

REPORT OF PROCEEDINGS BEFORE

**SELECT COMMITTEE ON ELECTORAL AND
POLITICAL PARTY FUNDING**

**INQUIRY INTO ELECTORAL AND POLITICAL PARTY
FUNDING**

At Sydney on Monday 10 March 2008

The Committee met at 10.00 a.m.

PRESENT

Reverend the Hon. F. J. Nile (Chair)

The Hon. R. L. Brown
The Hon. A. R. Fazio
The Hon. J. A. Gardiner
The Hon. D. T. Harwin
Reverend The Hon. F. J. Nile
The Hon. M. S. Veitch

CHAIR: Welcome to the second hearing of the Select Committee's inquiry into electoral and political party funding in New South Wales. Today I am pleased to announce that the Committee will hold a public forum on Friday 4 April. The forum will be held from 6.00 p.m. until 8.00 p.m. and will be open to all interested members of the public. The Committee looks forward to hearing from the community about this important issue. Further details about the forum are available on the Committee's website.

Before we commence I will make some comments about procedural matters. In accordance with the Legislative Council's guidelines for the broadcasting of proceedings, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what they publish, or what interpretation they place on anything that is said before the Committee. The guidelines for the broadcasting of proceedings are available from the Committee Clerks.

Committee hearings are not intended to provide a forum for people to make adverse reflections about individuals or organisations. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings, and therefore I request that witnesses avoid the mention of individuals unless it is essential to address the terms of reference. Any messages from the attendees in the public gallery should be delivered through the Committee Clerks. I remind everyone present to please turn off your mobile phones.

ROBIN BANKS, Chief Executive Officer, Public Interest Advocacy Centre, Level 9, 299 Elizabeth Street, Sydney, and

DEIRDRE HELEN MOOR, Manager, Policy and Programs, Public Interest Advocacy Centre, Level 9, 299 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: Do either of you wish to make an opening statement?

Ms BANKS: Yes. Mr Chair and honourable members, it is a wonderful opportunity to appear before the Committee, and I think a very important opportunity for the electors of New South Wales for this inquiry to be conducted. I think it is reasonable to suggest that there is something of a crisis of confidence at the moment in the way in which our political processes are managed and funded. One of the concerns that we as an organisation have is that such crisis in confidence can lead very easily to disengagement from the process, and that would be a dreadful outcome for the democracy of New South Wales and for Australian democracy generally. So we are encouraged that this inquiry is an opportunity to look at ways to reform the current systems to hopefully deal with some of that lack of confidence or concern about the way the political system is operating and re-engage the community in effective democracy in this State.

It is an opportunity to take action in New South Wales to show leadership in Australia. One of the things we would urge is that New South Wales not hold back in waiting for the rest of Australia to come to the same point but, rather, to take the action that needs to be taken in New South Wales, perhaps to lead the rest of the country on some of the reforms, and we hope that this is an opportunity to do that.

CHAIR: In your submission you recommend that consideration be given to establishing a non-parliamentary body to develop electoral law. Could you elaborate on that proposal?

Ms BANKS: Certainly. One of the concerns that that reflects is that at the moment electoral law is inevitably developed by those who are elected and members of government, so it tends to have a partisan approach. The electoral law should be developed in a way that focuses on the public interest and the health of the democracy first and foremost. We think that having a non-parliamentary body that is independent and a standing body could certainly assist in looking at where electoral law needs reform, reviewing the ways in which reviews have taken place in other countries in a much more comprehensive way than is possible within the purely parliamentary process, and then making recommendations.

Of course, those recommendations would still go to the Parliament, and hopefully with the level of evidence and support articulated by that standing body, it will be easier for Parliament to see the rationale for proceeding in accordance with the recommendations of that body. It certainly is an approach that has been taken in other countries with emerging democracies. While Australia is not like that—we have one of the longest-standing democracies in the world—it has been done in those places in recognition that democratic systems can be vulnerable to corruption, and certainly to influence and overuse of power by incumbents; so it is really a way to take a step back from the politics of it where you are looking at whether electoral law is working effectively for democracy. So, yes, we certainly think it is an important way to create distance between the day to day of politics and proper electoral reform.

In part we were influenced by proposals made by McCaffery in the democratic audit process. He recommended a seven-member committee with approval from two-thirds majority of Parliament, which would hopefully increase the sense that it was a non-partisan, or bipartisan at least, process, with a limited but fixed term for the members. It is our view that it would be very beneficial, that such a standing committee could be certainly listening to groups like ours, but also to the political parties and to less active members of the community about their concerns about existing electoral law and move those reforms forward.

CHAIR: In your submission you are critical of the operation of a political education fund, which from your comments does not appear to be giving a political education, or not to the extent that

would satisfy you. Could you comment on the fund's effectiveness, and do you recommend tying a proportion of public funding to furthering such aims?

Ms BANKS: Rather than comment on the effectiveness of the fund, I think the important point is that there does not appear to be clear accountability requirements in relation to payments from the fund. That means the fund does not have a role in auditing the use of funds and determining whether or not the funds that are allocated are used effectively for political education purposes. At the moment the only apparent accountability is that the money has been spent. I may be incorrect in saying that, but that is all I could glean from the materials I have reviewed. If it were about political education, surely an appropriate mechanism would be to say there are some accountability requirements attached to that which measure whether or not the money is used for public education around democracy and, perhaps, provide the body that manages it with a right to audit at least on an occasional basis, if not regularly, the use of those funds. It is less about the effectiveness of the fund. Certainly it seems to disburse the monies it is required to disburse in accordance with its mandate, but there is a lack of criteria around how that money is then to be spent.

We are very supportive of public funding of electoral processes and of education around the political process. That is one of the things we do a bit of through our work. We see it as vital that people not feel that the process is something that happens over there, away in the distance, or down here in Macquarie Street, but rather it is something that does engage them. Requiring those that receive funds to account for how they engage the community and how they educate the community about political processes in this State particularly is, in our view, a vital part of the fund being effective.

The Hon. DON HARWIN: You talk a lot about the Canadian model of capping donations and spending in your paper. You also talk about an alternative, which is a system-wide ban on donations. Can you give us a sense of how you see where this inquiry should go and what it should recommend?

Ms BANKS: In terms of political donations, the position we feel most strongly about is that there should be a ban on donations by organisations and that individual donations should be capped in some way. Probably not a high cap, but rather the kind of cap we are seeing proposed at the Federal level. If you were to set up a system that allowed donations from some organisations there is always the potential that it will be manipulated. It is much more likely to be manipulated by organisations than individuals because they have generally more capacity to look at the way the law is operating and find loopholes. Our position is that we think the opportunity to manipulate the system for the potential gain of influence should be minimised and that is an important change to be made. We support individuals making donations to political parties or campaigns—it is part of the democratic process—but if it is an uncapped donation then obviously those with more can donate more and potentially seek more influence through that donation. That is really where we are coming from on that. Our view is that it is better to have a blanket ban on organisational donations rather than to get into the complexities of whether or not X is an organisation that is banned or the amount being donated is manipulated. That is our position on caps.

The Hon. DON HARWIN: That is the broad gamut of organisations, including unincorporated associations, corporations and trade unions?

Ms BANKS: Yes.

The Hon. JENNIFER GARDINER: You mentioned the need for leadership to be exhibited in the area of law reform. There have been some indications that some of our leaders are prepared to look at law reform and from their public statements so far, would you care to comment on whether or not they go far enough? For example, Mr Iemma has suggested certain matters that he will formally put to this committee, we understand, for possible law reform recommendation from a State point of view. Also in the last week or so Mr Rudd has started to put forward specific points for reform. Do you think those suggestions go far enough?

Ms BANKS: I think they are a very good start. There are a couple of elements—I hope I have the full range of them in front of me—and many of them are very positive. The disclosure requirements of all donations that the Premier has announced I think are important. I think the recent

Federal requirement to bring back the cap—I think the most recent announcement is \$1,000 as opposed to \$1,500, which is what we saw before the changes in 2006—is positive. I think the ban on foreign donations is also a positive move. I think the one area that has not gone far enough, and also needs to be made clear, is that any electoral law should apply at all levels of government in New South Wales. That is to the State legislature and its processes but also to local government. I think that the announcement by the Premier in relation to the reporting of donations by developers when applying for approvals does not deal with our concerns about the influence they can have. A ban on donations would do that. It is all very well to report but at the end of the day influence can still exist. At the moment we have some reporting of donations but we still appear to have quite significant levels of influence occurring in the political process. To that extent, no, the announcements of the Premier to date do not go far enough.

I certainly think the proposal to consult on further reforms with the Commonwealth is a good thing but, as I say, I do not think New South Wales should hold back. I support the principle that laws should be harmonised when they can be, but the risk with that is that you end up with nothing changing. I think this is a prime opportunity for New South Wales to show what can be done when there is political will to move in response to the level of concern. I think it is a positive thing to be talking to the Commonwealth, but not to be waiting for the Commonwealth.

The Hon. ROBERT BROWN: In your summary of recommendations you state that a proportion of direct election funding should be spent on agreed broader social objectives. Could you explain what you mean by that?

