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Mr Alan MacSporran QC  
Chairperson  
Crime and Corruption Commission  
GPO Box 3123  
BRISBANE QLD 4001

Attention: Dr Rebecca Denning (Director, Policy and Research)

*Alan*

Dear Mr MacSporran

### Issues relating to local government elections

Thank you for your letter dated 21 March 2017 inviting me to make a written submission on this subject.

I will comment on the following questions drawn from your 'Key questions to guide your submission' document. I will not comment on some questions which are essentially electoral in nature i.e. those relating to groups of candidates, and electoral expenditure.

#### *The independence of candidates*

- *What does it mean to be an independent candidate? Why is "independence" important in local government?*
- *What practices suggest or indicate that a candidate is not independent? Please describe these practices and explain their actual and potential effects on transparency and integrity. Is it appropriate for independent candidates to receive financial and other support (directly or indirectly) from registered political parties? Because how-to-vote cards are being examined in the CCC's current investigation, please comment on independent candidates using how-to-vote cards that feature the name or colours of a registered political party.*
- *What information relevant to candidates' independence should be available to voters to help them make informed choices on election day? For example, what are the pros and cons of requiring candidates to disclose whether they are a member of a registered political party or have received "in-kind" support from a registered political party or its members? When should these disclosures be made?*

I confess to considerable difficulty in defining what independence means in this context, but in any event it is my view that this horse has already bolted. Party political influence in local government, particularly in large councils, is well-established, and there is no real likelihood of that position changing.

There are costs and benefits associated with this feature, but generally my view is that full transparency, and the good sense of the electorate, provide the best protection against the downsides.

In particular, I believe that all candidates should disclose whether they belong to a political party or have received support from one, and that this disclosure should be required from all candidates immediately prior to the casting of any votes.

- *Should the term "independent" be defined and its use regulated in relation to local government elections?*

I don't believe this is a practical or achievable aim.

### ***Election funding*** ***General***

- *What are the pros and cons of a local government election funding model that involves only private funding?*
- *Do any types of donations or election funding mechanisms present high corruption risks, or significantly undermine transparency, integrity and public confidence? We are particularly interested in your views about donations from companies (as opposed to individuals), trusts set-up to collect campaign funds, and donors involved in the property and construction industries. Do these pose risks? How might these risks be best mitigated?*

In my view electoral donations of any type pose risks of the type identified in the question, and the types of donations identified pose particular risks. However, I am not persuaded at this time that any local government election funding model which involves other than private funding is necessary or desirable.

In my view, the best way to minimise the risks is through a robust system for managing conflicts of interest, coupled with open and transparent disclosure of electoral donations, through a system like the one recently established in Queensland. I believe it would be sensible to see how well this significant initiative achieves its object before contemplating further change.

I am not attracted to the suggestion that particular types of donor should be treated differently, both because of the definitional issues which that approach raises and because a significant corruption risk can arise whatever the nature of the donor. The systems established to promote transparency and manage conflicts of interest should be robust enough to cope with donations from a wide range of sources, and interests which may equally be non-financial.

### ***Conflicts of interest***

- *Can donations lead to real or perceived conflicts of interests for councillors? In what ways?*

They certainly can. It seems self-evident that a reasonable person would expect that electoral donations are made for a purpose, and that donors will expect that their donations achieve



that purpose. Those personal or sectional interests can clearly conflict with the public interest which should be the basis for all public decision-making.

- *How are conflicts of interest best mitigated? We are particularly interested in your views about legislative approaches (e.g. prohibiting donors from bringing business before a council where they have donated to one or more of its councillors) and informal approaches (e.g. councillors choosing not to vote on matters that affect their donors). Is it sufficient for councillors to decide if they have a conflict of interest?*

In my view the focus should be on disclosing and managing conflicts of interest when they arise, rather than on seeking to avoid them. We expect that elected representatives at all levels of government will have close connections to their communities, and it is therefore inevitable that conflicts will arise. What is important is that they should not adversely affect, nor be seen to affect, the responsibility of public officials to make decisions in the broad public interest and in accordance with the public trust which they hold.

