Submission No 103

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

Name: Clr Genia McCaffery

Date received: 15/02/2008

Cr Genia McCaffery
9 Priory Road
NORTH SYDNEY NSW 2059
14 February 2008

Revd the Hon Fred Nile MLC
Chairman
Select Committee on Electoral and Political Party Funding
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Revd Nile

Thank you for your letter of 26 November 2007 inviting me to make a submission to your inquiry into electoral and political party funding.

While I am Mayor of North Sydney and President of the Local Government Association of NSW, I am making this submission to your inquiry in my personal capacity as an elected councillor.

As you know, the question of managing electoral and political party funding is a significant concern to Local Government and the communities it represents. The impact of donations to candidates and political parties on the perception and the reality of decision making and local democracy has been the subject of debate at local councils and in state-wide forums of Local Government.

The 2004 Annual Conference of the Local Government Association considered a motion from Manly Council (attachment 1) which proposed a comprehensive regulatory regime for donations to candidates from property developers, including the adoption by councils of a charter of political reform.

The Manly motion was referred by the Conference to the Association's elected Executive for consideration. The Executive established a working party of councillors drawn from councils across the state, which made eight recommendations (attachment 2). Without endorsing these recommendations, the Executive referred them to the 2005 Annual Conference of the Association for debate.

The 2005 Conference debated the working party's recommendations and resolved to seek transparency of political donations made to candidates for election to federal, state and local government (Resolution 147 - attachment 3), and public funding for local government election campaigns (Resolution 147,1 - attachment 4).

The Association received responses from both the Commonwealth and State Governments on this resolution, which I attach for your information (attachments 5 and 6). You will note the NSW Government simply noted the resolutions but provided no other opinion or comment.

The 2006 Conference again considered a motion from Manly Council (attachment 7) calling for a national summit to be convened to develop a strategy for donation reform.

The Conference resolved to refer this matter to the Commonwealth Government and I have attached their response for your information (attachment 8).

The history of debating this issue within Local Government as demonstrated by these attachments highlights how difficult it is to achieve consensus on regulating political donations and election funding. While I am happy to advise that the original motion from Manly proposing a political charter and a regime for regulating donations from property developers met with my personal approval, there was no consensus on this matter within the wider Local Government community. Nor did I perceive any consensus or impetus for change in relation to this matter at any other level of government.

Nevertheless there is a broad ranging concern amongst the community I represent that political donations to candidates for election to all levels of government can influence decision making. Further, there is a demand in the community for regulation not just of donations to candidates in their quantum, frequency, disclosure and management, but also for regulation of lobbyists and other political support activity at least in so far as to guarantee a level of disclosure and exposure sufficient to satisfy the community that the workings of government and decision making are not being abused.

I recognise that it is easy to call for regulation and much harder to design and implement regulation which will both satisfy the community and actually work. Nor is finding the balance between accountability to the community and transparency on the one hand, and individual political freedoms on the other, any easier a task.

Thank you for the opportunity to submit to your inquiry. I would be happy to discuss this matter further if you require.

Yours sincerely

Genia McCaffery

Cr Genia McCaffery

ATTACHMENT 1

Category: 1
Resolution/ Motion No: 168
Related TRIM Ref: IN-25889

Container: R
Action: Warren Taylor

From: Manly

Text: That the LGA contact all NSW councils to request they each consider adopting the Charter of Political Reform as detailed below.

Part A
1) All council candidates will be asked to make a public commitment not to accept any direct or indirect donations from property developers.

Immediately on announcing their candidature, all those aspiring to public office will be asked to sign a statutory declaration committing themselves to such a principle.

2) That the true original source of all donations over $500 or equivalent in services or 10 hours in kind, labour, material or services help to a councillor candidate, group or party be fully disclosed. Before accepting any donation, the candidate, group or party should inform the donor that this information will be publicly disclosed.

3) That all candidates be asked to voluntarily fully declare their business and property interests before the election. These declarations to be made available for public scrutiny within 7 days of formal candidature.

4) A councillor candidate, group or party should ensure all auction fundraising donations over $500 or equivalent in services or 10 hours in kind, labour, material or services are fully disclosed before the election as to who paid how much for what.