Ms BANKS: Certainly. It links to the use of the political education fund. In the main the funding should be really directed towards education about democracy and our political processes. We run training for people about working with government and it never ceases to amaze me how little people understand about the way in which voting works, the way in which the two Houses of Parliament work, and the difference between Federal and State governments. Despite the fact that we are a relatively highly educated democracy, and certainly very well developed, we still have an enormous lack of understanding. Certainly development in civics education at school level is important but there are a lot of people who are post school age. Even at school, the way in which it is taught would seem to suggest it is a bit of an add-on and does not become something that people necessarily carry forward.

So it is very much the social objectives of engaging the community in processes. Partly it is about education and partly it is looking to ensure that it is used to engage the community to undertake processes. That means going out and talking to the community and listening to what they want. Parliamentary inquiries are an important part of our democratic process but they still tend to happen here to a great extent and they tend to hear from people like me. That is great for people like me but it is not a very proactive way to hear from the people of New South Wales. Certainly a social objective that we would say is important is using the funding to go out and conduct community fora. The announcement of the public forum on 4 April is really good and we will be encouraging as many people as we can to attend that forum. So that, as well as education.

The Hon. ROBERT BROWN: Do you see any inequities in the current eligibility criteria for access to educational funds?

Ms BANKS: I think my answer to that is that, having reviewed the way it works, yes. Whether or not I could say how it should be changed, or for that matter the detail of how the inequities apply is another matter, other than effectively, as I understand it, you would need to have somebody standing in the upper House, which is probably less of a challenge than if you had to have somebody standing in the lower House. But then the amount you get depends on how many votes you receive, as I understand it, in that the lower House, and please correct me if I am wrong.

The Hon. ROBERT BROWN: No, that is correct.

Ms BANKS: That will tend to favour the major parties over the minor parties. We certainly think that political education is not simply the domain of major parties. It is something that all those involved in the political process should be engaged in. Indeed there are smaller parties and Independents who are clearly involved and concerned about democracy because they have put their

hat forward into the ring to participate in a process that is largely dominated by two parties. Certainly the dominance of the major parties in the receipt of funds is of concern.

The Hon. ROBERT BROWN: In your submission you are clearly in favour of more direct public funding and cutting out funding from organisations. I will ask you two questions. To what extent should the public funding of the electoral process occur, bearing in mind that between the two major parties they raised pretty close to \$50 million last election? In your summary you suggest creating a sliding scale of public funding. Could you explain what that would entail, and do you know of such a system operating in other jurisdictions?

Ms BANKS: I am just looking to Deirdre on the last part of the question.

Ms MOOR: We are not aware of it anywhere else.

Ms BANKS: That is what I thought. We are not aware of it working anywhere. Can you remind me of the first part of the question?

The Hon. ROBERT BROWN: What proportion do you believe, or to what extent should the taxpayers of New South Wales support the election process?

Ms BANKS: I would say to a significant extent. Part of the issue is not just about capping donations but also capping spending. There is an issue also about trying to rein in the potential excesses. I understand on current estimates that in the recent Federal election the two major parties are thought to have spent about double what they spent in 2004. That is a pretty significant ratcheting up and if that continues, it is hard to imagine where it might go and how much more those donations will rise. If you were to cap spending as well as cap donations, then the call on the public purse would be limited in an effective way. I guess I would put it in a theoretical framework and that is if the public purse does not fund democracy, does that reflect that we do not care enough about it? It seems to me that one of the most important things that we should fund from the public purse is the effective operation of democracy, so certainly I would urge that that is the sort of thinking that should be behind any progress in that direction.

The Hon. ROBERT BROWN: And a recommendation of the sliding scale, can you elaborate on that?

Ms BANKS: Can I take that on notice?

The Hon. ROBERT BROWN: You may.

The Hon. DON HARWIN: Ms Banks, assuming your proposal of capped expenditure is adopted and following on from the Hon. Robert Brown's question, if the expenditure was capped, would you be prepared to put a figure on how much public funding should be? Should it be, say, 25 per cent, 50 per cent, 75 per cent? Do you have any feel for that?

Ms BANKS: I do not think I could put a number to it at this stage. I think all of this needs more thinking by us and by others, and that is part of why you would have a body to look at reform. I think it is worth looking at the way in which other countries have approached this issue because some of them have already gone down the track of capping expenditure and certainly public funding is not an uncommon approach. Rather than come up with a figure that would be somewhat meaningless, I think, if I came up with one at this stage, I think it is really a matter that should be further investigated.

CHAIR: Would you comment on this aspect? If it is \$50 million, obviously the major parties would like to replace any donations with public funding for that amount. But is a flood of TV advertisements from a political party really aiding democracy?

Ms BANKS: I think the answer is no, and I think that was at Dorothy Dixier, was it not? No, it is not, it is not an effective way to encourage participation in democracy. Certainly looking at some of the models that have been implemented in Canada where there are processes that cap the amount of expenditure, capping expenditure inevitably will affect the advertising and the use of spots on prime time. We also would support looking at ways to ensure that all participants get airtime in mainstream

media, not just airtime but newspaper coverage as well. If you cap expenditure, the \$50 million would hopefully shrink. It is a lot of money, \$50 million, for what is effectively a four week or so campaign. It is an enormous amount of spending. If most households thought about what that is compared to their household budgets, I think most would be horrified to know how much is spent on elections in this State and Federally by the parties.

The Hon. DON HARWIN: It halved in Britain in one election after they reformed there.

Ms BANKS: Yes, and I think that is a good thing. It may be that people have to be clearer about the messages they want to get out and more focused on who those messages should get to.

CHAIR: In your submission you raise a matter that would be controversial to the major parties: that the internal financial dealings of political parties should be the subject of full disclosure. You refer to accrued wealth advantages for certain parties. Could you elaborate on that?

Ms BANKS: Certainly almost every other aspect of the way in which business operates and certainly the way in which community sector organisations operate is open to public scrutiny. Many of those who currently make donations are open to more public scrutiny than political parties and their financial arrangements. There is an element of it whereby it would be nice to think that political parties would willingly go down that track because they want the people to trust them. That would be the ideal, but I do not think that is about to happen. So I think that requiring disclosure of financial records is an important part of trying to gain the trust of the people, to say, "Well, here it is. This is where we come from. This is our financial circumstance. This is where we make our money from. This is how we make our money." Certainly my organisation is required to do that. We receive public funding. We are required to account not just for that public funding but for all of our expenditure, and I think that is a reasonable expectation on political parties that receive public funding as well.

CHAIR: You are referring to when they have investments and the like?

Ms BANKS: Yes. We, as a non-government organisation [NGO], are required to report all of that as a company, and not all of our money is public money. We report on all the money that we receive and all of the money that we spend. I think that is part of accountability, it is part of transparency, in participating in a range of public processes. In our case it is not quite as public as political parties do, but it is certainly an important part of saying, "Well, we are willing to be held accountable to the voters on how we gain and spend our money."

The Hon. MICHAEL VEITCH: I have just a couple of questions relating to third party funding and bringing to account in-kind donations. How would you propose to treat third party arrangements, such as someone paying for advertisements on behalf of a political party, but not actually donating the money?

Ms BANKS: You have asked the trickiest question, I think, in some ways. I think any political advertising should be disclosed as paid for and who it is paid for. I do not think there should be any preferencing around that. I think that if it is part of the political process, then it should be openly disposed expenditure. The issue about third-party involvement is difficult because you do not want to stifle participation of non-political entities in political processes. At the same time it is clear that people and entities can use those processes for either direct political gain or influence. That is not a good outcome necessarily. So finding the line is difficult. Again, it is one of those areas where a lot of others have tumbled with it. We can learn from certainly the work that has gone on in Canada and Europe on this issue rather than starting from scratch. I think the principle should be that it is an open disclosure arrangement where it is advertising on a political message.

The Hon. MICHAEL VEITCH: Then you need the definition of "political message".

Ms BANKS: Indeed.

The Hon. JENNIFER GARDINER: Where would the WorkChoices campaign by the trade unions, for example, fall into that scheme of things?

Ms BANKS: It was clearly a political campaign. I do not think there is any doubt about that. There are a number of campaigns that would fit that definition. Certainly some of the campaigning that I am aware of in Tasmania around the previous State election as well, which was paid for by third parties, is equally political campaigning. The question is whether you attribute it to particular political parties or you simply say, "This is being paid for and here is the full disclosure of it", by the entity paying for it. Many people will be able to understand whom it is supporting. So you do not have to necessarily teach the electorate to suck eggs. But certainly disclosing who is paying for it and their links are an important part of disclosure.

The Hon. DON HARWIN: It is the nub of the issue because if an individual trade union is limited to giving \$1,000 to a political party but has a third-party election advertising limit of say \$250,000 and can put out a blatantly political message, or a corporation has a limit of \$1,000 and an industry association \$250,000, drawing the line between free speech and a blatant loopholing of cap legislation becomes very difficult.

Ms BANKS: I think the struggle to find the balance with free speech is an important one to have, instead of assuming that one way or another it is either going to fail completely or be completely safe in constitutional terms.

The Hon. DON HARWIN: May I ask a related question? You have said that you support caps. Do you have a view on when caps on expenditure should commence? Should they commence, to use the Australian jargon, when the writs are issued or 12 months before the theoretical due date of the election? Do you have a view on the issue?

Ms BANKS: That is a very good question. I am not sure I have turned my mind to it. I wonder whether in the process there has been any more thinking.

Ms MOOR: There are different models in different countries around the world and they have worked in varying success. I think it is one of the issues that we need to really consider. In the United Kingdom there is a cut-off date just 24 hours before an election and continual disclosure till then. But I think it is the underlying principles are the important thing.

