for the system. If the Government is serious about doing something, the support will come from the councillors and their Association.

**The Hon. LUKE FOLEY:** I recall the dismissal of the elected councillors and the appointment of an administrator in Liverpool some years ago. That was a result of issues around the Oasis project. The election in which you were elected saw the restoration of elected local government in Liverpool.

**Mr MANNOUN:** Yes.

**The Hon. LUKE FOLEY:** What can you tell the Committee about that election with regard to donations and fundraising by not only your team but also the Labor team, which has the majority, and others given the period of administration and the return of democracy? Did some of the colourful business figures in the Liverpool area get back involved in the business of donating and supporting candidates for election to the council?

**Mr MANNOUN:** I know that we did not receive any donations from any colourful businesspeople in Liverpool. I do not mean to be political, but all we have seen from the Labor Party is donations from a branch to individuals. 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. The elected representatives were dismissed just prior to an election. The reality is that that may have got rid of the councillors, but the same staff were inside the organisation. I do not want to go into that sort of thing, but when councils are placed in administration the internal staff should also be subject to investigation. The overwhelming message at the election was that the council needed to be cleaned up regardless of whether the councillors were Labor, Liberal or Independent. Generally speaking, there was a change because it was a majority Labor area. I think the then Mayor George Paciullo attracted 55 per cent of the vote. The current Mayor attracted only 35 per cent because she was a member of the old dismissed council.

**The Hon. LUKE FOLEY:** I accept that, but it is also the case that Waller, as an opponent of Paciullo within the Labor caucus, was very vocal about that. Waller and her team are of a very different political persuasion from the old controllers of the Liverpool council.

**CHAIR:** Does your council have an independent hearing and assessment panel?

**Mr MANNOUN:** Yes.

**CHAIR:** In the two years that you have been on council when applications have been lodged have any other councillors on your team or any other team had to disclose a non-pecuniary interest by way of a political donation?

**Mr MANNOUN:** Yes. Do you mean significant or insignificant or just non-pecuniary in general?

**CHAIR:** An interest that would preclude them from voting on a matter.

**Mr MANNOUN:** Yes, I have, but not from a political donation perspective. I had to do so, but not necessarily because of a direct political donation. I am pretty sure that the answer would be yes.

**CHAIR:** In your experience, when an application—particularly a contentious application—comes before the council, do you feel that the community has confidence in the integrity of the process?

**Mr MANNOUN:** It depends on whether the decision goes their way.

**CHAIR:** I am not referring to the outcome. If an application has been rejected, do the residents, objectors or applicants feel that the process has been impartial?

**Mr MANNOUN:** Liverpool is not controversial when it comes to development. If you want to build a 30-storey building, there might be one or two submissions, whereas in others areas there would be many more. A private school was recently proposed in the area and the voting did not follow political lines. However, the community told the staff there were issues; they did not say it to us as councillors.

**CHAIR:** After you were elected to council and had to account for donations and expenditure by lodging a return did you identify any issues about the way in which you were required to disclose information? Did you find the process easy?

**Mr MANNOUN:** Because it was a new system it was challenging and confusing. As I said, there was an issue with the individual and the group. That was confusing—do you account for it twice? There are constant technological changes to the disclosure system and forms can now be filled in online. I see it getting easier as we go along. Embracing technology can make it very simple. The Liberal Party is undertaking a technological upgrade to make it easier for us to fulfil our obligations.

**Dr JOHN KAYE:** You said it was confusing but not onerous. If the confusion had been resolved would the task have been onerous? If you had known what you were doing, would it have taken you a lot of time?

**Mr MANNOUN:** As with anything, if the system is good at the beginning everything will be fine. It is basically bookkeeping. It is not hard; you have a receipt and you enter it. Future candidates should be advised to do it as they go along rather than at the end.

**CHAIR:** If public funding were introduced for local government elections, should it involve a reimbursement system for actual expenses? If so, should the councils pick up the cost for the candidates, or should it be covered by another level of government?

**Mr MANNOUN:** I am sure my General Manager would say that councils should not pick it up, and I do not argue with that. Councils have enough financial pressures. The fairest method would be to reimburse expenses. Obviously you do not account for your time, but that is part of life. The state and Federal regimes have their own mechanisms. I think candidates are reimbursed a dollar amount per vote. In some areas that could result in a surplus for the candidate, especially where not a lot of expenditure is incurred.

**CHAIR:** That happens in the Federal arena, not the state arena.

**Mr MANNOUN:** The fairest approach would be to reimburse expenditure.

**CHAIR:** Do you wish to add anything?

**Mr MANNOUN:** If something is going to be done, it would be great to have a discussion about potential models and systems and to provide feedback on each system. That would be very positive and as a council we would welcome that process. It is also important that we have consistency in election systems across all levels of government. It gets very confusing. If possible, we should have identical systems across the spectrum. That would make everybody's life easier. That could be extended to the voting system. In an area like Liverpool it gets very confusing with optional preferential voting and so on. At the end of the day we are voting and it is democracy and we are one country. There should be one system.

