

**GENERAL PURPOSE STANDING COMMITTEE No. 3**  
**Portfolio Area: Local Government**  
**19 October 2007**  
**Response to Questions**

**Question from the Hon Marie Ficarra MLC  
(pages 4-5)**

"The Hon. MARIE FICARRA: Can you advise us of the number of inquiries that are presently underway into local councils throughout New South Wales, the total cost of each inquiry and particular amounts of fees paid in the last 12 months to each commissioner carrying out inquiries?

Mr PAUL LYNCH: There are two inquiries into section 740, one is into Port Macquarie and the other is into Brewarrina. As to the details and the costing, I will defer to the director general.

Mr PAYNE: I cannot give you a cost because they are not completed. The Brewarrina inquiry is being conducted by a departmental officer so it will be a salary. As I said, Commissioner Willan is paid \$900 a day. At this stage we have an indicative cost of how many days he will be involved but it is not conclusive.

The Hon. MELINDA PAVEY: Who will be paying those costs?

Mr PAYNE: The department.

The Hon. MELINDA PAVEY: The cost of the inquiry will not later be billed to the council?

Mr PAYNE: No.

The Hon. MELINDA PAVEY: So the Department of Local Government will pick up all the costs of the inquiry?

Mr PAYNE: We will cover the costs, correct.

The Hon. MARIE FICARRA: Could you take that on notice and give us an answer in writing?

Mr WOODWARD: We will not be able to provide that because we do not have the figures at this point.

The Hon. MARIE FICARRA: Whatever you have expended up until this point."

**Answer**

Costs to date are:

Brewarrina Shire Council Public Inquiry No 2	\$10,335
Port Macquarie-Hastings Council Public Inquiry	\$90,702

**Question from the Hon Marie Ficarra MLC****(page 8)**

“Perhaps this is a question that the Minister can handle and not bypass. Minister, there is a 13-member Ministerial Advisory Council, chaired by Ernie Page, to assist you in your portfolio. What recommendations has the Ministerial Advisory Council made since its inception under your predecessor?”

**Answer**

Since its inception the Ministerial Advisory Council has made the following recommendations to the Minister:

- Endorsement of the draft proposals subsequently contained in the Department's Position Paper – “A New Direction for Local Government”, released in October 2006. The Advisory Council confirmed its support for the proposals at its meeting in October 2007 following consultation with the sector
- That the Advisory Council endorse the draft proposals contained in the Department's Position Paper “Asset Management Planning for NSW Local Government” released in May 2007. The Advisory Council confirmed its support for the proposals following consultation with the sector at its meeting in October 2007
- Endorsement of the draft Option 3 contained in the Department's Position Paper – “Planning for a Sustainable Future – Integrated Planning and Reporting for NSW Local Councils” released in November 2006. The Advisory Council confirmed its support for Option 3 following consultation with the sector at its meeting in October 2007
- That consideration be given to amending section 351 of the *Local Government Act 1993* to allow for temporary appointments for up to 24 months, but only where the appointment is to fill a vacancy arising from an employee taking parental leave. That employers are given the opportunity to comment and that a circular be sent to councils seeking comment on the proposal
- That the *Local Government Act 1993* be amended to permanently allow councils to reduce their councillor numbers without the need to hold a constitutional referendum, combined with a limitation of councillors to nine (9) for councils with populations of less than 25,000. As a short-term measure the Advisory Council recommended that councils be afforded another one-off opportunity to reduce councillor numbers without the requirement of holding a constitutional referendum
- That consideration be given to extending the term for councillor elected mayors from one year to two. That the sector be consulted on the proposal.

**Question from Ms Sylvia Hale MLC  
(page 12)**

Ms SYLVIA HALE: My point here is that unless there is timely exposure of donations it becomes extraordinarily difficult for people to even determine whether the areas conflict of interest, whether pecuniary or non-pecuniary. Unless that timely disclosure is made people do not have the basis to investigate and even the councillor can say, "Well I did not perceive a conflict of interest" so they can be exonerated from any need to declare that conflict as well.

Mr PAUL LYNCH: I think there are two separate issues there. One is the timing issue. I am not persuaded that is all that important because, as I have said, even if the declaration is made six months later the apparent conflict will still be obvious. It is a separate issue as to which body you are making the donation to. Are you making it to a councillor or are you making to a political party? That I am afraid goes centrally to the whole issue of the need for a national scheme. Whilst you do not have a national scheme you can hide donations by bodies outside the states, Federal bodies and so forth.

Ms SYLVIA HALE: So you think it is impossible to act unilaterally on this issue in this State?

Mr PAUL LYNCH: I think it is very difficult to do anything that makes a difference unless you have a national scheme.

Ms SYLVIA HALE: You do not think it is even worth trying?

Mr PAUL LYNCH: No, I did not say that.

Ms SYLVIA HALE: Well what do you think we should try to do?

The Hon. MARIE FICARRA: Nothing much.

