

Select Committee on Electoral and Political Party Funding

Monday 31 March 2008

3.30pm to 4.15pm Jubilee Room, Parliament House

The Committee's Questions to Cr Bruce Miller and Draft Answers

Cr Bruce Miller, President Shires' Association 3.30 – 4.15

1. What is your response to the Premier's announcement that he advocates a ban on all private donations in favour of a system of public funding? Who should be covered by such a ban? Would a blanket ban on donations be enforceable?

I welcome the Premier's rapid response to this matter. I am pleased that the Premier recognised the caustic effect of the wash-up from the ICAC inquiry into Wollongong City Council and the revelations about Ministerial access in return for donations. The public perception, whether true or not, that political donations buy access to politicians and influence decision making at all levels of government, will erode public confidence in our system of government. Over time, a system which does not retain the trust of the people falls not just into disrepute but actually breeds the sort of corruption which the Premier and all of us seek to avoid.

I support the Premier and his proposal to ban all private donations in favour of a system of public funding. This proposal was debated by the joint committee of the Local Government and Shires Associations recently and on balance, we resolved that a ban was the most effective way of ensuring political donations could not influence decision making and just as importantly, could be seen as not influencing decision making.

As you heard recently from my colleague Cr Genia McCaffery, Mayor of North Sydney and President of the Local Government Association of NSW, we in Local Government workshopped several options for managing this issue, based on the proposal from Manly Council for a Charter of Political Reform and a ban on donations from developers. While this proposal has some support amongst councils and other groups, the problems we faced are how to define developers, how to effectively disenfranchise only one section of the community from supporting the political process, and how to manage the perception that all donations, not just those from developers, are seen to influence the decision making process.

On balance, only a ban on donations from whatever source will be both equitable and effective.

The second part of your question is how to enforce such a ban. I agree that a ban may be easy to legislate for and difficult to enforce. Donations are not just financial, but are made in kind and through third parties like party head offices and support groups. Political donations are made not just to candidates, but also to third parties who may campaign on a particular issue or advocate votes for or against particular candidates without ever having any link to a campaign. A ban on donations which is enforceable will have to encompass all those aspects of donating to ensure that

donations are not driven underground, to avoid encouraging third party campaigning technically at arms length from candidates, and to satisfy the public that a ban on donations is complete and effective.

2. Should a ban on political donations apply to both State and local government elections?

A ban on donations must apply to all levels of government – federal, state and local. The Premier recognised this in his announcement of 28 February, and the Prime Minister has also recognised that this is not an issue for state and local governments only.

3. The Committee has received a dozen submissions from local councils, each expressing different views on the effectiveness of the NSW election funding and disclosure scheme. Councillor McCaffery has described the difficulties the Association has faced in trying to achieve a consensus position on this matter. Does the Shires' Association have a position on this matter?

To my knowledge, the Shires Association has never formally adopted a position on this matter. As Cr McCaffery described, the Local Government Association, of which my council Cowra is also a member, considered various motions over several years proposing a variety of approaches to regulating political donations. As you would expect in a representative organisation, there were a range of views expressed and compromises reached in order to achieve consensus. The Local Government Association resolved to support public funding for elections and a national summit on political donations and their influence on decision making.

The Shires Association represents 78 councils in regional and rural New South Wales and it is fair to say that for many, the robust party political debate experienced in metropolitan councils is unknown to them. Most country councils are comprised completely of independents, most of whom have never been members of political parties and who in many cases fund their own campaigns entirely from their own pockets. It is not unusual for some country council elections to be unopposed and for campaign costs to be minimal. A past candidate for election to his local council told me recently that his entire campaign cost him \$80.

While the Shires Association has not adopted a formal position, we have given support to ICAC's recommendations on corruption in the planning process and encouraged all councils to consider adopting them.

4. Several submissions supported the introduction of public funding for local government elections. Is this a common view across local governments? Do you support public funding?

As I said at the start I support public funding for local government and indeed all elections. I think this is the only feasible and logical outcome if we support a ban on donations. Not all candidates

can pay for campaigns from their own pockets, and in order to encourage the widest possible participation in the democratic process, public funding is the only answer.

I think we can say there is a fair consensus for this across local government, as it certainly has been supported by the Annual Conference of the Local Government Association. Later this week, the Executive of the Shires Association will debate whether to recommend public funding to our Annual Conference in June.