5) A councillor candidate, group or party should immediately declare during the campaign any incoming donations over $500 or equivalent in services or 10 hours in kind. The Council will administer an up-to-date public declaration that includes financial donations received that are over $500 or equivalent in services or 10 hours in kind, labour, material or services and promises of any forthcoming donations. These declarations are to be put on public display at each polling booth.

6) Councillor candidates be asked to declare current or previous membership of any political parties within the last 4 years.

7) Political 'trust funds' or the like, set up to benefit any candidates, sitting councillors, groups or political parties should be fully disclosed within 1 week of its creation. That the original source of all donations over $500 or equivalent in services or 10 hours in kind, labour, material or services be disclosed.

8) Councillors should act with due diligence to ensure they are aware of any donations over $500 or equivalent in services or 10 hours in kind, labour, material or services made to their respective parties at state or federal level. A councillor whose party receives a donation at state or federal level should not vote on a matter that delivers a financial advantage to that

donor. The councillor should treat the matter as a conflict of interest, just as if the donation was made directly to that councillor.

9) This Charter is to be administered by the Council. All the information on donations, party membership and financial interests of candidates should be collated on statutory declarations, and signed by those candidates. On election day an information board should be erected at each booth with the public able to view all the statutory declarations.

Part B
(i) That Council commit to establishing or utilizing an Independent Expert Panel to oversee any 'controversial' development applications.

Which DA's should go to the Independent Panel?
- Any DA in which the applicant, organization or company has been a donor to any councillor or their political party for a financial donation of $500, an equivalent in kind offer of services, materials or labour.
- Any DA in which any councillor or family member has a direct financial interest.
- Any DA that 3 or more councillors see as needing to be processed independently for whatever reason.

(ii) That the definition of Property Developer in the above Charter is: any person or body that carries out or has as one of its principal objectives the carrying out of development within the meaning of the Environmental Planning and Assessment Act 1979 "more or less" on a continuous or repetitive basis with a view to making a profit (whether or not a profit is made).

That the conference supports the intent of the charter and that the matter be referred to the Executive to examine problems in the legislation regarding transparency of donations made to candidates for election.

Note from Sponsoring Council:

Note from the Executive:

Action Officer: David Hale

JOINT WORKING PARTY ON POLITICAL REFORM
Item: **LGX14**
Ref: R90/0675

Summary:
A draft Annual Conference motion on the regulation of donations made to candidates for election.

Report:
Motion 168 of the 2004 Local Government Association Annual Conference from Manly, requested that councils consider adopting a Charter of Political Reform with specific reference to political donations and independent development assessment.

The Conference resolved to support the intent of the charter and refer the matter to the Executive for examination of problems in the legislation regarding transparency of donations made to candidates for election.

The Executive of the Local Government Association resolved to establish a Joint Working Party with the Shires Association to undertake this examination.

The Joint Working Party, which included representatives of both Executives and Manly Council met on several occasions. It considered the Manly Charter of Political Reform as well as submissions from several councils including the City of Sydney, North Sydney, and Shoalhaven. At its meeting of 14 July the Working Party endorsed the following draft motion for reporting to the August meeting of the LGA Executive with a recommendation that it be referred to the 2005 LGA Annual Conference for debate.

That the Local Government Association supports amendments to legislation governing all elections to ensure the transparency of donations made to candidates for election to local, state and federal office, these amendments providing for:

1. Full disclosure by all candidates for election of the original source of all donations over $500 or equivalent in kind (material or services), including by way of raffles and auctions, political trust funds and to party head offices, made to a councillor, candidate, group or party.
2. That all donations totalling more than $2,000 be banned.
3. Each candidate is to sign a statutory declaration of their business and property interests at the time of their nomination, and a statutory declaration of donations received up to the declaration of the poll.
4. Elected councillors be required to declare election donations as part of their annual pecuniary interests return as governed by the Code of Conduct.
5. Disclosure provisions are to be advertised to potential donors, including by candidates for election.
6. All candidates for election are to declare their political interests within 7 days of their nomination for election. Political interests include current party membership or previous membership within 2 years of the election.
7. Disclosures are to include the posting of candidates' declarations on public display in polling booths.
8. Local Government disclosure and declaration provisions are to be administered by councils.

That the Charter of Political reform adopted by Manly Council be forwarded to all councils in New South Wales for their information and consideration.

Recommendation:
That the following draft motion be referred to the 2005 LGA Annual Conference.