**The Hon. LUKE FOLEY:** Would you like single-member constituencies within the Liverpool council area?

**Dr JOHN KAYE:** I take your point on the voting system and the desirability of consistency there. When it comes to your statement about consistency with respect to the funding system, is it not

true that the people engaged in this are candidates and therefore one would expect a certain degree of sophistication to be able to deal with perhaps a slightly different system from one to the other, and is it not true that councils have a substantially different set of circumstances about what would make a good funding system and what would not, from say, State or Federal?

**Mr MANNOUN:** I do not see why. Essentially, an election is an election and whether it is a council election or a Federal or State election it still has the same issues of essentially communicating a message and running a campaign. That is what it gets down to, so I do not see any difference.

**Dr JOHN KAYE:** So you see council elections as scaled-down State or Federal elections?

**Mr MANNOUN:** In our case it is actually scaled up. When you are looking at 90,000 voters in a local government area, that is a Federal electorate.

**Dr JOHN KAYE:** But you have wards?

**Mr MANNOUN:** Two wards but we have a popularly elected Mayor, so that is basically running a Federal campaign. They are still run by, I guess, the same sort of a group.

**Dr JOHN KAYE:** We heard this morning that some councillors face an electorate of 800.

**Mr MANNOUN:** I think the discussion should be about amalgamation of councils then. They say we are the most governed people. Some say we should abolish State Government, but that is another issue. I will not go into that now.

**CHAIR:** In your community do you think there would be acceptance that integrity in the election process might involve additional cost and that in order to have confidence in the impartiality of decision-making that citizens and councils might have to pay a little more for that?

**Mr MANNOUN:** If that is not through rates—we have enough costs being shifted on to us, and especially in recent times. I remember council staff were saying the extra expense of having the elections run by the State Government rather than being run locally—and I think they should be run by the State Government because that maintains transparency—but I think generally they would, they would be happy with that.

**CHAIR:** On behalf of the Committee I thank you for your contribution today. It has been very valuable. We appreciate your time and your efforts.

**Mr MANNOUN:** Thank you very much. Can I just say something before I leave, something not directly related but worth considering. I have worked with John Kaye on a couple of polling booths throughout the years, once at Penrith for the by-election and I think at Waverley a while back.

**The Hon. DON HARWIN:** A by-election?

**Mr MANNOUN:** Yes, a by-election. I think there should be some recognition for the booth workers there. For example, a lot of people spend all day there, or even if they spend a couple of hours, they are not entitled to use the facilities whilst at the polling booths. That is wrong. Essentially, if they are recognised, we should make sure the bare minimum facilities are there for them.

**CHAIR:** That is not entirely part of the reference, but it is worth making.

**Mr MANNOUN:** When you are looking at providing funding, they should provide funding for toilets at polling booths.

**(The witness withdrew)**

**TERRENCE PATRICK FOGARTY**, affirmed and examined:

**CHAIR:** We have received your written submission. Is it your wish that the submission be included as part of your sworn evidence?

**Mr FOGARTY:** It is.

**CHAIR:** Under standing orders witnesses are examined on oath or affirmation upon the subject matter of the inquiry. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr FOGARTY:** No, I do not.

**CHAIR:** Would you like to make an opening statement?

**Mr FOGARTY:** Yes. This is a matter I have been quite interested in over a number of years. I have found difficulty in getting take up within the industry on the issue. I am sure you will ask me about that later. I should say at the outset I have difficulty with the interpretation of what the term "public funding" means. To me, public funding is money spent by the public on a candidate, as we have now. I have used the term "public purse funding" to talk of what I think you are talking about, which is the Government funding candidates at an election. If I speak about public funding, I think there are two nuances to that term.

**CHAIR:** So your reference to public funding is donations?

**Mr FOGARTY:** More along the line of donations. Generally, my belief is that local government is different from State and Federal for a whole variety of reasons, and because of that I think it is important that people who stand generally self-fund their election campaign. There are always some people who want to help and I call that public funding from people who may want to make a donation or be of some sort of assistance. I am not generally supportive in a broad sense of public purse funding. Government costs us enough and in Australia it would be better to make that an elective decision rather than a mandated decision.

**CHAIR:** Have you had an opportunity to look at any other submissions made in relation to this inquiry?

**Mr FOGARTY:** I have read particularly some of the previous inquiries and I have read a few of these ones, including from the Local Government Association, where I spoke to them. They gave me a copy in advance of their submission and I would be quite happy to give you a perspective of that submission if you so desire.