The real question for someone like me who gives support to public funding is to address the best way for public funding to be provided, especially if donations are to be banned and public funding is to be the only source of campaign funding. The biggest challenge is probably to convince an understandably cynical public that public funding is not just another grab for the taxpayer's funds by undeserving politicians. This is why that we must devise a scheme for regulating political donations which earns the public's trust. A scheme which simply replaces donations with public money and fails to remove corruption or perceptions of corruption from decision making will quickly lose public support.

A second important issue is how to devise a scheme which encourages people to participate and doesn't just entrench the existing players. The current public funding models I am familiar with all reimburse candidates based on past performance. This means that you have to have runs on the board to receive public funding. This type of scheme means that someone thinking of nominating for office for the first time needs the support of a party already in receipt of public funding, or needs to fund their first campaign from their own resources, which effectively eliminates independent candidates without access to private funds.

We need a scheme that ensures as far as possible that no one is prevented from participating as a candidate because they could not raise sufficient funds to mount a campaign. Standing for election must not become the preserve, either by design or accident, of only rich candidates and candidates backed by political parties.

I recognise that we can't write blank cheques so that the Monster Raving Loony Party can run advertisements on prime time television, but nor can we have a system where only those candidates or parties who met the threshold for reimbursement at the last election be able to afford to run at the next election.

5. What is the impact of the current disclosure scheme on regional councils? For example, does it discourage candidates from standing for local government?

I am unaware of any candidate, regional or otherwise, being discouraged from standing for election by the current disclosure scheme. If anything, because the current scheme is not timely and allows disclosure to take place many months after the campaign and election are over, there is a perception that disclosure requirements are not sufficient to make the source of donations to

candidates available to voters so they can make informed decisions. Disclosure schemes that are designed to make the most possible information available to voters during the campaign should contribute to trust in the system and to informed decisions being made at the ballot box.

6. Do you believe that the same regulations should apply to both State and local governments? For example, should there be the same disclosure requirements for both levels of government? If donations were to be capped, should the same caps apply?

As I said earlier, I believe the same provisions should apply to all levels of government. I don't think the public perceive elected politicians as more or less open to influence depending on which level of government they represent. And I think they would treat cynically any rules on political donations that were applied differently to different levels of government. I think the public would regard a state government which implied only local government was susceptible to influence as looking for a scapegoat or a diversion, and I think they would be right.

If donations were to be capped, I think the same caps should apply to donations to candidates at all levels of government. I suppose you could make the argument that campaigns for election to federal and state government are more expensive than local government campaigns. But to support higher caps for federal and state donations you would also have to make the argument that susceptibility to influence varies depending on the level of government rather than the personality of the candidate. Some people run for office at all three levels of government. It is specious to suggest that if I were to run as a candidate for election to state parliament somehow my capacity to be influenced by the size of a donation is greater or lesser than when I am running for Cowra Council.

The only purpose of imposing a cap on donations, rather than banning all donations, is to preserve the ability of ordinary people, especially community based independents, to run local grass roots campaigns. Unlike party candidates, community independents rely on many small donations from their neighbours, local business houses, and local groups, and the proceeds from small local functions to fund their campaigns. In many ways these types of campaigns embody the essence of local democracy and much would be lost by banning all political donations. On balance I think we need to ban all donations to regain public trust in decision making, but I acknowledge what will be lost in terms of local grass roots activity and community spirit by going down this path. It is unfortunate that we have to make rules to protect the honest majority from the corrupt minority, but that is the nature of the world we live in.

7. The Premier has announced that reforms to the current disclosure scheme will be introduced in time for this year's council elections in September. What is your response to this announcement? Do you have a clear understanding of the new requirements?

What I understand of the Premier's reforms is what I have read in his releases and newspaper reports. I think his reforms to disclosure and reporting requirements present few difficulties and will achieve widespread support.

What concerns me about the Premier's proposals as I understand them, is his suggestion that political parties be enshrined in the process as bankers, if you like, of campaign donations which will no longer be held in the personal campaign accounts of candidates. That is, the central party offices – Sussex Street and William Street – will organise, receive, handle and administer donations.

For community independents, or candidates without the backing of a political party the Premier proposes that the Electoral Funding Authority or another independent body provide this service.