That the Local Government Association supports amendments to legislation governing all elections to ensure the transparency of donations made to candidates for election to local, state and federal office, these amendments providing for:
1. Full disclosure by all candidates for election of the original source of all donations over $500 or equivalent in kind (material or services), including by way of raffles and auctions, political trust funds and to party head offices, made to a councillor, candidate, group or party.
2. That all donations totalling more than $2,000 be banned.
3. Each candidate is to sign a statutory declaration of their business and property interests at the time of their nomination, and a statutory declaration of donations received up to the declaration of the poll.
4. Elected councillors be required to declare election donations as part of their annual pecuniary interests return as governed by the Code of Conduct.
5. Disclosure provisions are to be advertised to potential donors, including by candidates for election.
6. All candidates for election are to declare their political interests within 7 days of their nomination for election. Political interests include current party membership or previous membership within 2 years of the election.
7. Disclosures are to include the posting of candidates' declarations on public display in polling booths.
8. Local Government disclosure and declaration provisions are to be administered by councils.

That the Charter of Political Reform adopted by Manly Council be forwarded to all councils in New South Wales for their information and consideration.
Moved Cr Hegarty Seconded Cr Byrne

Attachments:
Nil.

ATTACHMENT 3

RES - 2402

LOCAL GOVERNMENT ASSOCIATION OF NSW

ANNUAL CONFERENCE 2005

Action Sheet Conference Resolution

Resolution / Motion No: 147
Category: ONE

Container: R90|0675-06
Action Officer:
ES/NB
Related:

From:

147 – Executive

That the LGA supports amendments to the legislation governing all elections to ensure the transparency of donations made to candidates for election to federal, state and local government.

ATTACHMENT 4.

RES -2403

LOCAL GOVERNMENT ASSOCIATION OF NSW

ANNUAL CONFERENCE 2005

Action Sheet Conference Resolution

Resolution / Motion No: 147.1
Category: ONE

Container: R94 | 0113-03
Action Officer:
ES/NB
Related:

From:

147.1 – Supplementary

That there be appropriate public funding for local government election campaigns.

ATTACHMENT 5

IN -30679

SENATOR THE HON ERIC ABETZ
Special Minister of State
Liberal Senator for Tasmania

16 JAN 2006

Local Government Association of NSW
Shires Association of NSW
17 JAN 2006
EDU DM CSSR
STRAT CSU
WPLACE NO ACTION
FILE No R90/0927-02

Cr Genia McCaffery
President
Local Government Association of NSW
GPO Box 7003
SYDNEY NSW 2001

Dear Cr McCaffery

Thank you for your letter of 10 November 2005 forwarding resolutions of your Association's 2005 Annual Conference in Mudgee in October.

You may be aware that the Government introduced the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 into the House of Representatives on 8 December 2005. In addition to Government policy priorities, the Bill will implement key recommendations of the Joint Standing Committee on Electoral Matters' (JSCEM) inquiry into the conduct of the 2004 federal election. Several of those matters had already been canvassed by me in speeches to the Young Liberals in January 2005 and to the Sydney Institute in October 2005.

The first resolution you list concerns ensuring the transparency of donations made to candidates for election to federal, state and local government. Only state governments can legislate with regard to state and local government elections. Any submissions you wish to make regarding state or local government elections would need to be made to the relevant state Minister. For federal elections, a comprehensive regulatory scheme exists to provide transparency in donations to candidates. While the Bill proposes to lift the threshold for disclosure of donations to $10,000, the JSCEM noted this increase would still mean that a high proportion of donations would be disclosed and a higher threshold would encourage more individuals to make donations.

The second resolution you list asks that the Government reject the proposal to raise the threshold level for public disclosure of political donations. Put simply, the original threshold has been eroded by inflation and was much too low when originally set. It adds nothing to Australia's democracy other than unnecessary red tape.

Parliament House, Canberra ACT 2600 Telephone 02 6277 7600 Facsimile 02 6273 4541

The Liberal Party argued for a threshold of $10,000 in 1983 when these provisions were introduced and supports that threshold now.

The third resolution you list concerns the availability of electoral rolls for inspection in local government offices, and the closure of the electoral roll on the calling of an election. A copy of a Divisional Roll is available for inspection at a Divisional Office, usually located within each Division. An elector may also be able to confirm his or her enrolment details by using the facility on the Australian Electoral Commission website at www.aec.gov.au. The rolls for local government elections, and local government areas, are prepared for the purposes of state legislation and the question of their availability for inspection is a matter for state authorities.