**CHAIR:** Have you had a chance to look at the ICAC's submission?

**Mr FOGARTY:** No, I have not. I have heard what you said there.

**CHAIR:** I have read a couple of quotes out of its submission to a number of people who have given evidence today, and I will do the same to you. Quoting from its submission:

The fact that candidates for elected office have to wear competing hats as a fundraiser and current or aspiring public official is of particular concern. This concern is heightened by the fact that persons with a direct stake in decisions of a council, such as developers, are the most obvious fundraising targets.

ICAC went on to say:

Nevertheless, the commission is of the view that a culture of political donations involving individuals with an interest in council decision-making has fuelled perceptions of inappropriate conflicts of interest and undue influence and also represent a significant corruption risk.

Is that a view that you generally share?

**Mr FOGARTY:** Yes. Mainly because that is a public perception as well, and I am reflecting that public perception, although the term developer is a bit restrictive. 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.

**CHAIR:** So, it is your view that there should be caps on the amount of money an individual or a company can donate to a political candidate or party?

**Mr FOGARTY:** In my submission I suggested that fundamentally I would like to see an election spending cap, which then reduces the need to spend, but of that spend a maximum 50 per cent to be by donations so a candidate would have to self-fund up to 50 per cent of that electoral expenditure, and 50 per cent funded by the public, not the Government but by way only of individual small donations and no organisational donations.

**CHAIR:** On the point of candidates being required to self-fund under your suggested model, do you see that as being a barrier for people who have an interest or a capacity to represent their community being able to put themselves up for election?

**Mr FOGARTY:** Not if it is a dual-pronged approach where the expenditure is capped, and I made specific reference in my submission to what I believe is a level of expenditure that allows any candidates to be elected. I am very perturbed when I read the returns on the Election Funding Authority's return site. The amount of money that some people would spend to get elected to the local council, I cannot understand why someone in a ward situation would spend, say, \$35,000. I was elected for less than \$2,500. That was the cap that was put in, beyond which you had to get an auditor. So, I elected not to spend beyond that.

**CHAIR:** So, in your submission, if I am right, you are suggesting a cap on expenditure for the popular election of a Mayor should be a dollar, roughly, per elector?

**Mr FOGARTY:** One of the beautiful things about the new system, which uses the electoral funding system with the returns, now that that is generally online, allows us to do some analysis. I did some analysis, pretty much city-based, and it appears most of the Mayors who were elected, irrespective of the way they were funded, could be elected for that sort of expenditure. It also related to when you ramp it up from a ward level.

**CHAIR:** If we look at the example of the council that was giving evidence before you, and Liverpool council has a voting population of 90,000 or thereabouts and a popular Mayor. Using your formula, that would mean that the campaign could cost \$90,000 or thereabouts. If your suggestion that candidates self-fund half of that cost, do you see the cost of \$45,000 being a potential barrier to people being able to—

**Mr FOGARTY:** As a popularly elected Mayor?

**CHAIR:** Yes.

**Mr FOGARTY:** The view I took initially when I first stood as a councillor—I acted as Mayor for 18 months but I have never been elected as Mayor—was that we are paid an allowance. I think the majority of local government people do not do this job for the money; they do it to make a contribution. So, I always look to see how do I spend that money. There is not a lot of opportunity as a councillor to spend money. We do not go around giving gifts and making large donations in general. Largely I saw that income as being part of what I would use for re-election. The first time I decided I would spend 10 per cent of what I was going to earn over four years. Now it turned out that I do not need to spend anywhere near that amount. Maybe the first time in you need to spend a bit more and some consideration could be given to that but you do not need to spend a lot. In our council, for instance, the councillor allowance is about \$20,000 and I think the mayoral allowance is \$50,000 so that is \$70,000 a year and for four years that is \$280,000; it is not a job, it is a hobby.

**CHAIR:** In your submission you talked about third-party expenditure?

**Mr FOGARTY:** Yes.

**CHAIR:** And suggested that there should be a ban on all third-party advertising which endorses a candidate. Could you explain a little bit about that?

**Mr FOGARTY:** In what regard?

**CHAIR:** What is your rationale for it?

**Mr FOGARTY:** I think the community becomes suspicious of any third-party endorsement of candidates. It builds that aura that there is something going on in local government or in State Government, which we know that there is not. For instance, in our last popularly elected mayoral election both the candidates—one was an Independent and one was a Liberal candidate—accepted donations from developers. That was made public; I made sure it was made public. As it was in the previous election the Mayor had accepted donations; he was re-elected on both occasions but there is still that suspicion about why are people giving councillors money? Why are people endorsing councillors? What is in it for them? We do not need that. We are there trying to work for our communities to get better lifestyles, better outcomes, better homes and gardens or whatever it is.