If personal campaign accounts are to be banned, how can the Premier imagine that a sceptical public will believe that Sussex Street is a less corruptible banker than the local candidate? To be quite frank, I expect the voting public will have more faith in their local party candidate than head office.

So if the Premier thought he would get that one under the radar while we were all distracted by his flurry of activity, he hasn't fooled me.

If it's good enough for the Electoral Funding Authority or another independent body to manage donations on behalf of independent and non-party candidates, I think it's good enough for the same model to apply to all candidates.

To be fair I welcomed the Premier's announcement and supported his general intent. As you suggest in your question, if the Premier wants all the changes on board for the September local government elections, let's see the details as soon as possible and let's work together to get them right.

8. Some submissions outlined moves by local councils to amend their codes of conduct, or introduce voluntary codes of conduct, to introduce tighter regulations for councillors voting on development applications by campaign donors. Have many regional councils introduced tighter controls?

I am aware of the response of regional councils to introducing tighter controls. Certainly some councils have done this and the Shires Association has encouraged councils to adopt the ICAC recommendations on corruption and the planning process. Cr McCaffery and I have met with the Local Government Minister where we proposed that Codes of Conduct should be amended so that political donations give rise to a non-pecuniary interest, and further that the Minister consider amending the law to ensure that political donations give rise to a pecuniary interest. On the face of it, this is a very simple and effective measure to address the perception of conflicts of interest arising from political donations and I encourage the Committee to look at it very closely.

9. In your opinion, are developer donations impacting on the decisions made by local councils?
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It is difficult to express an opinion without acknowledging that for any individual councillor, their experience is not much wider than their own council. We are all aware of the experience at Tweed Shire Council and the investigation that led to the sacking of the council and recommendations for improving the disclosure of donations. And the Wollongong inquiry continues to cause heartburn for those of us who passionately support local government and local democracy.

We need to be confident that as far as possible, developer donations do not impact on the decisions made by local councils, but just as importantly, we need to ensure that the perception that they can influence and are influencing decision making is managed or removed. It is no good having a system where there is no influence if the public perceives that influence is possible or likely or actually taking place. Perception eats away at public confidence just as effectively as reality. I am sure as legislators we can design regulations better than the current ones and maybe regulations so good that we might think them failsafe. But our regulations will not matter a jot if the public doesn't believe them and perceive them to work.

10. Last year, the ICAC produced a position paper on corruption risks in NSW development approval processes. The ICAC recommended that the Model Code be amended to provide clearer instructions to councillors on matters pertaining to campaign donors. The ICAC also recommended that candidates for local government be required to publicly disclose donations in the period leading up to an election. What is your opinion of the ICAC's recommendations?

The Shires Association gave in principle support to ICAC's recommendations and encouraged councils to adopt them. Councillors are ordinary people. They are representative of their communities. They benefit from clearer instructions on matters pertaining to campaign donors and given their special vulnerability as guardians of the public interest, no councillor objects to clearer instructions. Indeed we welcome them. We object to the fanciful notion that somehow local councillors are more susceptible to influence than members of federal and state parliaments, and I have no doubt the public thinks the same.

Public disclosure of donations in the period leading up to elections seems to me a natural outcome of any analysis of how to improve regulation. The point of disclosing and regulating donations is not just to be better informed after the event, but surely is to ensure a better informed electorate when they enter the voting booth. A better informed electorate not only makes better decisions, but is more confident that the system is serving their interests and not just people who can afford to make donations. Most people will never make a political donation, but everyone will vote.

11. What are the central recommendations for reforming the system of electoral and political party funding, that you would like to see emerge from this Inquiry?

If I can summarise my evidence and opinions today I think the central recommendations of your inquiry should address:

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- *Restoring, maintaining and enhancing public trust in government, not just local government, but in the election of representatives, in the decision making process, and in the operations that underpin decision making and allow decisions to be implemented;*
 - *Making sure that the widest possible segment of the community can participate in government, whether as a voter or a candidate, as an applicant for development or as a neighbour with a concern about how development will affect their enjoyment of their own property;*
 - *Formulating regulations which do more than address donations to candidates, but capture third party donations and campaigns and don't simply drive donations and influence underground; and*
 - *Consistent regulation of donations across all three levels of government.*