In regard to returning to the traditional close of the rolls at the calling of an election, the Government believes that the seven-day grace period introduced in 1983 increases the opportunities for fraud and errors. The states and territories have various periods for the close of rolls, with New South Wales closing the rolls on the issue of the writs and the Northern Territory giving a two-day grace period. The Government is returning the close of rolls for new enrolments to the day the writs are issued, while allowing a three-day period for correction of existing enrolments. Appropriate provisions cater for 17 year olds turning 18 prior to polling day, as well as people becoming Australian citizens before polling day.

Thank you for bringing the resolutions of the recent Annual Conference of the Local Government Association of NSW to the Government's attention.

Yours sincerely

ERIC ABETZ

ATTACHMENT 6.

'N - 32578

COPY

New South Wales

The Hon. Kerry Hickey MP
Minister for Local Government

Ref: 050275
MIN: 05/1294
Doc ID: A39951

Cir Genia McCaffery
President
Local Government Association of NSW
GPO Box 7003
SYDNEY NSW 2001

6 APR 2006

Dear Cir McCaffery

I am writing in reply to your letter of 10 November 2005 (your reference R04/0024 Out-13022) regarding resolutions from the Association's 2005 Annual Conference relating to my area of Ministerial responsibility. I apologise for the delay in responding.

My comments in response to the relevant Conference resolutions are as follows:

57 – Greater Taree R90/0161-03

Section 506 of the *Local Government Act 1993* provides me, as Minister for Local Government, with the authority to determine the percentage by which councils can increase their general income on an annual basis. If a council wishes to increase its general income by more than the specified percentage, it must apply for approval under either section 508(2) or 508A.

Ministerial approval of a special variation for a particular council relates to the total general income that the council can raise. The approval should not be interpreted as endorsement of the projects that the council plans to undertake with the additional income.

If the requested legislative amendment was made, the Government's commitment to rate-pegging would be somewhat diminished and ratepayers would no longer be protected from potential excessive increases in rates. There is also no mechanism in place to ensure that the additional revenue would be channelled into roads and bridges.

58 – Coffs Harbour R93/0099.

Under the resolution proposed by Coffs Harbour, criteria would need to be developed to define 'rapid growth' and 'coastal environmental constraints'. These can be subjective and may not be the only circumstances that would warrant a higher percentage increase.

If a council believes that it has experienced 'rapid growth' or that it has 'coastal environmental constraints', it can apply for a special variation citing these issues as the basis for its application under the current rating provisions.

59 – Sydney R90/0218-02

A national Inter-Governmental Agreement is currently being prepared with involvement from the Australian Local Government Association and the Department of Local Government. The draft agreement is scheduled to be considered by the Commonwealth and State/Territory Governments in April 2006.

In addition, I have recently announced the establishment of a Local Government Advisory Committee, and a number of local government sector groups have been invited to nominate representatives, including the LGSA. This Committee will further enhance the relationship between the State and Local Government sectors.

With regard to the issue of investment in infrastructure for major growth areas, I would firstly make the point that capacity currently exists through the special rate variation provisions for councils to seek a rate increase to address their infrastructure needs. In addition, I am happy to work with Local Government to lobby the Commonwealth Government for a greater share of Commonwealth revenue to help meet the sector's infrastructure needs.

61 – Lake Macquarie R92/0195-03

The NSW Local Government Grants Commission makes recommendations on the allocation of federally funded local government financial assistance grants. A cornerstone of the funding arrangements is that councils, which through no fault of their own have relatively higher costs in providing services or a relatively lower ability to raise revenue, should receive relatively higher grants.

As part of its assessment, the Grants Commission considers a range of issues including population growth, development activity and the impact of non-resident use on council services.

X **62 – Waverley** R90/0218-02

As part of the Cabinet process, the Government considers, through the advice of the Department of Local Government and myself, the implications for local government of all proposals for legislative or policy change that come before it. Further, in developing such proposals, Ministers and departments generally undertake extensive community and stakeholder consultation. The LGSA plays a key role representing the interests of local government in such consultations.

66 – Blacktown R91/0115-01

The *Local Government Amendment (Discipline) Act 2004* amended section 435 to remove the requirement to prove "culpability" before a councillor, member of staff or delegate is surcharged for deficiency or loss incurred by a council as a consequence of negligence or misconduct.