Ms BANKS: In a State like New South Wales where we know when the election is coming, to simply limit it to the period after the writs are issued would be somewhat disingenuous.

The Hon. DON HARWIN: It is about 2½ weeks before, not much more.

Ms BANKS: Yes. I think that would not serve the purpose of protecting democratic processes and encouraging civil engagement. I am not comfortable with that, but it would need more thinking.

CHAIR: You want full disclosure, so you would not focus on the date of a writ.

Ms BANKS: No, the date of the writ is not the important date.

The Hon. DON HARWIN: My question was about expenditure caps, not disclosure.

CHAIR: You have expressed concern about the Electoral Funding Authority trying to enforce all these rules and regulations. However, you say in your submission that you do not feel they are very effective.

Ms BANKS: I think the difficulty here is partly unpacking what is on their website is difficult. It is not a very accessible source of information. But the rules seem to be much more focused simply on financial reporting and not really on accountability. I think an effective process would be much more about what is the purpose of this funding, how is the money being spent, and what powers does the Electoral Funding Authority have to order and review and ask questions about expenditure. It appears it either does not have significant powers or resources or it does not utilise those that it has. I cannot categorically state which of those it is. Either way, it is not as effective a mechanism as it could be.

The Hon. MICHAEL VEITCH: With regards to "in kind", in your submission you talk about the definition of "gift". As to the purchasing of merchandise, an individual could buy a truckload of cheap-to-produce diaries. In effect, is that not making a gift?

Ms BANKS: Potentially absolutely it is making—

The Hon. MICHAEL VEITCH: Do you have a proposal how to treat that?

The Hon. DON HARWIN: Capping expenditure. Sorry, I should not answer the question.

Ms BANKS: You answered the question asked, that is a good approach. I am not sure how that answers the question though, so I might have to think a little more about that. Certainly our approach is that gifts and payments for seats at a fundraising dinners and events should all be treated as donations. I think the approach, as I understand it, that has been increasingly implemented in relation to tax law is where if you get a benefit, the value of the benefit is taken off. If you pay \$150 for a seat at a dinner, then there is a reasonable value for the dinner and then the rest of it is treated as a donation. That seems to be one way of thinking through that problem. Did you actually get value for money? I guess when you get a whole lot of very cheap diaries that you then just put into a pulper or donate to somebody else, all you are doing is masking the donation a different way. I had never thought about people doing that. It is an interesting question. I do not know how you would prevent that kind of use of caps or ways around the caps. I think it certainly needs to be in the mix in terms of consideration because it is a possibility, sadly.

The Hon. MICHAEL VEITCH: In relation to local government, you spoke earlier about harmonising the requirement across the three tiers of government. Have you given consideration to the impact of these on dependent councillors or independent candidates for councils? I am thinking about rural councils where some of these processes will act against people running.

Ms BANKS: Certainly we say all of the processes should apply to local government. So, in addition, public funding should be available to candidates and in a way that deals with the problems of the benefits of income. Hopefully, you could craft a system that did not disadvantage independence in particularly rural communities. The diversity of communities in the bush is significant and, I think, very misunderstood by those who live in the city. So it is important to get that diversity in local government across the State, but particularly in rural areas. We would say that public funding is about public funding for all candidates, not just those who are already in office or members of the major parties.

CHAIR: Do you believe that the Electoral Funding Authority website at present is adequate in providing information to the electorate?

Ms BANKS: If I treat myself as a punter, I would say that I found it very difficult to find information. I think an effective website is a website that makes information easily locatable and searchable. It is not. A significant number of the documents on the website are in PDF format. So if you do a search on the website, unless the document has the word in its name it will not search into the documents and it will not necessarily find all of the possible responses. I went online to look at the political education fund materials and I found it distinctly unhelpful, I would have to say. I really did not feel that I understood the way it worked particularly or what its purpose was. So I do not think it is a particularly effective website. We live in an age, sadly, where that is where most people will look. Maybe it is a good thing because it is much more accessible than having to come to a State library or elsewhere to find the information. It could certainly be greatly improved. I think the fact that disclosure documents are not available online in an electronic form is unfortunate as well. As I understand it, in order to access those documents you would have to go the authority, and that is a fairly significant disincentive to people getting that level of detail.

CHAIR: You have suggested that members of Parliament also have an advantage in electioneering because they are in Parliament. Are you suggesting the use of their allowances, postal allowances and so on—

Ms BANKS: Yes.

CHAIR: Can you elaborate on that?

Ms BANKS: Certainly, there seems to be a use of electorate allowances and other parliamentary allowances that is weighted around the period of elections, in the lead-up to elections, which would suggest that they are not being used, as I understand it, for the purpose they are given, which is to engage with the electorate throughout the electoral cycle, not simply in the campaign process. It is vital that those who are in Parliament be required to account for the money they spend and that that spending cannot be used for partisan purposes in the sort of pointy end of the election process. How to do that, I think again it is complex but we need to ensure that the levels of accountability we expect of the third sector are expected of our parliamentarians and of all our political processes. I do not think it is an unreasonable expectation.

The Hon. AMANDA FAZIO: Are you aware that any materials, like electorate mailouts, sent out by MPs have to be approved by the Clerks to ensure that they are within the guidelines that the remuneration tribunal has put on the use of the allowances so that they cannot be used for blatant electioneering, for example. Were you aware of that when you were making those comments?

Ms BANKS: I do not think I was aware of that.

Ms MOOR: The Auditor General has noted the way the expenditure peaks in the period immediately before the election, so it may be unrelated but it may not.

CHAIR: How does your organisation get the public to support your submission today? Do you have some method where you conduct surveys?

Ms BANKS: We do sometimes. We have not in relation to this process. What we have done is be informed by a more academic approach, to look at what has been done in other countries, look at the purpose for which those reforms have been made and sought to think about how they would apply and work in Australia. We have a range of ways in which we talk to the community. Probably the most significant one is we conduct training across the State on engaging with government and we get a lot of input from people in those processes about what has worked for them, what has not worked, how they feel about the way in which the political process operates.

The Hon. JENNIFER GARDINER: As you know, New South Wales has local government elections later this year. Do you think it is important to try to get some reforms through relating to local government on this subject before then? Also, in terms of introducing public funding for local government, if it was extended to local government, that would require it to be presumably factored into the next State budget. Do you think that that timetable is realistic?

Ms BANKS: It is September; it is not that far out. I think it would be a big ask to implement significant reforms that affected local government in that time frame because I think it requires more thinking and it requires thought about what has happened in other places, what the effect of that has been and how it might apply to local government.

The Hon. JENNIFER GARDINER: Are there other jurisdictions where public funding applies to local councils?

Ms BANKS: I am not sure about local government, although I have a feeling in Canada—

Ms MOOR: And possibly New Zealand.

Ms BANKS: Yes, and possibly New Zealand.

The Hon. DON HARWIN: Just a few questions from your list of recommendations, most of which I agree with. We did not quite get on top of the sliding scale issue, which the Hon. Robert Brown was referring to. I think we established that we were not aware of the sliding scale appearing in another jurisdiction. What exactly were you getting at with that concept?

The Hon. ROBERT BROWN: She was going to take that on notice.

Ms BANKS: I had suggested I might take it on notice, and I may continue to seek that indulgence.

The Hon. DON HARWIN: That is fine. I am sorry, I did not hear that. Just a couple of dot points up, "Any entity that has contracts with State or Federal Governments be prohibited from making donations". What did you have in mind? What sort of arrangements?

Ms BANKS: Certainly where organisations are receiving or seeking government contracts, and government is increasingly using the private sector for the delivery of services. I guess the good example Federally is the shift from internal legal service delivery in the Federal Government to expenditure in the tens of millions of dollars going to private entities. That kind of contracting, the tendering and contracting of work should result in entities that are seeking to be contractors to government should be precluded from making donations.

The Hon. DON HARWIN: Would there be any particular limits you would put on it? Would you specify that, for example, the contract value had to be worth over a certain amount? Would you place any restrictions on regularity as opposed to one off?

Ms BANKS: I guess we answered that by saying we think there should be a ban on that sort of donation in the first instance, and this is really a fallback position. If the ban on donations is not implemented for organisations then they should at least be capped. In terms of whether or not there should be another set of rules that says—and certainly it is important that we keep organisations that seek to contract with governments separate from that donation process. Obviously you may not know in advance when you give a donation that a contract is going to come up that you seek to obtain from government, in which case you would have to deal with that through an open disclosure process of the donation and make sure that that happens. But once an organisation has begun working for government I think there should be an absolute ban on them donating further because I think many organisations that contract to government will seek to renew that relationship over time.

The Hon. ROBERT BROWN: Would you include grant recipients in the term "contractor"?

Ms BANKS: I do not know any grant recipients that make donations to government, but perhaps that is just my naivety rather than anything else.

The Hon. ROBERT BROWN: Say green non-government organisations in some circumstances?

Ms BANKS: If you seek to benefit from a relationship with government—and that would include grants—the same should apply.

(The witnesses withdrew)

(Short adjournment)

KEN MORRISON, New South Wales Executive Director, Property Council of Australia, Level 1, 11 Barrack Street, Sydney, affirmed and examined:

CHAIR: We welcome you to the Select Committee on Electoral and Political Parties. Do you wish to make a brief opening statement?