**CHAIR:** When you talk about third parties, do you include things like the local football club, the seniors association, environment groups?

**Mr FOGARTY:** Basically I am saying that if individuals want to donate a few bob, that is fine; the rest of it, no.

**CHAIR:** The way I read the summary of your submission to ban all third-party advertising which endorses a candidate would suggest that the St John's football club could not say that they support candidate X or candidate Y, is that your view?

**Mr FOGARTY:** Generally I think in principle, yes. Many organisations do not want to be involved, to start with. I have been involved with lots of community organisations over the years and the ones I have been involved with have a general policy that they do not endorse candidates at elections because it becomes too complex and it makes life too messy for what should be a reasonably simple process.

**CHAIR:** Could I get you to explain the circumstances of Willoughby Council, the structure and make-up?

**Mr FOGARTY:** Sure. Obviously we are inner ring council with a population of about 70,000 and growing rapidly due to the attraction of the area, with a voting roll of about 46,000, I think from memory, with 38 per cent from non-English speaking background. We have a very large population, both resident and transient, with Chinese speaking background and many others, and up until the last council we have never had a Chinese representative on the council. We had one in the last term; we do not have one again this term. We have a very diverse community but not a diverse representation on the council. Part of that could relate to the culture of how we go about elections.

We have a popularly elected Mayor; we have now for the last four terms, so one of the very early popularly elected Mayors. I believe that was a good move. It takes a lot of the politics out of the yearly things. We only have that for Deputy Mayors now. We have currently four wards; it was five when I first started. We reduced the numbers. People seem to be generally supportive of the fact that there is too much governance and too many people are elected to government, so we have four wards of three and that is a magical number under the way the votes are counted. For instance, in Ku-ring-gai where there are wards of only two, there is a whole different voting system which pretty much says that whichever one candidate gets up, if you spent the money, you will get your second candidate up.

The experience in Willoughby is that it is very difficult in a group voting situation for the second candidate to be elected, so apart from where the Mayor stands at council, then when he is elevated to the mayoral roll he drags through another candidate. In the recent past it was virtually

impossible to get your second candidate up, so the context of what we call a group ticket—and we are basically independent; I am sorry, I forgot to mention that—there are a few people who belong to political parties, but we all stand as Independents, which makes us in a minority across the State but when we stand with a group it is on the basis really that you are promising the other two people that they are not going to be elected. For instance in my campaign I fully self-fund that whole group ticket. I do not ask the other people to put any funding in.

**The Hon. DON HARWIN:** Under your model in terms of the funding of candidates just standing as councillors, how would you deal with candidates standing in a group versus ungrouped candidates? For example, in your council where you have three people on the ticket, would you have three lots of expenditure so effectively therefore—

**Mr FOGARTY:** No, I see it as a group expenditure per group. The reality—and we would try to advise—is that it is virtually impossible, not impossible, but virtually impossible to be elected under those situations if you stand below the line. Most voters like to tick above the line, tick a group but no, for a ticket, what I am recommending is that expenditure is for the group not for the individual, so it is not three times, it is for that group because the reality is only one ever gets elected.

**The Hon. DON HARWIN:** At your council. There are plenty of councils where people get their number two up, in Sydney.

**Mr FOGARTY:** When they have got three?

**The Hon. DON HARWIN:** Yes.

**Mr FOGARTY:** Standing as political parties?

**The Hon. DON HARWIN:** Yes.

**Mr FOGARTY:** As I said, we are fairly unique and hence we believe stronger for it because we get a greater diversity, which we do not believe you get when you have got—and I know most of you are from political parties but we like to try and think that we could make local government a bit different.

**CHAIR:** Your submission talked about public funding—and I am assuming you are saying public purse funding—for disadvantaged groups?

**Mr FOGARTY:** Yes.

**CHAIR:** Could you elaborate a little bit on that?

**Mr FOGARTY:** One area would be anyone who is wanting to front up for the first time. I think they are at a disadvantage. I think incumbency has a value and it may be worthy that you consider some method of assisting people who are not already councillors, certainly those from a different ethnic background. There are a whole range of issues that require assistance there and obviously for anybody who has a physical or other disability, if needed.

**Dr JOHN KAYE:** One of the proposals in your submission is that fundraisers and functions should be capped at 25 per cent of total expenditure. I put to you a scenario where I am anticipating raising \$1,000. In my budget I say, "Okay, I am going to have a fundraiser event where I raise \$250". I have that event and I raise \$250 and that is great but then the other ways of raising funds fall through and I only raise \$500. Am I then required to give up \$125 I made from my fundraiser?