Section 435 provides for the surcharging of councillors and staff. The meaning of the word "culpable" as it stood was unclear. It is an inappropriate term for this area of the law. Culpable negligence is only relevant to criminal law. Other jurisdictions already have powers to surcharge for negligence or misconduct without reference to culpability in the context of local government.

The Local Government Act already requires councillors and staff to act honestly and to exercise a reasonable degree of care and diligence in carrying out their duties. The amendment does not impose any greater responsibility.

The power to surcharge would only be used in circumstances of serious negligence or misconduct. The other surcharging provisions in the Act do not mention culpability. However, they have never been called on by the Director General of the Department of Local Government.

The Act already provides safeguards against any inappropriate use of this power in the form of a right to make submissions and a right of review to the Administrative Decisions Tribunal.

69 – Hornsby R95/0025-03

As indicated under Resolution 62, mechanisms are already in place for the Government to consider the implications for local government of all proposals for legislative or policy change that come before Cabinet.

170 – Camden R90/0394-08

The current NSW Pensioner Rebate Scheme remains one of the more generous rate concession schemes operating in Australia for eligible pensioners. In 2005-06, the scheme cost the State Budget $76 million. This cost is expected to increase significantly in future years in line with the State's projected ageing population. It is therefore not feasible for the NSW Government to increase payments under the scheme.

Councils have the discretion to provide further pensioner concessions, such as extensions in time to pay rates, if they believe there is a need or demand within their community for such additional support.

L10 – Parramatta R91/0112-05

Sections 525 and 526 of the Local Government Act allow a ratepayer to make an application to the council to have the categorisation of their property reviewed if they believe that it is incorrectly categorised.

The Act requires the council, upon receipt of an application, to review the category of the subject property. Once reviewed, the council must declare whether the category is to remain the same or whether it will be changed. If the ratepayer is dissatisfied with the council's declaration, they can appeal to the Land and Environment Court.

Section 521 states that the declaration of a category takes effect from the date specified for the purpose in the declaration. There is nothing to either prevent or make a council adjust rates for any length of time leading up to the date that the category is changed. This provides the flexibility for councils to deal with the different circumstances that may exist. For example, some councils are willing to adjust rates for the previous three years where it is clear that the council incorrectly categorised the property and rated incorrectly for that period.

To amend the Act so that adjustments can only be made for the current financial year would remove councils' ability to exercise their discretion and treat ratepayers equitably.

L16 – Eurobodalla R90/0394-08

In addition to the comments provided under Resolution 170, I would note that it is a well-established principle that the cost of pensioner concessions is shared between the State and Local Government sectors.

L22 – Broken Hill R90/0400-04

It is unclear from the resolution what anomalies in the rating system Broken Hill City Council believes currently exist. Additional information is required before this resolution can be further considered.

73 – Lake Macquarie R04/0066

The power to enter a private premise should not be taken lightly, hence the requirement for police officers to obtain a search warrant prior to entry to a residential premise where the owner does not consent.

The existing powers of entry under the Local Government Act are consistent with powers of entry provided to authorised officers in other contemporary legislation. Neither 'residential purposes' nor 'dwelling' are specifically defined in the Act for the purposes of a council exercising its powers of entry. Therefore, in the absence of evidence to the contrary, it is not clear what the proposed amendment would change in respect of councils exercising their powers of entry.

74 – Penrith R93/0099

Generally speaking, the definition of terms is in accordance with the Dictionary to the Local Government Act, the *Interpretation Act 1987*, and ordinary meanings. Identification of the terms in question would be required before a more detailed response can be given.

Section 678 of the Local Government Act allows councils to do all such things as are necessary or convenient to give effect to the terms of an order, including carrying out any works. This section allows councils to recover costs through the proceeds of sale, as a debt due to the council (enforceable in court), or through party-party costs.

Generally, resolving issues of non-compliance with orders served in accordance with section 124 is through enforcement via the civil court system. Cost recovery is a matter for each court to determine in accordance with the merits of each case.

While in part containing similar provisions, the Local Government Act and the *Environmental Planning and Assessment Act 1979* (EPAA) are discrete forms of legislation. Where provisions in section 121 of the EPAA are replicated in section 124 of the Local Government Act, consideration will be given to parity in the penalties applied.