Mr MORRISON: A very short one. The Property Council of Australia represents companies which own, manage, invest or develop properties—all forms of property from office buildings, shopping centres, residential development, industrial development, tourism, hotels and the like, so a very broad membership—where members are developers; some are exclusively developers, some are property companies which earn the majority of their income from investment activities but do development ancillary to that, and some that do no development whatsoever.

We come to this inquiry because the property industry and donations from the property industry has been a matter of public discussion, so we thought we needed to make a submission and a presentation today. As our submission states, the Property Council would be happy to support measures that make the political donations process more transparent. There have been a number of those announced and canvassed. But the primary purpose in coming here today was to also recommend to the Committee that it look at making decision-making processes around development applications also more transparent.

The Property Council for some time has been advocating that decisions on development proposals needed to be depoliticised and we have supported a proposal which would see independent experts become the decision makers on development proposals in replacing politicians at a local and State level. To be precise about it, we have in the past supported a South Australian model of independent planning experts forming a panel which would be the decision maker for all development applications at local level which were not done by staff. It is a system that operates successfully in South Australia.

We also have supported the establishment of a panel or planning commission at State level, which would fulfil the function currently undertaken by the Minister for Planning for major projects. We are very happy that in the Government's planning reform discussion paper, released in November last year and likely to be the subject of draft legislation later this month, two of those proposals have been taken forward, albeit in modified form. One is the establishment of a State planning assessment commission to replace the Minister for Planning's roles in approving development. So, the Minister and the Parliament would, of course, still be responsible for setting the policies and setting the planning laws but projects that came forward that needed to go to the State Government would be assessed by the planning commission. We support that proposal.

The second proposal that the Government has on the table is the establishment of joint regional planning panels, which would not operate in all parts of the State but in some parts of the State. The Government does not say where it sees these operating. We have suggested that these should operate in the higher growth areas of the State—coastal New South Wales and metropolitan Sydney—and they would be the determinative authority for all projects above a certain threshold, and we have suggested that \$10 million would be the right threshold there. Again, those would be panels which the Government proposes would be a five-member panel made up of three appointees from the State Government and two people from local government—likely to be two councillors—and that panel would make decisions on projects above the threshold, whatever the threshold turns out to be.

The reason why we support that is because we are keen to see decision-making that gives applicants a fair go; it means that applications are determined on their planning merits and not on other political considerations. I think the relevant point to the debate here is that there is concern that it is political considerations through the form of donations that are influencing decisions or have the potential to influence decisions. The flip side of the approach that we support is that the Government has in its proposals that it will remove any issue of substance or reality that donations would play any role in decisions on actual development proposals. That is all I wanted to say in terms of opening, but I am happy to take questions from the Committee.

CHAIR: You mentioned the perception in the community that there may be undue influence by developers in the way in which they give donations. What is your response to that?

Mr MORRISON: We would say that the system should be made more transparent and that the sort of proposal we have talked about would be making the system more transparent. Any package of measures that comes forward from this inquiry and other inquiries that are going on that only focuses on transparency around donation processes without also focusing on transparency around decision making on development applications is going to miss an opportunity to get greater transparency.

CHAIR: Have you had any information or an indication that there has been undue influence through developers' donations previously?

Mr MORRISON: Unfortunately, if you read ICAC's annual reports local government is, I think, the largest area of ICAC complaints and investigations. Obviously, not all of those matters are planning related but a good number are planning related. So there is, unfortunately, a track record of where we have seen corruption in various forms. Some of those have involved political donations. Obviously, the vast bulk of companies and individuals that do make political donations do so in accordance with the law and without seeking to influence decisions. But certainly there have been plenty of instances of downright corruption.

CHAIR: Many people are of the view that developer donations should be banned, if not all donations. I think you have reservations whether that could work?

Mr MORRISON: If you try to define what a developer is then you come up with a definition, which we believe anyone of ill will would be able to walk around fairly easily. For example, many property companies earn the majority of their income from non-development activities. For example, Mirvac is a publicly listed company which is very well-known but it earns the majority of its income from its investment activities. It owns shopping centres, office equipment et cetera but obviously it also has a development arm from which it earns earnings. What proportion of earnings does a company need to have from development activities before they are a development? Is Bunnings a developer because it has an expansion program, which sees it develop its own Bunnings stores through New South Wales and other States?

Once you start going to a private company or private individuals who may do developments, what is the definition around them? So we do not think that if you attempted to do that that you would succeed. This sort of regulation is intended to stop people of ill will, and people of ill will will walk around any regulations or definitions you care to put up. The other thing to say is that it also paints the property industry as being, somehow in its entirety, a problem in this area and while I can understand some of the community's concern—and the Property Council has been a champion of greater transparency around decision making processes around development decisions—it is certainly not true that the vast bulk of the players in the property industry are seeking to influence the system unduly, or engage in corrupt conduct, looking to make donations under the table. The vast bulk of property companies act extremely ethically.

CHAIR: Are you arguing that if it were abandoned it would ban all donations from corporations, unions and so on?

Mr MORRISON: That is right. The Property Council would be happy to support such a ban. There are obviously some practical challenges that stand in the way to that, not least the public's appetite for funding political campaigns for the political parties, but there are other measures as well. The Property Council does not come here to say that it holds itself out as being an expert in the best way to make the donations system more transparent, other than to say that if the Greens policy of trying to ban developer donations is put in place it would not be effective. But the council does say that there is a need to also make decision-making processes around development decisions more transparent.

The Hon. DON HARWIN: In 2005 Manly Council went to the Local Government and Shires Association and moved a motion on a charter of political reform which has been brought to our attention that had the following definition of "property developer" in its draft charter:

Any person or body that carries out or has one of its principal objectives the carrying out of development within the meaning of the Environmental Planning and Assessment Act 1975, more or less on a continuous or repetitive basis with a view to making a profit but whether or not a profit is made.

Do you see any pitfalls in that sort of approach to define what is a developer?

Mr MORRISON: The definition of "development" under the Act is an extremely broad term. It actually encompasses changing a letterbox, which sits within the definition of "development" although obvious one does not need to get a development application for doing an activity like that. You do have a very broad definition to start from so the question is: Are some of the other caveats that follow in that definition sufficient to narrow that back down to something that is a developer in most people's terms? I think that would be the challenge. If people wished to apply a Maximalist approach to that interpretation you would pick up a lot of individuals and companies who would not believe that they were developers. But then also if you had a person of ill will who wished to make a donation, and you had a regime which banned developers, however defined, from making a donation, it would be a relatively easy thing to set up a shelf company and make the donation from a shelf company.

The Hon. DON HARWIN: While I am not familiar with all of the aspects of the Bunnings business model, theoretically Bunnings would be caught under something like that?

Mr MORRISON: Yes, it would be, that is right, because they have an expansion program. Part of that expansion program is to roll out their stores in new locations. Any fast food franchise would also be caught in that as well as it is also looking at, as part of its strategy, putting stores in new locations. Let us go back to the definition of "development", shop fit-outs are development so is Just Jeans caught by that definition? They certainly do development which supports their profit making activity so it could well be caught by that definition.

The Hon. DON HARWIN: Last week the committee heard from an organisation that operates in the same area as you do, the Urban Task Force. Its preference is that all political donations be banned, whether from individuals or all organisations. Do you have any comment on that suggestion? Do you see that as having merit?

Mr MORRISON: Again, they have pushed that strongly. We have not been out there pushing that strongly. Certainly, if the Government decided to do that we would support any measure there. I repeat my previous comments, from a practical point of view, as someone who observes the political process, I doubt whether the public would wish to take on that funding responsibility. I am not sure that is a measure that would get the support of the people of Australia.

The Hon. DON HARWIN: Am I correct in assuming that the council's position is basically that the issue of undue influence should be addressed through the planning system more than through changing electoral and political party funding?

Mr MORRISON: There needs to be both. That is the key thing. We would not want this Committee to miss this opportunity, particularly when the Government has some proposals on the table that would do that. The purpose for us championing those changes to the political system is that we are less concerned about political donations—but certainly that is very relevant—but more concerned about the impact of politics on decisions. We have seen many examples where proposals have been put forward that would comply with the local planning policy and rules but perhaps create some political controversy in the community they are in and because of that community controversy developments get refused or the processing period taken to process these applications is greatly elongated because of the impact of that.

The Hon. DON HARWIN: If I have read it correctly, the main suggestion of your submission relates to the disclosure issue and in particular what you say is the full, timely and transparent reporting of political donations?

Mr MORRISON: Yes.

The Hon. DON HARWIN: I wonder if you could just respond to what you consider would be the appropriate regime embracing the concepts of full, timely and transparent?

Mr MORRISON: We have not gone to the level of detail you are asking for. I think the basis of what we have with the Australian Electoral Commission, we have a disclosure regime that works well. There have been others which have critiqued the timeliness of information available through that. So, if this Committee or Parliament is looking for measures to increase transparency and disclosure, it could look at the time frames around which that information is reported back to the public. The Prime Minister has announced a threshold reduction, which again is a transparency measure. So, the Property Council does not have a fully fleshed out policy on transparency around donations but those would be the sorts of areas that the Committee and the Parliament should be looking at if it wants to improve transparency.

The Hon. ROBERT BROWN: Mr Morrison, just two things: Your suggestion that taking care of the issue, particularly, of the development industry and political parties causing problems is the adoption of better decision-making processes.