**Mr FOGARTY:** Go back to the reason I put that in. My belief is that we should be self-funding. Fundraisers, in my experience, cost more than they earn.

**Dr JOHN KAYE:** That is your experience.

**Mr FOGARTY:** That is my experience.



**Dr JOHN KAYE:** We are not writing laws to suit one individual; we are writing laws to suit a whole variety of people.

**Mr FOGARTY:** If you are going to write a law and that is what we are saying, yes, you are going to have to give the money back.

**Dr JOHN KAYE:** So you would have to give \$125 back?

**Mr FOGARTY:** If you have raised more than what is allowed.

**Dr JOHN KAYE:** You suggest here that we should only allow two colours for how-to-vote cards. What is the rationale for that?

**Mr FOGARTY:** The rationale for all of this is to keep down the actual costs of the election. The whole reason I am suggesting that we go with the funding model is to take the costs down. We do not need to be spending what is spent on local government elections. From my marketing background, you could design everything else and probably be as effective with two colours, which allows you toning and other things. We do not need full glossy stuff. The community does not read most of it.

**Dr JOHN KAYE:** That is probably true.

**CHAIR:** Is there anything you wanted to add before you conclude your evidence?

**Mr FOGARTY:** You raised the Association. I guess the take I get on that is that there is complexity across the range. As you say, when you have got political parties you have got certain things; you have got country councils. I know one of the reasons that the Association has not gone far with this sort of thing is that it is difficult to get any sort of agreement on what could happen. We are a very complex sector and given some of the other things that are going on, such as our modernisation issues, which address amalgamations and everything else, for a set of volunteers I do not think there is the band width to do it. Like the previous speaker, I do have a belief that most councillors would share a view that some sort of reform would be appropriate but, on the other hand, every councillor, particularly incumbent councillors, worries about how they are going to get re-elected and any change is something new that you have to cater to. I could not get a lot of traction myself within the council of even getting to discussion on this matter.

People say, "Yeah, I like that bit and I think that bit is right" but the general view, I think, is to reduce the cost of how much we spend. We are all talking about sustainability these days. The electorate, when we are out there on election day, do not like the experience. They hate to see all the paper being scattered about, thrown about. People take it and throw it away. They hate the cattle run, when you are trying to push something into their hand. Some of the things I suggest in there are how we could address that through a more formal use of the electoral returning officer. We could get information to people in a much more cost-effective way and that part of it is generally shared.

**CHAIR:** Thank you. We appreciate your contribution today and your submission. Thank you for your time.

**(The witness withdrew)**

**IAN MICHAEL TILEY**, Councillor, Clarence Valley Council, Maclean, sworn and examined:

**CHAIR:** Councillor Tiley, we have received your written submission. Is it your wish that the submission be included as part of your sworn evidence?

**Mr TILEY:** Yes.

**CHAIR:** Under the standing orders, witnesses are examined on oath or affirmation upon the subject matter of the inquiry. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr TILEY:** No.

**CHAIR:** Would you like to make an opening statement?

**Mr TILEY:** Yes, I would. I would like to commence by first of all indicating that I am talking about local government electoral funding in a rural and regional sense, as distinct from the previous speaker. I will quickly give you my background, very quickly talk about my perspective of local government and my concerns about the introduction of public funding, and finally I will make a number of points about my views and my position on public funding.

I have been in local government almost continuously since 1964, 24 years in administration. I was a Shire Clerk for 15 years. I was a returning officer to all three tiers of government in the 1970s and 1980s, so I am very practised in terms of the preferential and proportional representation system of voting. I am a local government tragic, and I ran for council for the first time in 1989. I have been involved in six local government elections, having been successful in the last five. I have served on three general purpose councils and two county councils. I have had several ministerial appointments in the past. I have served on the Catchment Management Authority, the Area Consultative Committee and the Regional Development Board. Currently I am a member of the North Coast TAFE Advisory Council, I chair Regional Development Australia—Northern Rivers, and I am a member of the Executive Committee of the Centre for Local Government at the University of New England in Armidale, where I am about to complete a doctoral thesis—within the next couple of months, I hope—on the subject of local government amalgamations. So I have been at the coalface for a very long time, and I hope that what I say today will have some impact.

Local government in the broader sense is a multi-million-dollar business operation across the State. My central view in relation to local government is that we need better-quality councillors because of that. My own council, for example, is a \$150 million-a-year business. We are remunerated in the sum of only \$15,500 per annum. We have a huge workload. We all know it is essentially volunteerism. I think we really have to get past that point, because we need that better quality. The only way to get that, I believe, is by paying. I think that further structural reform of local government in New South Wales is impeded by a lack of professionalism, experience and qualifications of elected representatives.

