ECONOMICS AND GOVERNANCE COMMITTEE

Members present:

Mr LP Power MP (Chair)
Mr ST O'Connor MP
Mr DC Janetzki MP
Ms KE Richards MP
Mr RA Stevens MP

Staff present:

Ms T Struber (Acting Committee Secretary)
Ms M Salisbury (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE LOCAL GOVERNMENT ELECTORAL (IMPLEMENTING STAGE 1 OF BELCARRA) AND OTHER LEGISLATION AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 28 MARCH 2018

Brisbane

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The committee met at 1.32 pm.

CHAIR: Good afternoon. I declare open the Economics and Governance Committee hearing for the committee's inquiry into the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018. I would like to acknowledge the traditional owners of the land on which we meet. My name is Linus Power. I am the member for Logan and the chair of the committee. With me here this afternoon are Ray Stevens, the deputy chair and the member for Mermaid Beach; Sam O'Connor, the member for Bonney; Kim Richards, the member for Redlands, who has stepped outside but will be returning; and David Janetzki, the member for Toowoomba South, who is attending in place of Dan Purdie, member for Ninderry, who is unable to attend the hearing this morning.

On 6 March 2018 the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, the honourable Stirling Hinchliffe MP, introduced the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill into the parliament. The parliament referred the bill to the Economics and Governance Committee for examination with a reporting date of 23 April 2018.

The purpose of this hearing is to hear evidence from stakeholders who have made submissions as part of the committee's inquiry. The hearing is a proceeding of the Queensland parliament and is subject to the standing rules and orders of the parliament. Any person may be excluded from the hearing at my discretion and by order of the committee.

The hearing is being recorded and broadcast live on the parliament's website. Media may be present and will be subject to my direction. The media rules are available from committee staff if required. All those present should note that it is possible you might be filmed or photographed during the proceedings. I ask everyone to turn off mobile phones or switch them to silent. Only the committee and invited witnesses may participate in the hearing. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

BRAGG, Ms Jo-Anne, Chief Executive Officer, Environmental Defenders Office Queensland

HANDLEY, Ms Elizabeth, President, Brisbane Residents United

HANSON, Mr Ross, Committee Member, Brisbane Residents United

CHAIR: Good afternoon. I invite you to make a short opening statement after which committee members will have some questions for you. Do you wish to make separate opening statements?

Ms Handley: Yes. Good afternoon, Chair and committee members. I represent Brisbane Residents United, Brisbane's peak body for community resident action groups. I have been involved in local community groups for over 20 years. We welcome the opportunity to make a presentation to the Economics and Governance Committee on this bill. It is a business decision for development companies to invest in political donations. Businesses do not spend money without the expectation of a business return. The fact that many developers keep making political donations year after year suggests that they certainly think that political donations deliver good business outcomes for them. There is obviously some perceived business benefit or the development industry would not be fighting so hard to be able to continue donating to candidates and political parties. Is this how we want our democracy to be perceived?

Politicians have stated that the only thing donation buys you is access. That, members of the committee, is where the problems begin. The public sees that access as a purchased extra ability to influence decision-makers—in effect, to become a mate. As we know, perception in politics is everything. Our governments have created a situation where all levels of government are perceived as corruptible, of doing their mates or donors favours.

Many government development approvals are widely perceived to be bought by donation, especially where genuine community consultation and due process are absent or tokenistic. The planning system is now perceived as so biased towards developers that it is no longer seen as

functioning effectively. We welcome the government's response to the Operation Belcarra report and eagerly anticipate further legislation to deal with the outstanding recommendations. We need anti-corruption measures that really work.

We recommend this legislation be expanded around the following five points. The political donation ban should be on all corporate and trust donations, but if still limited to developer donation the definition of developer needs to be expanded to include, for example, refuse companies that may be developing new tips, retirement villages and aged-care facilities. Particular attention needs to be paid to donations via second- and third-tier associated entities.