Mr MORRISON: Yes.

The Hon. ROBERT BROWN: I guess that would also sort out the problem not only of developers' donations or developers' influence by objectors' influence?

Mr MORRISON: Yes.

The Hon. ROBERT BROWN: Because it would remove the whole thing totally?

Mr MORRISON: Well, objectors would still have the opportunity to object but the decision on the project would be made on its planning merits. So, it would be taking into consideration any concerns objectors had, what the local policies were, planning frameworks et cetera, and then make a decision based on planning merits not on any other political issues, whether they be the donations or a campaign that might have come from that particular area.

The Hon. ROBERT BROWN: On page 2 of your submission after you detail your two main recommendations and you offer a third recommendation which my colleague Mr Harwin talked about and which was the approach of full public funding. You expressed the view, as you have done here verbally, that the public may well not support public money or tax money being used in this way. Do you have a concept of what it costs to run the last State election in private donations and, secondly, do you believe the public should fund political campaigns to the extent that private funding has previously done or would you suggest some other method to ameliorate that amount of money? We are talking, I suggest, maybe \$10 million, \$20 million, \$30 million, \$40 million, \$50 million. It is a lot of money.

Mr MORRISON: It is a lot of money, that is right. The Property Council does not have a policy that public funding should be to a certain amount or whatever. We have not gone to that level of detail of enunciating a detailed policy position on this but because it is being discussed in the discussion paper and in the public domain we have said we would be happy for governments to do this. We are happy to comply with whatever regulations governments and Parliament put in place. But we note it will cost a lot of money and I do not know that the public would want to front up the money.

The Hon. ROBERT BROWN: That was just the general feeling of the Property Council rather than having thought about how much money should be spent?

Mr MORRISON: It would be very easy from reading the papers to have an expectation that the Property Council would be sitting here today saying we want to retain the ability to fund political parties as much as we wish. We are not doing that. We are saying if you want to change transparency measures, make political parties fully public funded, that is fine with us. There is no reason for us to attempt to hang on to it. We make the comment that trying to define a developer is not going to work.

The Hon. MICHAEL VEITCH: Going back to one of Mr Brown's questions relating objectors to developers, we heard last week, again from the urban task force, about the need to have balance in the debate about political donation and that a lot of the focus is on property developers, as

broadly defined as that may be, and they gave some instances of multimillion dollar houses being objected to in some of the leafier or wealthier suburbs. Do you have any views about that whole process of all donations from all sides of the divide being somehow transparent, registered, and how that would work?

Mr MORRISON: I think you have the basis of it at the moment where the Australian Electoral Commission requires you to lodge your returns and then report on the website there. I think really the measures would be augmenting that somehow. I can understand why the media has done this, but I think the media debate on this issue would put forward the impression that the only way a development application gets approved in New South Wales is if a political donation is accompanying it, and that is just a million miles away from the reality of the New South Wales planning system. Yes, there are clearly individuals who engage in corruption and there is that edge of practice that the recent ICAC inquiry into Wollongong has put a focus on. Clearly we should have systems and processes that get rid of that from the industry. At the end of the day, what we are trying to get through the planning system, and one of the reasons why we are quite pleased about the majority of what is in the Government's discussion paper on planning reform, is that it is tried to get back to this idea that if you put in a development application, it is going to be judged on its planning merits, whether you are a renovator or a major multinational developer.

The Hon. MICHAEL VEITCH: Do you have a view about having the same process for Federal, State and local government in dealing with donations?

Mr MORRISON: Anything that was as consistent as possible between the three levels of government would be much easier to comply with. If you had different regimes around the country or between the State, local and Federal government, that would just make it more difficult to comply with. It is much easier for business or anyone to fill out one form, one declaration, however often that is, to one body to enable them to declare any donations they made.

The Hon. AMANDA FAZIO: Mr Morrison, in your submission you talk about the campaign that the parliamentary Greens have run.

Mr MORRISON: Yes.

The Hon. AMANDA FAZIO: What damage has that done to the property industry by the perception that no development application goes through unless someone has been given a backhand? What damage has that done to the whole process, do you think?

Mr MORRISON: I think it has done a lot of damage. Sydney is a very large city, it has some big and very natural growing pains, and really what we need in a city like Sydney is discussion and debate about how you manage urban growth. When we have surveyed members of the public on this sort of issue in the past, everyone knows Sydney is going to grow; everyone knows that that means that there will be new buildings erected, whether that is for new housing or to contain jobs or whatever. People just want to see it done in a way where they get a say, where it is as good quality as possible and hopefully it is as sustainable as possible.

I think that is where the debate needs to be, not some of the frankly outrageous allegations that the Greens have been coming up with. I think what it does is just marginalise the whole debate around planning issues. I can understand why it might be in some people's political interests to create this sense of crisis, but it is not actually the reality. There are those that do the wrong thing, there is corruption in the system and we need to stamp that out, but there is also far too high a degree of complexity in the system, politicisation of decision making, a lack of transparency and just wasted effort.

One of the big challenges for councils, as I am sure all members know, is the challenge of how to retain planning staff within their offices. It is very difficult to do that when they are forced to work in a system, which is a very cumbersome system, which cannot be a lot of fun to work in. A lot of the things that the Government is talking about in its planning reform discussion paper will actually address a lot of those issues. We are not seeing a very mature discussion on the sort of things that the Government is trying to do or on the broader issue of how you plan and deliver growth in a place like Sydney—or the Hunter or the Illawarra or the coastal areas of New South Wales particularly as well.

The Hon. AMANDA FAZIO: One of the things we often hear about in terms of development proposals is that some councils get them through quite quickly and others seem to take years—in some cases literally years.

Mr MORRISON: Yes.

The Hon. AMANDA FAZIO: The campaign that has been run by the Greens creates a perception that if councils get things through quickly then something must be going wrong, or something corrupt must be happening in the planning process, yet there is no questioning of why some councils take a long period of time. From your experience or your members' experience, what is the real difference between development applications that go through quickly and others that take years?

Mr MORRISON: A lot of it can be resourcing. When you have smaller, under-resourced councils and you have larger, more complex proposals coming through, it is harder for those councils to deal with those larger projects. So one of the advantages of a regional panel idea is that it means for those larger and more complex proposals you are going to have expertise being applied to those decisions because they are used to dealing with those types of projects. That is one thing. There are general systemic issues of just too high a degree of complexity within the system generally.

New South Wales has twice as many planning issues, twice as many planning consents as Victoria has planning permits, and yet our building approvals are running less than Victoria at the moment. Basically we are asking for twice as many things to go through a full development application process than should be going through a full development application process. No doubt another big issue is how well that council is run. That goes from the politics to the administration. Do you have councillors who see their roles as making political decisions on development applications rather than merits-based decisions? Do they see their role as making decisions on a majority of applications coming before it, not a minority, because they do not have a good delegation protocol? How well is the staff led and run? A good example is the City of Sydney Council, which obviously gets major multi-storey commercial office buildings and small-scale renovations, and they have different streams of systems right from the counter to deal with those. If it is a small development application, it is dealt with by one team in one stream; if it is a major project it is dealt with by another staff team. So running your staff well is also very important. There is a diverse range of reasons.

It is useful to put on the table that other countries have looked at this, and particularly how to link it to sustainability. The Property Council had a green cities conference just a month ago where there was a representative from Chicago. One of the things that they do is they have a green door policy. For projects that meet a high sustainability standard, they go through the green door and they are guaranteed a determining time of 28 days. They get their development application through in 28 days, even if it is a major project. They throw resources at those projects and they use that lever to try to incentivise the development industry to upgrade the sustainability features they are putting in new developments. I think we need a bit more innovation like that in New South Wales.

The Hon. AMANDA FAZIO: Some inquiry participants in some recent media reports seem to imply that political donations or attendance at fundraising dinners, particularly on the part of property developers, result in unequal access to government and bring about undue influence on government policy. What is your response to that issue?

Mr MORRISON: I think if you had the sort of transparency around development projects that we are aiming for and the Government is intending to introduce in its planning reform packages then that would not arise. I think you would not have any perception—let alone reality—that donations were colouring decisions because the people making those decisions would not be politicians. The politicians would be setting the rules or setting the policy, as occurs in almost every other area of government regulation, and then you have independent experts making the decision. I think if you had transparency on the decision-making side as well as on the donations side then that issue would not arise.

The Hon. AMANDA FAZIO: So your members who make donations and attend fundraising dinners do that as a normal part of their business activities?

Mr MORRISON: Yes.

The Hon. AMANDA FAZIO: They do not do that because they expect to get anything out of it?

Mr MORRISON: They would have the same range of motivations as any other part of the business sector would, so someone will be backing a particular political party because that is their personal belief; others will be supporting both sides equally; others will be supporting individuals who they think a talent in Parliament. It would be the full spectrum of motivations for attending those fundraisers, the same as any other part of the corporate community.

CHAIR: There was mention earlier that there can be competing pressures. In other words, the developer may want to get something approved and built and there could be other forces that want to stop that.

Mr MORRISON: Yes.

CHAIR: At Byron Bay there seems to be a lot of conflict from what could be called the environmental lobby. Can you comment as to whether there are competing pressures on councils?