If we are to have public funding, I have a number of concerns. Firstly, I think that public funding should only be available if a person is elected to council. I think it is really important to avoid the nuisance—dare I say, ratbag—element that would run if they thought they could do a "Hanson". I should not say that, I suppose. But I think that is the reality. I believe that if there were public funding, the best way to finance it would be to increase the elected councillors' remuneration over the succeeding term of the council, in effect to reflect the base costs. Obviously, if there was to be public funding, there would need to be limits on the quantum of funding. It would be relatively simple to find out election costs. Each councillor has to lodge an election funding return after each election, so you could accurately gauge what the real costs were. If you had to, I believe you could pay a percentage of those actual costs as indicated in those returns.

I think that if public funding became available election costs would inevitably escalate; I think that is the reality. I am sure that Genia McCaffrey and Paul Braybrook would this morning have conveyed to you in no uncertain terms that we do not have the capacity to pay extra. We find in local

government now that we have the State Electoral Commission running elections and our costs have escalated through the roof. The former Premier arranged an inquiry into that particular matter, and it is a matter of concern to councillors that it is a real struggle, at least for some of the smaller ones, to meet those additional costs. That is probably a little bit removed from this inquiry. I believe that public funding is hardly a local government reform, and many would view it as a retrograde step on the basis that it has the capacity to contaminate grassroots local democracy. The previous speaker demonstrated to me the wide gulf between city and rural and regional local government. There is an almost complete dearth, or absence, of politics at the local level in the bush. That has been my long-term experience.

If I can now move to my reasons for opposition to public funding. Your Terms of Reference focus on how to implement comprehensive public funding. My submission opposes public funding, as I said. I will quickly go through some of the main points in my submission, if I may. Firstly, as I said earlier, I believe that we need to be able to continue what amounts to a relatively uncontaminated local government election scenario in the bush. We are all aware of the need for ongoing integrity and the public perception of the sector, and this is particularly vital in terms of public distrust and criticism of all levels of government. I believe 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.

I think it is really important to state that the public in the bush generally enthusiastically engages in local government elections. Voter turnouts are in excess of 90 per cent. There is commonly ample free publicity for candidates' issues and election platform, courtesy of the engaged print and radio and local media. In my own area, the three separate newspapers provide 250 words free of charge, and the chambers of commerce arrange meet-the-candidates groups, as do environmental groups. So there is ample opportunity and mechanisms to get your message out there as a candidate.

I believe, and my experience has been, that you can run a successful campaign at very minimal cost. That has been aided in recent years by modern technology. With a few friends, you can put together posters, how-to-vote cards, and all the rest of it, for next to no money. My personal expenditure on election campaigns over the years would not have exceeded \$1,000. At the last election I did not spend a cent. Admittedly I was the Mayor, so I had a high profile. In the previous election, the election of the forcibly amalgamated Clarence Valley Council, I spent around \$5,000. I am pleased I did so, because I only just got there.

A successful campaign is about getting out on the hustings and going to every meeting that is available—not necessarily spending money. In the last election, in my council area there were 21 candidates. They all turned up to five meet-the-candidates meetings. There were questionnaires from various interest groups that they all filled in. The interest groups then wrote to the paper and articulated the views of the candidates. I strongly hold to the view that the retention of the present system of candidate funding of local government elections is integral to the continuing authenticity, the standing, the public regard, and the perception of local government.

**CHAIR:** Could you briefly explain the nature of your council, referring to the structure, the size and the make-up of it?

**Mr TILEY:** Clarence Valley Council is a meltdown of four general purpose councils and two county councils—Grafton City Council and three surrounding rural shires. I was a member of the previous Maclean Shire Council. The area covered comprises 10,500 square kilometres and includes 43 towns and villages and the city of Grafton.

**CHAIR:** How many residents, or voters?

**Mr TILEY:** The quota last time was 2,900. It would be 30,000, maximum.

**CHAIR:** How many elected councillors?

**Mr TILEY:** Nine, and an undivided area.

**Dr JOHN KAYE:** And not a directly elected Mayor?

**Mr TILEY:** No. We have skilfully avoided that, on the basis that we want someone we can work with—and you can kick them out every 12 months if you need to.

**CHAIR:** Have you had a chance to go through any of the other submissions?

**Mr TILEY:** No, I confess that I have not had that opportunity.

**CHAIR:** Certainly on the evidence we have heard today, including yours, a clear picture is emerging of the types of campaigns that are being run in councils like yours compared with councils in metropolitan Sydney and the major centres.

**Mr TILEY:** Yes.

**CHAIR:** We had an officer from the ICAC here today who was talking about the nature of complaints that have been received alleging corrupt conduct. Some of it relates to political donations and the perception of influence in decision-making. Other complaints about potential corrupt behaviour are that decisions that have been made seem to advantage people who are related or connected with the councillor. Do either of those scenarios eventuate in your council, or has there been any evidence to suggest those things?