76 – Sutherland R93/0099

The resolution makes proposals that would reduce accountability and community participation and is therefore not supported.

The community land provisions of the Local Government Act emphasise a council's responsibility to actively manage land and to involve the community in developing a strategy for management. This is particularly important where a change in classification from community land to operational land is proposed.

The Act provides the common foundation for each council to apply specific management strategies to public land, as they see fit.

Classification as community land reflects the importance of the land to the community because of its use or special features. Generally, it is land intended for public access and use, or where other restrictions applying to the land create some obligation to maintain public access. This gives rise to the restrictions in the Act, intended to preserve the qualities of the land and to ensure community participation in the management of the land.

82 – Campbelltown R95/0160-09

On 13 January 2006, the Government introduced amendments to the *Companion Animals Act 1998* and Companion Animals Regulation 1999. The amendments to the Regulation included a clear definition of a childproof enclosure for restricted and dangerous dogs.

83 – Fairfield R95/0160-09

The amendments to the Companion Animals Act that were implemented on 13 January now include crossbreeds of those on the restricted dog list for all NSW. The Government also banned the breeding and sale of any dog of restricted breed (including crossbreeds) and all restricted dogs must be desexed, with the intention of breeding these dogs out of existence in NSW.

115 - Willoughby R04/0029

While I note the resolution, I am not in a position to comment given the relevant legislation is outside of the scope of my portfolio responsibilities. I suggest that this matter be raised directly with the Minister for Planning.

119 – Blacktown R90/1256-03.

The issue of abandoned and unattended shopping trolleys is a real concern to the NSW Government. However, I believe there already exist legislative options available to councils to deal with the issue in their local government area.

In the first instance, councils are encouraged to work cooperatively with their local retailers. A number of councils and retailers have developed successful cooperative arrangements and retailers have adopted a variety of approaches to ensure that trolley loss is minimised. These include the employment of designated trolley collectors, the use of consumer deposit schemes and the introduction of trolley tracking technology.

In order to assist councils and retailers to enter into such cooperative arrangements, I note that the LGSA worked with the Australian Retailers Association (ARA) during 2001-04 to develop the *Code of Practice for the Management of Shopping Trolleys*.

In addition, there are legislative options available to councils to deal with the issue:

- Under the *Impounding Act 1993*, councils have the power to impound shopping trolleys found abandoned in public places and impose a fee on retailers for their redemption.

- Both the Local Government Act and the *Protection of the Environment Operations Act 1997* provide for fines to be issued in the case of trolleys left in public places under certain circumstances and trolleys dumped in a watercourse.

I note that the LGSA has prepared *Guidelines to Assist Councils in the Management of Abandoned Shopping Trolleys*, which contain advice to councils on their legislative powers to impound trolleys and charge for their return. They contain flowcharts setting out the legislative process and sample notices which can be issued to retailers who do not take responsibility for the collection of their trolleys.

Ultimately, I do not believe it is appropriate, nor desirable, to legislatively impose a single approach on retailers and councils, such as the use of deposit schemes. Rather, councils should continue to maintain a degree of flexibility in dealing with the issue in their areas.

X **L41 – Mosman** R90/0109-04

While I support any clarifying amendments, I am not in a position to comment more fully on the legality or advisability of the proposal, given the relevant legislation is outside of the scope of my portfolio responsibilities.

X **147 – Executive** R90/0675-06

The resolution is noted.

147.1 – Supplementary R94/0113-03

The resolution is noted.

X **155 – Pittwater** R93/0099

Any review of section 12 of the Local Government Act cannot be conducted in isolation from the *Freedom of Information Act 1989* and the *Privacy and Personal Information Protection Act 1998*. This was the function of the independent Parliamentary Inquiry conducted by the Office of the Ombudsman and the Police Integrity Committee. The relevant report is available on the NSW Parliament website.

In addition, I note that the Local Government Managers Australia (LGMA) is in the process of developing a comprehensive guide for General Managers to assist in ensuring compliance with councils and their employees' statutory obligations under disclosure and privacy laws. The Department of Local Government is liaising with the LGMA in the development of the guide and is providing detailed comments.

X **157 – Hornsby** R93/0140-07

The public advertising requirements under the Local Government Act are designed to ensure accountability and maximum exposure. They are also consistent with other legislation.