Mr MORRISON: At the end of the day when a project comes in the decision-makers are not making it up as they go, they should be basing the decision on the laws and the policies that are set out in planning legislation and local planning policies. The time for politics is when you are setting the policies. If you get the policies right, then the project comes in and it is either in line with those policies and laws or it is not. If it is not, maybe you can negotiate to get some changes in the project so that it does comply or maybe they are told "No". Obviously objectors to any project should be allowed to have their voices heard and lodge their objection, but if their objection is not based on the local planning policy and the law then the project has every right to go ahead. All we are asking is that projects be considered on their merits.

CHAIR: You place a lot of emphasis on regional panels in that they would solve the problems—in other words, take the decision-making process from the council—but obviously councils would strongly oppose that. Can we guarantee that the panels do not have undue political influence? How do we ensure that a regional panel is detached from the political process? Is that possible?

Mr MORRISON: If you stack them full of political hacks then they won't be, so it is important that whoever is appointing the members of those panels chooses people who are up to the job, who have the expertise to do that job and are seen to have those qualities. I know that the Minister for Planning has made the point that quite often when he has put panels together, he likes to involve previous political leaders as the chair of those panels because he believes they have the skills and the abilities to deal with communities and explain to communities, so former politicians may well have a role on some of those panels but if I saw them stacked with more than one, I would start to be worried. You need to get the right people on those panels, but they are not party politicism; they are independent experts who are making a decision. If you go to almost any other area of public policy where government regulates, you have systems like this in place.

You have administrative appeals tribunals, migration tribunals but you do not have the bear pit of New South Wales determining who is going to be next on a public housing waiting list or the House of Representatives debating who is or is not going to get a refugee visa, but you do have in the local council those sorts of political discussion about whether a development application should be approved. It is not the appropriate way to make a decision on an application against planning policy.

CHAIR: The other complication in trying to staff a regional panel is to have qualified people such as architects, but they could also be associated with developers. How do you find truly independent professionals? It is a challenge, because they do not work in a vacuum?

Mr MORRISON: No, no-one does, and the likelihood is that this would not be their full-time role. You may well get independent people or people from within local government or State government who do not have any of those affiliations but you would also want people on these panels

who probably in their past or perhaps in their present lives would have some of those affiliations. What you need would be code of conduct regimes that work. Again, South Australia, which has this in place at the moment, has a code of conduct regime that bans any panel member from meeting with applicants or objectors on their own. They can only do that as part of a panel. It banned them from making a site visit on their own. They can only do that as part of an organised panel. They are trying to remove that sort of backroom lobbying, one way or the other, from the process.

It is worth noting also that there are full reasons for a decision, written decisions, tabled on the website after a decision has been made. If you are an applicant or a member of the public who supports or opposes a project, you know what has happened, and that is not always the case when you front up in front of a council.

CHAIR: So you would endorse that code from South Australia?

Mr MORRISON: Yes.

CHAIR: It seems to work quite well?

Mr MORRISON: It works pretty well. It works quite well. It is a step beyond what the Government is proposing here because they have a panel at each council area. We put that to them, but the Government is proposing here just to have a regional panel, to only have that panel cut in above a certain threshold—the threshold is still being determined—and then a State panel, which would take over from the function that the Minister currently has himself.

The Hon. ROBERT BROWN: Just a point of clarification to make sure I understand what you are saying. The council's recommendation to the Government was to have panels in each local government area?

Mr MORRISON: That is right, yes, but in the discussion paper the Government said no, we will just do the regional and State.

The Hon. DON HARWIN: One of the submissions we received was from the Commissioner of the Independent Commission Against Corruption referring to a publication that I am sure you are familiar with, "Corruption Risks in New South Wales: Development Approval Processes", and then he takes from that report a recommendation that he forwards to us, which is "That the Premier consider requiring persons submitting development applications, rezoning proposals and applications for other types of approvals and permits to a Minister to declare any political donations they have made to the Minister or to his or her political party". I think that recommendation that was in the ICAC report has been referred to in a number of other submissions we have received as well. Do you or the Property Council have a position on the recommendation in that report? Is it appropriate, broad enough or too restrictive?

Mr MORRISON: We do not think it is appropriate nor is it necessary. If you have the system of commissions and panels in place that make these decisions, the donation issue becomes irrelevant so you do not need to attach that to the DA. That is trying to take a concern around the transparency of decision-making processes and bolt on to the DA process a donations transparency measure. You would be better off making the DA decision-making process transparent and then the donation issue does not come into play. So if you have the system we are talking about, you actually do not need that recommendation in place at all.

The Hon. DON HARWIN: I think the Premier has indicated that that is one of the things he is looking at legislating upon. If that was the case and that was the proposal to come forward, short of outright opposition, would it be the council's view that it should be amended in any particular way to apply to any other category of persons, other than just those submitting development applications?

Mr MORRISON: No, we do not have a view on that, but again, let us say you had the State planning assessment panel in place and a company was making an application for a major project, which was being assessed by the panel. Who cares if they have donated? It does not matter.

CHAIR: In closing, could you summarise what you would like to see as a main recommendation to come out of the inquiry from your organisation's point of view?

Mr MORRISON: It is really important that the inquiry not only look at the donation system but that it also looks at the development assessment system. It is important to have transparency around both. We would urge the inquiry to look at the proposal the Government has got on the books at the moment and will shortly come to Parliament to create a planning commission at State level to take over responsibility from the Minister and to create planning panels at regional level to take over responsibility for regional level projects from councils and those would have welcomed transparency and would put the issue of donations out of touch in terms of this discussion.

CHAIR: With respect to the regional panel, the size of the project would be what?

Mr MORRISON: The Government's discussion paper said \$50 million, which I think they based on the Central Sydney Planning Committee, which has a \$50 million threshold, but \$50 million is actually quite large. There were only 26 DAs in the last financial year approved by local government that were greater than \$50 million. I think about half of those were in the city of Sydney, so I think they got the number wrong. We have suggested \$10 million is a more appropriate level, which makes sure that you are not getting large residential houses or just two-storey walk-ups. You are getting things of more regional significance such as distribution centres, major apartment buildings, major commercial buildings and major industrial developments but my understanding is that government is still considering what the threshold should be.

CHAIR: Thank you for appearing before our inquiry and I thank the Property Council for its cooperation.

(The witness withdrew)

GENIA MARIA McCAFFERY, Mayor of North Sydney and President of the Local Government and Shires Associations, GPO Box 7003, Sydney, sworn and examined:

Ms McCAFFERY: As members know, I gave a personal submission to the inquiry. North Sydney Council also made a submission and I want to say a number of things on behalf of the Local Government and Shires Associations, so I hope I will not confuse you too much. You can ask me whom I am speaking for, but I will attempt to say whether it is my personal opinion and when the association has taken this position.

CHAIR: You will identify them?

Ms McCAFFERY: Yes.

CHAIR: Do you wish to make an opening statement?

Ms McCAFFERY: That is really the opening statement I was going to make, but I did not want to confuse you.

CHAIR: The Committee has already received dozens of submissions from councils, which have expressed different views on the matter. I think in your submission you have indicated that you have had problems in trying to get a consensus position on the matter. Could you outline the history of the associations' consideration of the matter and the associations' policy?

Ms McCAFFERY: In my submission I think I dealt with the matter. The positions resolved really reflect those areas where consensus was achieved, and the issues not resolved upon reflect where there is a diversity of opinion. I do not know whether you know, but there is the Local Government Association and the Shires Association. The Local Government Association essentially represents metropolitan councils and larger regional councils, and the Shires Association fundamentally represents rural councils.

There are 152 general purpose councils and 14 special purpose councils. You can imagine that with a range from large metropolitan councils through to small rural councils, you have a huge diversity of opinion. That is why the history has been that we really have not been able to resolve a definite position. However, the Local Government Association supports the public funding of elections.

I have had some discussion with the executives of both associations last week, when they knew I was coming to this inquiry to give evidence. We resolved in the first instance to support public funding. We weighed up a number of issues, including the perception of influence on decision making which attaches to political donations, as well as the kind of complexity of formulating and implementing regulations that control monetary donations.

Basically our position is that if we cannot get public funding, we will support that political donations become a pecuniary interest for all levels of government. I guess the important thing is that it is not one rule for local government and a different rule for State government. We are saying that there should be a rule for all elected people, at State and local level. We think that that is a fairly clear and simple way of dealing with it.

CHAIR: For your information, the Committee has resolved to invite some of the councils who made individual submissions, so you will be invited to attend a further hearing to speak on behalf of your council. You need not include your council in your evidence today; if you could relate your evidence to the Local Government and Shires Associations. There is obviously, as you have said, agreement for public funding for local government elections. I guess you can agree in principle to do it, but how to do it is another big issue.

Ms McCAFFERY: Exactly.

CHAIR: Has any thought been given to that?

Ms McCaffery: I think that is why we have done the second position. I know you are going to ask me to speak on behalf of the North Sydney position. I have spoken to the Minister for Local Government about what North Sydney has done. North Sydney has taken the Model Code of Conduct and made it stricter, which you are allowed to do. Obviously you cannot make it weaker, but you can make it stricter. What we have done is that we have taken the election donations declarations that are made to the Electoral Funding Commission and made those declared donations non-pecuniary but a conflict of interest.

What I suggested to the Minister for Local Government is that he would consider amending the legislation to recognise campaign donations as giving rise to a pecuniary interest, and then to expand the definition of pecuniary interest and the declarations required. If you have a pecuniary interest, you clearly then have to declare an interest and you cannot participate in a vote or a decision. At a State level, that would then involve either a State member or a Minister not being able to deal with an application that came from a donor, because there would be a pecuniary interest and then you would have to have a separation.