Mr PAUL LYNCH: As to that interjection over there it is your Federal government that has refused to be involved in this.

The Hon. MARIE FICARRA: That is a cope out.

Mr PAUL LYNCH: The Premier has written to your Federal leader—

CHAIR: I would remind members that they should not interject in other people's time for questions.

Mr PAUL LYNCH: I am not convinced there is nothing that can be done. I am sceptical that anything particularly effective can be done unless there is a national scheme. In terms of a more considered position I am happy to take it on notice and get back to you with more sensible comments about what may or may not be done.

## **Answer**

There are two separate issues being raised here in relation to conflicts of interests and the declaration of pecuniary or non-pecuniary interests. One relates to the time of the declaration of conflicts of interest and the other relates to the declaration of political donations made to a political party as opposed to donations made to an individual councillor. I will respond to these issues in turn.

In relation to the timing of disclosure of conflicts of interests, all councillors are required to submit a pecuniary interest return annually. The returns are available to be inspected by members of the public and assist in ensuring transparency and accountability in local government decision-making.

However in addition to this, the Model Code of Conduct for Local Councils in NSW, which sets out the minimum Code of Conduct requirements which must be adopted by all NSW Councils, provides that councillors must “take timely and appropriate action to avoid, or if not, to disclose any actual, potential or reasonably perceived conflicts of interests”. Accordingly councillors are required to disclose any conflict of interest as they arise. It is not sufficient to rely on the annual return.

In regard to the matter of political donations, the *Local Government Act 1993* applies the provisions of the *Election Funding Act 1981* to local government elections. The Election funding Act falls within the Premier’s portfolio responsibilities and is administered by the Election Funding Authority.

The Act also provides for the Election Funding Authority to keep a Local Government Register of Candidates that contains details of political contributions to candidates, parties and groups. The register is available for public inspection.

Within 120 days of an election, the Election Funding Act requires that registered official agents for parties, groups or candidates must lodge a declaration of political contributions received since the last election. Declarations lodged are publicly available, ensuring a measure of public accountability and transparency in relation to political contributions and campaign donations.

The NSW Government has previously raised this matter with the Prime Minister. However, the Prime Minister has declined to introduce legislation that would address this issue at a national level. In the absence of a national approach it would be difficult to address it on a state-by-state basis.

## **Question from Ms Sylvia Hale MLC (page 13)**

“My question is I put to you that these councillors have failed to abide by the specific provisions of the Cessnock City Council code of conduct. Yet the general manager of Cessnock council is refusing to act on this because the general manager says that those councillors have not perceived that they have a conflict of interest and because they have not perceived they have a conflict of interest they are under no obligation to declare one.”

## **Answer**

The Model Code of Conduct for Local Councils in NSW is a mandatory minimum standard. There are minimum standards in relation to a range of issues, including conflicts of interests. The minimum standard for conflicts of interest is an objective test and is set out at clause 6.1 of the Model Code. It refers to whether a person could be influenced, or whether a reasonable person would perceive that the person could be influenced by a personal interest. Whether or not a person perceives that they have a conflict is not a determining factor in assessing whether a conflict of interests exists.

The misbehaviour provisions of the *Local Government Act 1993* establish a system of checks and balances by giving the NSW Ombudsman, the ICAC and the Director General of the Department of Local Government roles in examining possible misbehaviour. For instance, a person aggrieved at the failure of a council to act on what the person considers to be a conflict of interest may pursue the matter with one of the oversight agencies. In the case of the Director General, he has powers to call on the council to report to him on possible misbehaviour (for example, a serious breach of the code of conduct not acted upon by the council) and to proceed to investigate the matter.

I have reviewed the additional materials you have provided me and referred them to the Department. The Department has advised me that it is making further enquiries into the matter directly with the Council.

## **Question from the Hon Marie Ficarra MLC (page 17)**

The Hon. MARIE FICARRA: Have you actually read the Allen report?

Mr PAUL LYNCH: Yes, I have.

The Hon. MARIE FICARRA: Then you will be able to tell me what State functions you have passed on to local government? Can you tell the Committee the functions?

## **Answer**

I have not passed on to local councils any State functions as defined under the Intergovernmental Agreement, which was signed in April 2006 by all tiers of government and the Australian Local Government Association.

## **Question from the Hon Marie Ficarra MLC (page 17)**

The Hon. MARIE FICARRA: Why does the State Government not disclose data of the total State grants to local government in your budget papers? Almost every other State and country does, why not your department?

Mr PAYNE: The figures are available, but they are not in the budget papers. It is basically a Commonwealth grant. The figure is available in the annual report. It is publicly available and always has been.

The Hon. MARIE FICARRA: Can you provide that information on notice?

Mr PAYNE: The total grant available to local councils?

The Hon. MARIE FICARRA: Yes.

Mr PAYNE: Yes, of course.

**Answer**

The total grant for the 2007-08 financial assistance grants for NSW councils amounts to \$556,888,176.