**Mr TILEY:** No. My long-term experience in rural New South Wales local government is that that is not a factor. I am well aware that just to the north of us in Tweed it was the reason for the sacking of the council. I am really pleased that it has not been an issue.

**CHAIR:** When you were explaining how you organised your own campaign you said you managed to spend very little money to run your campaign. You mentioned that you got a couple of friends together and they helped you with putting posters together and that sort of thing. One of the things that are required as part of election funding is donations in kind—being able to record the contribution of people who are not necessarily giving you money but are providing assistance to you for your campaign. In your view, should those things be captured as part of the election funding process?

**Mr TILEY:** No, I do not. I think that would damage the wonderful essence of grassroots democracy. How do you value what your partner or your brother or your sister does in helping you prepare for an election, or your neighbours or your close friends who might be folding letterbox drops? That would be inordinately difficult to do. On the basis that the candidate meets the cost of the paper and print cartridges, you are getting down to the minutiae in terms of cost. I do not want to trivialise it but people help you because they believe in you and they want to support you. If they felt that there was a dollar cost being put on their voluntary time to help their relative or their friend, you could have a negative impact.

**CHAIR:** Would you make a distinction between voluntary time, people handing out at a polling booth, for example—

**Mr TILEY:** Or walking around letterbox dropping.

**CHAIR:** —and providing a service such as designing a pamphlet? Would you make a distinction between those services?

**Mr TILEY:** Obviously there is a greater degree of skill involved. My sister has those skills. It is a hard call. If you were to go to somebody to get that done on a professional basis and there was a cost, you would declare it. With my laptop, and I am not exactly a tech wiz, I can put together those sorts of things. My present council are all computer literate. That is the way of things these days. I find that you put a lot of personal effort in and your friends and family just put the finishing touches, in the main, to your campaign.

**CHAIR:** The ICAC representatives said today that one of the areas of most complaints to the Commission is the relationship between decision-makers on a council and people who may have

supported them, not necessarily through donations but in other ways. Do you think that needs to be recognised and captured?

**Mr TILEY:** We have a declaration of interest regime, as you would be aware, in local government. It is incumbent upon every councillor to declare any potential conflict, including what you have just described. My perspective is that that the councillors I have ever dealt with have been very cognisant of that. I do not see it as a big issue. I am not aware of any complaints certainly in my locality. I have to say though that there was a full-page advertisement at the last election, for example, that promoted some candidates. That particular developer has since placed a number of development applications before the council. I have often thought about the councillors who were promoted in that advertisement and what they should do in terms of whether they need to declare or not because of the support they received, even though they did not solicit the support. This guy came totally out of left field and put the advertisement in the paper. There are circumstances like that where it comes back to the individual councillor in doing the right thing.

**CHAIR:** You made the point earlier that there seems to be a chasm between the experience of councils like your own in rural and regional New South Wales and metropolitan councils. You would have heard and be aware of some of the high-profile stories about the perception of influence on decision-makers brought about by donations?

**Mr TILEY:** Yes.

**CHAIR:** In light of those media stories and the impact that has on confidence in decision-making, do you think there is a case for reform of our donation system?

**Mr TILEY:** Yes, I do. I think that transparency, public trust in the system is absolutely predicated upon the need for donations of whatever form—in the city scenario I am talking about and the larger councils—being declared. Without that, you cannot be conveying to the public by your actions that you are absolutely transparent.

**CHAIR:** Do you think that even by declaring a \$10,000 or \$20,000 donation that you remove the perception of influence?

**Mr TILEY:** No, I am afraid not. A lot of constituents over the years have read about these practices that, as we acknowledge, are inappropriate. It builds up an antipathy towards whatever tier of government is involved. I acknowledge given the absolute vitality of clear transparency and accountability that political donations of whatever kind need to be declared, and they are declared. Every six months I have to make a declaration, as you do, I guess.

**CHAIR:** If we accept that the declaration of donations is not going to prevent the perception of influence, do we need to do more? Do we need to cap donations? Do we need to cap expenditure in local government elections? If we implement those two systems do we need to make up the shortfall through public funding?

**Mr TILEY:** I have highlighted my rural experience and my personal view is that capping of contributions is important. I personally question the need for contributions at all, political donations, but we know they exist. What was the last part of your question?

**CHAIR:** If we accept that donations, even if they are declared, have the potential to be seen to be influencing decisions, should we cap expenditure, should we cap donations and should we make up the shortfall with public funding?