Under the Act, councils are not precluded from using alternative media for the provision of public information. While the Government encourages the use of such media as an adjunct to prescribed advertising requirements, it does not support any proposal to replace these requirements.

X **159 – Hawkesbury** R90/0005-03

The Local Government Remuneration Tribunal considers that election to local government is still regarded as a partly voluntary service to the community, and also that the annual fee is intended to recompense for expenses arising as a result of holding office, such as lost business earnings or extra costs in keeping businesses running (eg hiring employees).

An arrangement whereby councillors were to be provided with conditions suggestive of full-time employment, such as superannuation, is contrary to the ethos of the office and the Tribunal's intention.

The Local Government Act does not recognise the office of full-time mayor. Councillors are not employees of council. Payments such as superannuation may have tax implications for councils, including payroll tax. The new Federal employment laws may also have implications for such arrangements.

X **L36 – Penrith** R90/0014-06

The Model Code of Conduct for Local Councils in NSW came into effect on 1 January 2005. The Department of Local Government continually monitors the implementation of the Model Code and provides advice to local councils on its implementation.

The Department issued a clarifying circular in October 2005 and developed and issued to all councils a facilitator's guide to allow councils to train councillors and council staff on the provisions of the code. The Department is intending to undertake a review of the implementation of the Model Code in 2006/07. This will involve input from the LGSA, the LGMA and local councils.

I am mindful of the difference between the codes of conduct that apply to councils and to Members of State Parliament. However, the role of councillors is different from that of Members of State Parliament. Additionally, the Model Code applies not only to elected officials, but also to council staff and delegates of councils.

The introduction of a Model Code has in fact resolved an inconsistency in the jurisdiction of the Independent Commission Against Corruption (ICAC) over councillors in contrast with its jurisdiction over Members of State Parliament. Prior to the Model Code, councillors were not subject to ICAC jurisdiction for conduct falling short of criminal conduct, unless it involved a breach of the pecuniary interest provisions of the Act. Members of State Parliament have for some years been subject to the ICAC's jurisdiction for disciplinary offences under the relevant codes of conduct for Members of Parliament.

X **L42 – Gosford** R90/1273-03.

It is not evident that there is an impediment to councils approving alfresco dining on footways under section125 of the *Roads Act 1993*, while also identifying an Alcohol Free Zone in an adjoining public road or footway. It would be important that the council impose conditions on the footway restaurant that ensures the approved area is clearly delineated from adjoining thoroughfares that are part of an Alcohol Free Zone.

This year, the Department is conducting an evaluation of the effectiveness of Alcohol Free Zones. The evaluation will include consultation with local councils and will evaluate issues such as this and make recommendations to the Government. The Department will be issuing a Circular to Councils providing

information on the evaluation and requesting that councils complete a survey in the near future.

X **L43 – Parramatta** R90/0019-06

Under the current law, qualified privilege can extend to domestic tribunals and the like, ie, bodies with no judicial or quasi-judicial authority.

Section 731 of the Local Government Act also indemnifies councillors, council staff and others acting in good faith for a purpose under the Act. This would include acting as a member of a Code of Conduct Committee.

Generally, parties undertaking factual enquiries, such as members of conduct committees, would have some protection if they publish defamatory material if it is genuinely part of the enquiry process. But each case will depend on its facts and circumstances. When exercising any administrative function, care must be taken with regard to the publication of material arising out of that process.

X **163 – Penrith** R95/0016-06

In accordance with clause 41(1) of the Local Government (General) Regulation 2005, councils can only approve the installation and operation of an aerated wastewater treatment system (AWTS) that has been accredited by NSW Health. The NSW Health Certificate of Accreditation specifies that the council shall require the owner/occupier of a premise to enter into an annual service contract with a service contractor or company acceptable to the council.

I am aware that regional groups of councils are developing guidelines for determining acceptable AWTS service agents in line with the NSW Health Accreditation requirement. Applicants who meet the criteria set out in the guideline are included on a regional listing that councils in a region can make available to landowners when an approval to operate is being issued.

When introducing any new scheme, councils should ensure that transitional arrangements are considered to provide existing service agents and any new entrants to the industry adequate time to satisfy the criteria set out in the guideline to minimise any business impacts and ensure council is not subject to claims of anti-competitive behaviour.

Service agents inspect and maintain the operation of AWTSs. They do not inspect the land application area and therefore will not identify any public health and environmental impacts of effluent disposal.