The Hon. Michael Veitch: Does the code of conduct apply to donations received from people who object to developments as well as to developer donations?

Ms McCaffery: Absolutely.

The Hon. Don Harwin: If someone objected and a councillor received a donation from the objector, they are not allowed to vote?

Ms McCaffery: That is right. But you have to understand, it is not for the smaller donations; it is for donations over \$1,000. Clearly, under the conflict of interest codes, a conflict does not mean that it is a positive conflict; it is simply any conflict. If you are an objector, you are a party to the matter, and you have the same conflict for an objector as for an applicant.

Chair: There has been some discussion about limiting the expenditure in local government by either a councillor or a mayor. Do you have any views on that?

Ms McCaffery: I think there is no doubt—and again that this is a personal view—that the more expensive campaigns become, the more difficult it is for either a popularly elected mayor who runs at large or a councillor to afford to run that campaign from their own resources, and therefore you have to seek donations elsewhere. Certainly during the last election we saw a significant increase in expenditure. I think it happened because of the changes that this State Parliament made to how elections were run in local government, where we are now running like an upper House ticket and you have to run in a group, otherwise you are, in what is described in the old Siberia, on the right-hand side of the ballot paper.

I think we used to get many more Independents running on their own and they were able to run in their own spot. What has happened with the changes in the way elections are run in local government since the last election is that you have more groups and we seem to be getting more and more expensive campaigns. So I personally would support a cap on expenditure.

Chair: Does the association have any recommendations about the level of that cap, or would it vary from metropolitan to country?

Ms McCaffery: We have not discussed it and resolved the matter. You can imagine that in an organisation like mine I cannot say that the associations have a position unless we have had adequate discussion across all our membership, and that has not happened. But with 152 councils—and you have a council the size of Blacktown compared with a very small rural shire that might have only 2,500 residents—with that kind of diversity you are going to get enormous diversity in the kind of election campaigns you run.

Chair: So it would be difficult to get one cap that fits all?

Ms McCaffery: That is right. We do have categories of councils. Maybe if you worked on the categories. The associations would be very happy to talk—

CHAIR: Could you take that on notice and give us some feedback before we finalise our report?

Ms McCAFFERY: Yes, I would be very happy to have a look at that.

The Hon. JENNIFER GARDINER: In the current climate where a discussion of political donations across the board is very prominent, and given that the Premier has indicated that he will be putting forward some legislative amendments, has the association had any contact from the Premier or the Minister for Local Government with respect to those proposed amendments and how they may or may not apply to local government? Do you think that some reforms should be in place prior to this year's local government elections?

Ms McCAFFERY: We have had discussions in the course of our regular discussions we have with the Minister for Local Government. The associations have had no contact from the Premier about the impact of the changes that he has proposed. In my personal opinion, I think it would be good if the changes could be in place by September, but clearly September is a fairly short period of time. There is no doubt that Wollongong, in particular, has created a very poor perception in the public's mind about the impact of political donations, not just at the local level but at the state level as well. I think before we have an election it would be very worthwhile if we could have some reform. We do have a very strong opinion that you cannot implement one set of reforms for local government and then have a different set of rules for the State government.

The Hon. JENNIFER GARDINER: Were those discussions with the Minister for Local Government in the context of possibly changing the Local Government Act in time for the 2008 elections?

Ms McCAFFERY: I have not specifically discussed that. The main discussion I had with the Minister—and I sent him a letter about it—was to make declared campaign donations a pecuniary interest.

The Hon. JENNIFER GARDINER: Have you had any response to the suggestion?

Ms McCAFFERY: Not at this stage, no. He has not responded to that letter but he certainly was very interested in the idea.

The Hon. DON HARWIN: Last year the Independent Commission Against Corruption [ICAC] produced a position paper on corruption risks in the New South Wales development approval processes. It recommended that the model code be amended to provide clear instructions to councillors on matters pertaining to campaign donors. It also recommended that candidates for local government be required to publicly disclose donations in the period leading up to an election. Do the associations have a position on ICAC's recommendations? Are you aware if the Department of Local Government is progressing those recommendations? Although to some extent that might have been overtaken by some of the Premier's recent announcements. What is your understanding of the position?

Ms McCAFFERY: There is considerable support for early disclosure among the council submissions that have been made to the inquiry. The associations in principle support ICAC's recommendations and we have been encouraging councils to amend their codes to reflect ICAC's recommendations. If I can just digress a little bit, I personally believe that we need to make sure the community is satisfied that political donations are not impacting on decisions that elected people make. Not only that they are not impacting but also they are not seen to be impacting on decisions that elected people make. There is a real perception in our community that political donation, particularly from developers, actually influences decision-making and that is a perception that reflects poorly on all elected people across New South Wales. It is logical why that has happened. If someone makes a donation, particularly a large donation, they usually expect something for it—that is the community perception. It is difficult then for the community to believe that large donations are just selfless contributions to the democratic process. We really need to—and this is why I applaud this inquiry—do something about fixing things. Primarily my greatest interest is that we restore the community's

faith in the decisions that we make. The Wollongong inquiry has undermined the community's confidence in the democratic process and that is bad for all of us and for the community.

As I described, North Sydney and a number of other councils have strengthened their code of conduct in response to ICAC's recommendations. If you look at the evidence in Wollongong and in media reports as to the disclosure of donations up to a year or more after the election campaign, that does nothing to inform voters. I think it can lead voters to the conclusion that candidates are really in no hurry to make the identity of their donors a matter of record before the polling day. Even though the associations have not taken a firm position on it, I think it is important that we try and reform the legislation so that people going to the polling booths understand who the donors are to the different candidate's campaigns. I am unaware that the Local Government Department has done any work in this area. It has been discussed at a number of local government conferences but we have not come to any firm position on this.

CHAIR: There has been some discussion in our inquiry already about electronic processes. That donation should be made public virtually when made to the councillors or politicians. The donation is declared straight to the Electoral Commission, goes on to a website and made public prior to the election?

Ms McCAFFERY: I think that would be a very worthwhile reform.

The Hon. DON HARWIN: You have made some suggestions in relation to disclosure during the election period but theoretically I suppose at the moment an elected mayor or councillor in place straight after an election does not have to disclose any donation received for the next election until after the next general election, do they? I mean, is there a case for saying that mayors and councillors should also have an annual sort of obligation in terms of disclosure or less than annual?

Ms McCAFFERY: We have to do a pecuniary interest annual return. That is required for every member of senior council staff and all elected councillors, including the mayor. That is required now under the Act.

The Hon. DON HARWIN: That is pecuniary interest?

Ms McCAFFERY: That is pecuniary interest. That is why again my suggestion is that we make donations pecuniary. If they were pecuniary you would have to declare them. Any donation you received after an election campaign over \$1,000 you would still have to declare because it would be a pecuniary interest.

The Hon. DON HARWIN: I am right, am I not, that at the moment effectively you could give it straight after the election and it would be there for four years undisclosed?

Ms McCAFFERY: That is the same for State members as well.

The Hon. DON HARWIN: It certainly is.

Ms McCAFFERY: I mean you can never make any system absolutely corruption proof, as people will always find ways around it, but we should try to make the system as tight as possible and where there are obvious potential loopholes like that we should be closing them.

CHAIR: Would it be true that all councillors have not put donations on their pecuniary interests? You would have thought it logical, if they got a \$5,000 donation that they would put that on their pecuniary interests but they just regard it as a political donation and it goes to the Electoral Commission?

Ms McCAFFERY: It is classified under the Act as a non-pecuniary interest and that is how State parliamentarians operate as well. There are Ministers making decisions on applications where there are political donations involved. This is happening across the system both at the state and local level. That is why it needs to be cleaned up. When I discuss this with friends and members of my community and I tell them at the moment political donations over \$1,000 are not a pecuniary interest, they are amazed. They say, "You are kidding? If you are getting money from someone surely it is a

pecuniary interest?" I say, "Yes, logically it would be but the way the legislation is now that is not the case." I think it is a reform that has to be made.

The Hon. AMANDA FAZIO: What comment do you have to make on the Premier's proposal that would have developers being obliged to declare donations they have made to councillors at the time of lodging a development application with the council? Do you think that would be a good process and would cover any time lag between donation-reporting requirements and actually getting donations?

Ms McCAFFERY: Look, it is a good reform but I think if you actually make the donations a pecuniary interest you need to make sure that if they are a member of a political party that is getting donations from a central office, the political donations to that central office should become a pecuniary interest for anyone who is a member of that party and benefits from funding from that party. I think that needs to be cleaned up as well because otherwise you have got one rule for candidates who are doing their own fundraising and another rule for people who are actually getting money processed through their head offices. I do not think that if we let that continue that that helps that all the public perception that members of political parties, whether they at the State or the local level, are not influenced by donations that go to the central party.

I think, though it is good that you need to declare the interest at the time of the development application, it is better to make it a pecuniary interest and you take no part in the debate and you do not vote on the matter. As soon as you declare a pecuniary interest you must absent yourself from the chamber, you cannot take any part in the debate, you cannot be involved in any meetings with the developers, and it actually, I think, cleans up the whole perception that the public is getting—that there is undue influence.