There should be total transparency around political donations. Donations or in kind gifts should always be freely and directly traced back to an individual. No foreign donations should be allowed either by funds or in kind—for example, printing services, roadside signs, billboards, cars, personnel et cetera.

Our third point is a cap on campaign expenditure. Ideally, political donations at all levels of government should be replaced by publicly funded election materials for each candidate. Otherwise a cap on campaign expenditure by all candidates in local and state government elections would stop the constant hunt for donations. This is currently in place in New South Wales.

The fourth point is providing for a betterment tax payable to the government where land rezoning benefits a property developer. This reduces the existing incentives to increase density to benefit particular developers.

Our final point is that we ask you address the revolving door for staff between industry and government. This leads to insider relationships established and used for private sector benefit without due regard for the public interest. Legislation is only as good as its meaningful punishments, compliance procedures and the funding provided to ensure compliance. The development industry in New South Wales has proved to be an inventive group and I expect no less in Queensland.

The Australia Institute report *The cost of corruption: the growing perception of corruption and its cost to GDP* concludes that corruption increases costs and reduces economic growth. Worsening perceptions of corruption in Australia since 2012 have potentially reduced GDP by $72.3 billion. It quotes a study by University of Queensland and University of New South Wales economists which found—

... that 80% of the richest 200 Australians made their fortunes in mining, property and other sectors where political favours ... can be extremely profitable.

The jobs and growth mantra is used by industry and local councils to excuse decreased meaningful community consultation, transparency and accountability. Your political legacy should be a healthy democracy that is immune to corruption. We call on the Queensland government to give serious consideration to our concerns and to ensure that Queensland is moving towards the very best governance system—one that truly inspires confidence and certainty from all stakeholders and empowers our communities to meaningfully participate at all levels of government. I table the Australia Institute report for your information.

CHAIR: The practice we have established in this committee is to have a glance of it before we accept it.

Ms Handley: Certainly.

CHAIR: Thank you very much. Jo-Anne, do you wish to make an opening statement?

Ms Bragg: Yes, thank you. Good afternoon, chair and committee members. I would particularly like to greet the shadow Attorney-General, whom I have not met before. I am the CEO and solicitor at community legal centre Environmental Defenders Queensland where I have worked with community groups on planning development mining for more than 20 years. I really appreciate the chance to address the committee in relation to these issues of avoiding corruption, fair decision-making and transparency in government.

In terms of our view on these reforms, as our submission shows, we do welcome these reforms. We think they are an improvement. However, we do not think they are satisfactory. They are not a satisfactory response to ensure good, open transparent unbiased decision-making by a government at local and state levels.

In particular, I wish to mention the need for a cap on political expenditure. As we have seen in New South Wales, you can ban developer donations—and I agree with Ms Handley that we need to expand the definition of what constitutes developers to further restrict those types of development—but industry is creative and finds a way around to still get the money to where they want it to go. In

New South Wales they have banned donations not only from property developers but also from gambling and a number of other industries. They have not banned donations from mining or resource industries.

In our submission, the ban on what constitutes an unlawful electoral donation should be expanded to include all corporate donations because, as with property developers, the gambling industry, the hotel industry, and the mining and resource industry, they do not just give money away because they have too much and want to be friendly. They are looking for a return by way of favourable policies and decisions—if not this week or next week, next year. There is no good reason not to extend the ban in that way. Fundamentally, it is restricting electoral expenditure by parties and candidates that will cut off the incentive for those political donations.

We have quite a detailed submission, but I do not propose to go through all of it. There are two documents that I would like to table. Firstly, this is a newspaper article about former resources minister Ian Macfarlane, who you would be aware was a federal government minister. There was in place a code of conduct that once you stopped being a federal government minister you could not become a lobbyist for 18 months. He joined the Queensland Resources Council—that is not disputed—and well within 18 months he was out there representing the industry. I am tabling this because another matter of concern, as Ms Handley mentioned, is the revolving door between industry and government. Could I table that article?