**Mr TILEY:** I think capping of expenditure would be inordinately difficult to do.

**CHAIR:** We have looked at such a system at a State level as well.

**Mr TILEY:** Yes, I am aware of that. Given that can be done, I do not think that necessarily extrapolates to the need of public funding support. You could say that some candidates are disadvantaged. I agree with the previous speaker that your name, if you have been there for a long

time, can be a great aid. In some circumstances it can be a negative. I do not necessarily believe that certainly in rural areas there is a need for funding under any circumstances. That is my view.

**The Hon. LUKE FOLEY:** Both you and the Mayor of Cootamundra, who was here this morning, have painted a picture of democracy in your local government areas that is quite untainted by predatory outside interests.

**Mr TILEY:** Yes.

**The Hon. LUKE FOLEY:** Do you think that a safeguard to ensure it remains that way would be donation and expenditure caps so as to minimise the risk of predatory outside interests trying to buy influence on councils?

**Mr TILEY:** I take the view, it is a colloquialism, if it ain't broke don't fix it. You could run that argument but the counter-argument would be you may well lose that fragile flower, which is large-scale public interest and participation in non-tainted council elections. I have not got the answer but I have a view that you can over-prescribe and over-legislate or you can leave well enough alone. In the circumstances that you find yourselves in your terms of references, there probably needs to be different rules for the smaller and regional areas.

**The Hon. DON HARWIN:** I follow that up by asking this question. If we set aside taxpayer funding of campaign costs, so-called public funding, and just have a situation where we cap the amount that you could spend and cap the amount that could be donated to candidates, that effectively would have no impact whatsoever on your campaigns, would it? If the candidates are largely self-funding and not spending very much, that would just continue, even if a scheme were implemented that was a cap on donation and a cap on spending to deal with problems that might be perceived to occur in larger coastal and metropolitan councils?

**Mr TILEY:** Yes. I would support what you are saying. I cannot see a circumstance certainly in the Northern Rivers or the Northern Tablelands where if you have a cap that people would get to that cap, depending upon what it is of course. If you had a cap of something like \$2,000, I would be very surprised that too many people would get to that. That is a fair few ads in a newspaper or on the radio. Conversely, if you allow public funding with a cap you are going to encourage that nuisance element. That makes me worried for the future of the sector because of, as I said earlier, the nature of the big business that we are running.

**The Hon. DON HARWIN:** I apologise to Councillor Fogarty if I get the numbers wrong. I think he said 30¢ per elector?

**CHAIR:** He said 30¢ to 50¢.

**The Hon. DON HARWIN:** If it were 30¢ per elector, you have how many electors?

**Mr TILEY:** Thirty thousand.

**The Hon. DON HARWIN:** That would be a \$9,000 limit for each candidate in terms of expenditure, on Councillor Fogarty's model, and say, for argument's sake, a cap of \$1,000 or \$2,000 for donations. What would you say to that?

**Mr TILEY:** You are suggesting—

**The Hon. DON HARWIN:** You could spend no more than \$9,000 and you could take a donation from an individual, perhaps also from a company, not exceeding \$1,000.

**Dr JOHN KAYE:** A donation or a series of donations?

**CHAIR:** No individual donation to be over \$1,000?

**The Hon. DON HARWIN:** No individual donation.

**Mr TILEY:** In the aggregate they could equal or maybe exceed your expenditure.

**The Hon. DON HARWIN:** No, the cumulative total from one individual or corporation would be \$1,000.

**Mr TILEY:** But if you had 10 backers you could conceivably make a few dollars out of the election campaign, if you capped it at \$9,000.

**CHAIR:** You cannot use the money for any other purpose.

**Mr TILEY:** No, that is right. What do you do? Do you keep it in an account at the next election? I have difficulty with it. If you put a cap of \$9,000 you are potentially getting some candidates thinking about television maybe, which is fine to a point. I really do not have the answer, I am sorry. I would need to think about it.

**The Hon. DON HARWIN:** I was just putting it to you as a suggestion.

**Mr TILEY:** You frightened me with a cap of \$9,000. I think that is ludicrous.

**The Hon. DON HARWIN:** I live in a country council area where a candidate for a popularly elected Mayor who was an Independent spent \$90,000 and other than the Greens there were no political parties on that council at all.

**Mr TILEY:** Wow. I have the perspective that if you spend \$2,000, \$3,000, \$4,000, your first couple of monthly remuneration payments cover the cost of the election, end of story, and you have three years and nine months unencumbered in terms of income, albeit a small income.

**CHAIR:** Is there anything you want to add?

**Mr TILEY:** No. Thank you for the opportunity.

**CHAIR:** Councillor Tiley, thank you for travelling all this way to be a part of this hearing. We appreciate your evidence, your insight and your extensive experience in local government.

**(The witness withdrew)**

**(The Committee adjourned at 3.14 p.m.)**