The Hon. AMANDA FAZIO: Do you think that there would be value in having both systems in place if developers have to declare donations they make when they lodge development applications as well as councillors having to launch them?

Ms McCAFFERY: Look, I think tightening up is helpful. Anything extra like that is probably worthwhile as well. It makes it very clear when anyone is looking at that application that that is where the donations are being made.

The Hon. DON HARWIN: Extending the approach you take on pecuniary interest at North Sydney to the proposal, presumably that should apply to objectors as well as applicants?

Ms McCAFFERY: Absolutely.

The Hon. AMANDA FAZIO: You mentioned the issue of members of parties getting support from their statewide party structures.

Ms McCAFFERY: Yes.

The Hon. AMANDA FAZIO: In most cases, for example, the Labor Party actually endorses candidates to run in council elections, but in some cases we do not and Labor Party members run without being on a party ticket in some council areas. That happens with members of other parties as well. How would you see that issue being covered in terms of people who are members of statewide parties being able to run un-endorsed in terms of any donations that the party's State structure would receive? That could become a murky area, could it not?

Ms McCAFFERY: The pecuniary interest reform that we are proposing is based on election donations. If you receive donations from your party head office, you have to have that on your electoral return, and that is what gives rise to the pecuniary interest. For those candidates that are not endorsed and receive no support from their head office, they do not have that pecuniary interest because they are not availing themselves of donations that are made to the party and then filtered through to candidates.

The Hon. AMANDA FAZIO: Would you see donations in kind being covered by that as well?

Ms McCaffery: This is clearly a difficult area and you start to scratch your head a little bit. I think if we start at least as a first step to clear up this issue where most people are amazed that it is not a pecuniary interest, but if you are getting donations over \$1,000, a declarable amount, that obviously gives rise to pecuniary interest because you are getting a benefit. Then I think it would be very worthwhile if the inquiry could certainly have a look at how you tighten up making sure that people cannot get around those changes by using in kind, functions and auctions to get donations and then not have to declare them. Maybe some cap on the kind and size of those functions and what you can get in kind. In the same way that you have a cap and you have to declare donations over \$1,000 currently in the legislation, I would look at some kind of similar cap for the in kind and for the functions.

The Hon. AMANDA FAZIO: How would you deal with an issue that I know is a particular one in terms of local government where you get these small unincorporated residents groups starting up who either promote a vote for or against a candidate or a group of candidates. That can be either quite valuable or devastating for a candidate, depending on which option they take.

Ms McCaffery: Yes.

The Hon. AMANDA FAZIO: How would you cover that in terms of this sort of pecuniary interest and disclosure stuff? Those campaigns have a fair bit of money behind them. Do you have any thoughts?

Ms McCaffery: Clearly, if those groups are giving money to a candidate, that would have to be in their disclosure declaration to the Electoral Funding Authority.

CHAIR: It is a third party issue.

Ms McCaffery: Yes. I must admit I do not have any answers there, but it is clearly an issue.

The Hon. AMANDA FAZIO: I do not think anyone has.

Ms McCaffery: When I think about it now, it is clearly an issue and it could be used in a way to manipulate campaigns, yes.

CHAIR: And conceal donations.

Ms McCaffery: Absolutely.

The Hon. MICHAEL VEITCH: Councillor McCaffery, you spoke about the Electoral Funding Authority. In your view, what is its ability to manage and police election funding processes in local government?

Ms McCaffery: You see, in our own case, all of our candidates at North Sydney all put in their forms, but I was surprised, I must admit, when I read the article in the *Herald* on the weekend before last that there are many councils that never put them in and the Election Funding Authority never forces them to put them in, and I think that needs to be tightened up. If you run in a public election, there should be a very tight timeframe on when your form is put in. If you fail to do it, you should be given a warning, and maybe there should be—if you are not prepared to do something which I think is an integral part of the democratic process, maybe you should almost be in a position of forfeiting your role. I was surprised that they had not taken action.

All you need to do if you did not receive any donations, and some of the very small rural shires would only produce a how-to-vote card because it is such a tiny election, you should at least go through the process of putting your form in with "Nil". I think it is important that we also require that those forms for the election returns are available easily, either through the Net on the Election Funding Authority or available at each council chamber, and it should be there as a matter of public record.

The Hon. MICHAEL VEITCH: That leads to my next question, which is about electronic arrangements. As a recently retired rural councillor, no-one, no ratepayer, at Young shire council went to look at the pecuniary interest returns in my 12 years. They are paper and hard copy and they are held with the general management. No-one has made an attempt to access them. My question in rural areas is the value of that process. What are your views about having these things available electronically? What sort of update regime do you think should be in place? Who do you think should be responsible, the party or the candidates?

Ms McCAFFERY: Look, I think whether or not someone looks at something like the annual pecuniary interest returns, it is absolutely vital that every council in New South Wales has that available. Whether you have that available electronically through the council or as paper, that is a decision for the council. But we must, whether people look at them or not—even if nobody had seen them in Young in the whole time that you were there, the fact that they are there and available I think is a vital part of the transparency and openness that we must have as local government in New South Wales.

The Hon. MICHAEL VEITCH: If it were to be electronic, what sort of update regime do you think should be in place?

Ms McCAFFERY: They should be the most current.

The Hon. MICHAEL VEITCH: Quarterly?

Ms McCAFFERY: I think the pecuniary interest returns are annual, so they are available there and updated annually as required under the Act.

The Hon. MICHAEL VEITCH: So if you have funding returns, political donations arrangements and disclosures, is annually sufficient? Some people are saying that there should be a much more frequent updating of that information.

Ms McCAFFERY: If it is more frequent, then that is what should be available. Whatever you decide, and I think disclosure when donations come in seems a very sensible idea. If that happens, then that should be available as it happens. That is probably going to need to be done electronically. There is a resourcing issue in rural shires. The associations are working very hard to help rural shires with their capacity to deliver on electronic, particularly website, delivery to their community. As part of that process, we would certainly help them do that.

The Hon. MICHAEL VEITCH: Should the onus of responsibility rest with the political party or individual councillors to make sure the information is up to date and correct?

Ms McCAFFERY: I think it probably needs to be done in the same way that we do pecuniary interest. It probably needs to be done through each council. I think if you are going to rely on each councillor, it gets very difficult for the public to access it. Or it could be done centrally through the Electoral Commission website where you could go to Young through the website. They could have a local government website as they might have a State member website.

CHAIR: There is discussion currently as to whether all political donations should be banned, so that local government would want political funding. Do you have any thoughts as to whether it would be \$1 a vote or \$2 a vote? Have you given any thoughts to the formula?

Ms McCAFFERY: We have not given any thoughts to that.

CHAIR: Or whether it is workable?

Ms McCAFFERY: From a funding point of view, public funding at the State and federal level has not stopped donations at either of those levels. If you were going to ban donations totally and have total public funding, then you would have to have a formula to fund each candidate prior to the election. Otherwise, how would a new candidate ever break into the system? I am not sure; there may be models in other countries for total public funding. If we decide to go along that route we should

have a look that. I guess we were aware that it would be quite a difficult thing to achieve. That is why we looked at this alternate model about pecuniary interest.

The Hon. ROBERT BROWN: Councillor McCaffery, reading through your submission and the attachments, I note your submission starts with a draft motion in 2004 from Manly council. That broke down the recommendations into two parts: one, disclosure of donations and, two, making the development process more transparent. Trying to follow those through to 2005 and on, I note the resolutions about making donations more transparent. You have talked about listing them on the pecuniary interest schedule. Firstly, did the Local Government and Shires Association come to a conclusion about part B of Manly council's submission, that is, that there should be independent panels? Secondly, does the Local Government and Shires Association support expert independent panels at a local government level or, as the Government seems to suggest in its latest review, at a regional level?

Ms McCAFFERY: My opinion and the opinion of local government is that it is laughable to say you are going to make the system more transparent and more accountable by appointing so-called independent panels because they will be populated by people who, when they are not on the panel, will be working for developers. That is the only other work you can get if you are an architect or a planner. You will never get enough money to make a living working on a panel. That is why we very strongly believe that the elected people are the best people to be accountable to the communities because they come up for election every four years. Let us fix that accountability if there are problems there. Coming out of the Wollongong inquiry and recommendations from the Independent Commission Against Corruption there clearly are. We do not believe that the so-called independent panels will fix the process at all. In fact, we think it will make it worse and they will have greater conflict of interest than any council ever had.

The Hon. ROBERT BROWN: The Local Government and Shires Association's preference is to clean up the donations side?

Ms McCAFFERY: Absolutely.

CHAIR: In summary, what would be the central recommendation you believe the Committee should make from our inquiry?

Ms McCAFFERY: The central one is that we need to achieve reforms that restore public trust in the decision-making we all do. The reforms must encourage good participation in the process by both candidates and members of our community. It is critical that the changes should be easily understood and applied so we do not create a more complex system than is currently operating. We clearly believe we have to have the same rules for local and State. We really think the regulations need to be strong enough to capture all forms of donations, including, as was mentioned before, the third party and in kind support. There is some concern that sometimes you make one change and then, in fact, drive donations underground and we could end up with a system that is less transparent and less accountable. I thank you for asking me here today and applaud you for doing this inquiry.

CHAIR: Thank you for attending as a witness and for all the community work you have done through local government for many years. It is much appreciated.

(The witness withdrew)

(The Committee adjourned at 1.06 p.m.)