Councils are responsible for managing the risk of sewage pollution in their areas and a council inspection of premises with an AWTS may be required. The on-site sewage management regulations are flexible so that councils may determine the most appropriate sewage management strategy for local circumstances. Under the Local Government Act, councils can charge a fee to cover the cost to council of inspecting on-site sewage management systems to ensure that they comply with the conditions of an operating approval.

Given the variable availability of service agents and operating conditions throughout the State, I consider the current system of councils determining acceptable service agents is appropriate for managing the operation of AWTSs.

Thank you for drawing these resolutions to my attention.

Yours sincerely

Signed
Hon. K. Hickey MP

Kerry Hickey MP
Minister

ATTACHMENT 7

RES - 2580

LOCAL GOVERNMENT ASSOCIATION OF NSW
ANNUAL CONFERENCE 2006

Action Sheet Conference Resolution

Resolution / Motion No: 137 Container: R90/0675

Action Officer: W. Taylor

137 - Manly **Political Donations**

Given that laws and practices relating to financial donations to political parties have become a serious risk to our democracy, the Local Government Association call upon the Federal Government to convene a National Summit to develop a national strategy to fundamentally reform, in a coordinated manner, all the financial donations legislation for all 3 levels of Australian government; ie: Federal, all State Governments and all local councils.

ATTACHMENT 8

IN -34462

THE HON GARY NAIRN MP

Special Minister of State
Federal Member for Eden-Monaro

13 AUG 2007

Mr Bill Gillooly AM
Secretary General
Local Government Association of NSW
GPO Box 7003
SYDNEY NSW 2001

OUT 15043

Dear Mr Gillooly

Thank you for your letter of 29 May 2007 concerning your Association's resolution calling for the Federal Government to convene a national summit to develop a national strategy to reform financial donations legislation at all levels of government. I apologise for the delay in responding.

You may wish to provide the following information to your Association.

The Government is firmly committed to supporting the integrity and rigour of the electoral system, and recognises that political donations offer an opportunity for individuals and organisations to support the party or candidate of their choice. This is an important part of the democratic process, as adequate funding for political parties and candidates supports the functioning of a sustainable, representative democracy.

At the federal level, the system for regulating donations to political parties is based on the philosophy that there is nothing intrinsically wrong with donating to political parties. Reflecting this approach, there are no barriers to who may donate to an Australian political party or candidate.

The Government understands however, that in preserving the integrity of the electoral system, the public needs to be aware of the major sources of parties' and candidates' funds. Accordingly, political parties, donors and other participants in the political process are required to disclose to the public how much they have received, spent or donated. Public disclosure of donations, and other expenditure, helps provide transparency.

In particular, Australian political parties are required to disclose the name, address and other details of all people or organisations, including foreign entities, which donate more than the disclosure threshold annually. Donors are also required to disclose the political parties (or

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other participants in the political process) to which they donated, if the total of their donations for a financial year is above the disclosure threshold. The disclosure threshold is currently $10,500 and is indexed to the Consumer Price Index (CPI) annually.

Turning to your Association's resolution calling for a national summit be held to develop a strategy to reform financial donations legislation, you may wish to note that the Parliament regularly appoints a Joint Standing Committee on Electoral Matters (JSCEM), which considers a range of electoral and administrative matters. JSCEM considered the issue of political donations, and related funding and disclosure, in its report on the 2004 federal election, and again in a later report in 2006. A copy of both reports can be found on the Committee's website at: www.aph.gov.au/house/committee/em/reports/htm

In its report on the 2004 federal election, JSCEM made a number of recommendations on political donations which the Government supported. Appropriate measures were included in the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*, which was passed by the Parliament in June 2006.

Given the recent extensive parliamentary inquiries on the issue of political donations, including related funding and disclosure, the Government considers that a national summit on these issues is not warranted. Noting that each State, Territory and local government has responsibility for their own donations arrangements, the current Commonwealth scheme strikes the appropriate balance between encouraging donations to sustain democratic activity and providing safeguards against the misuse of donations.

You may also wish to know that JSCEM has noted the absence of any evidence of corruption or undue influence and considered that Australia's funding and disclosure scheme was achieving its major goals.

Thank you for bringing your Association's views to the attention of the Government.

Yours sincerely

GARY NAIRN