It follows that I do not favour approaches such as prohibiting donors from bringing business before a council to whose members they have donated. Rather, the system should anticipate that such conflicts will arise, and should be sufficiently robust to accommodate them and manage them appropriately when they do.

In my view it is proper that the initial responsibility for determining whether a conflict exists should sit with the individual(s) concerned,<sup>1</sup> but I believe also that other elected representatives and council officers equally have a responsibility to ensure that public trust is maintained. If an elected member fails to declare a conflict which is known to another member or council officer, that other member or officer should have a legal obligation to raise the matter to ensure that it is dealt with properly.

I note that the approach of declaring conflicts at the commencement of a meeting, thus having specific regard to the items on the agenda, is preferable to general declarations of interest which bear no relation to the issues actually being decided. I would like to see the expansion of a 'real-time' disclosure system for conflicts of interest in many areas of government decision-making.

Further, the existence of a conflict should not necessarily require an elected member to withdraw completely from a decision-making process.<sup>2</sup> Often this will be necessary, but there are also situations in which the disclosure of an interest may be sufficient, with reliance upon full transparency to ensure that the public interest is protected.

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### ***Bans on donations***

- *What are the pros and cons of a complete ban on donations?*
- *Should there be more limited bans on donations, focused on specific areas of risk? If so, which donors or types of donations should be banned at local government level and why? What is the best mechanism to ban high-risk donors from contributing to local government candidates?*

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<sup>1</sup> See s.173(4) of the *Local Government Act 2009*.

<sup>2</sup> This is provided for in s.173(10) of the *Local Government Act 2009*.



I do not favour a complete or partial ban on donations from particular sources. Again, the definitional complexities would be significant, and I would prefer that the integrity arrangements applying to local government are sufficiently robust to cope with what I see as the inevitable contributions which will be made in some form or another to electoral campaigns.

### ***Donation caps***

- *Should donations to local government candidates be capped/limited to a certain amount? What are the arguments for and against this?*
- *If a donations cap was to be implemented, what should this look like?*
  - *What donations should be subject to a cap?*
  - *Should a donations cap apply to third parties as well as candidates? Should it also apply to donations received by councillors during their term in office?*
  - *What would be an appropriate level for a cap?*
  - *Should there be different donation caps for different types of candidates (for example, lower caps for incumbent candidates)?*
  - *What measures should be put in place to prevent caps being circumvented?*

Whilst I appreciate the potential benefits that caps on donations may confer, my view is that the impact of the system of electoral donations disclosure which has been recently established in Queensland should be properly assessed before any further changes are contemplated.

### ***Donation disclosure***

- *What are the elements of a best practice disclosure system?*

In my view the system recently established in Queensland is best practice in Australia. In particular, I understand that it requires timely disclosure of reasonably small amounts, and cross-checking of amounts according to donors and recipients. Further, it appears to be easily searchable in a variety of ways.

Of course, practical experience may dictate that further modification is necessary. If so, that should be pursued.

### ***Public funding for elections***

- *If a system of public funding for local government elections was to be introduced, what should this look like?*
  - *How much public funding should there be?*
  - *Who should public funding be given to?*
  - *How should funding entitlements be calculated?*
  - *How should recipients be held accountable for their use of public money?*

As noted above, I do not believe this step is necessary or desirable at this time.

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**Expenditure caps**

- *Should candidates' expenditure on local government elections be capped/limited to a certain amount? What are the arguments for and against this?*
- *If an expenditure cap was to be implemented, what should this look like?*
  - *How should expenditure be defined?*
  - *Should an expenditure cap apply to third parties as well as candidates?*
  - *What would be an appropriate level for a cap?*
  - *Should there be different expenditure caps for different types of candidates (for example, lower caps for incumbent candidates)?*
  - *What measures should be put in place to prevent caps being circumvented?*

I am aware that there is experience in other jurisdictions with electoral expenditure caps, and I believe that in due course they may warrant consideration as an adjunct to the donations disclosure system. However, I do not see that as requiring action before the impact of the disclosure regime is assessed.

I trust these comments are of assistance.

Yours sincerely



**Richard Bingham**  
**QUEENSLAND INTEGRITY COMMISSIONER**

28 March 2017

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