CHAIR: Certainly. The practice we have adopted is that we will have a quick look at the copy. I would like to take this opportunity to move that the Australia Institute report entitled *The cost of corruption* that was tabled before be accepted by the committee; seconded Ray Stevens. There being no objection, that is carried. Please continue.

Ms Bragg: I use this example because, as a representative of a non-profit community legal centre, I have sat in stakeholder meetings here in Queensland where former minister Ian Macfarlane was effectively throwing his weight around referring to his, if you like, inside knowledge relating to his time and experience as a minister. I have observed, if you like, lobbying using the strength of his previous position in that role. As the article mentions and as I understand it, there is really no enforcement action effectively taken when you have codes of conduct like that without adequate enforcement mechanisms. I urge Queensland to take a tougher approach with better enforcement, and there is no reason why this bill could not include an amendment to that respect.

CHAIR: I move that the document tabled by Ms Bragg be accepted; seconded Ray Stevens. There being no objection, it is accepted.

Ms Bragg: The next document I would like to table is from a group which did make a submission but was not invited I believe to present today. That is the Gold Coast environment council. As you would appreciate, a lot of the controversy and serious cases about councils and potential corruption have been exposed through Four Corners and other reports relating to southern parts of the state, including the Gold Coast. It seemed to me that it would be very important for this committee to hear from some of the groups from that area.

CHAIR: One of the rules of our hearings is that for things that are under investigation, and especially things where there are charges, there are rules of sub judice so just be careful where you venture into specifics about incidents.

Ms Bragg: Certainly. I am not intending to get into any detail, just to give the context that the Gold Coast environment council is a local environment group in an area where there has been discussion and controversy. I would like to table a letter from the Gold Coast group.

CHAIR: We might look at it before we accept it, just in keeping with our practice.

Ms Bragg: Certainly. That letter is dated today. I appreciate the committee is very busy and each and every member is very busy, but the request is that there be times for hearings of this committee located on the Gold Coast so some of those local groups could come and present. That is the request in this letter.

CHAIR: Do you have anything further to add?

Ms Bragg: No. They are the main points. I could go on at length but I know we do not have time for that.

CHAIR: Thank you.

Mr STEVENS: I have a question for Ms Handley from Brisbane Residents United, although Ms Bragg may want to have an input as well. Both submissions have called for a complete ban on all corporate donations and I assume that is for both council and state elections.

Ms Handley: Yes.

Mr STEVENS: And a strong enforcement of that ban. As the unions are strong, large corporations with a lot of money involved and they may have a lot of building jobs at stake in close contact with the development industry and obviously they have an interest with that, would you consider that the union donations should have been included in your ban on all corporate donations?

Ms Handley: I think corporate donations really cover—

Mr STEVENS: Union donations as well.

Ms Handley: Yes, everybody. I would include in that as well certain charitable organisations that may make donations to political parties because some of the charities now are actually quite large businesses. For example, with the Wesley Hospital, the Wesley Mission would be seen as a charitable organisation. They do not let you in there for nothing, so it is actually a business that is operating. The rules that apply to a normal business should also apply to those organisations. Even if it is done under a banner of a charitable organisation, I think the same rules should apply.

Mr STEVENS: Are you aware that the Wesley Mission, for instance, is a donor?

Ms Handley: I am just using that as an example.

Mr STEVENS: Okay, so if they did want to donate.

Ms Handley: If they did want to donate. I am not saying that they are a donor—

Mr STEVENS: I am not aware of it, no.

Ms Handley: It is just an example. Another example would be aged-care facilities. A lot of the aged-care facilities are run by charitable donations, or the retirement villages. There has been quite a push to have a lot of development done along with aged-care and retirement facilities. Because it is a charitable organisation, I think a lot of the time they have good relationships with various political organisations and they are assisted to make sure that their developments go through in a far easier fashion. You cannot be making that distinction.

What we are actually looking for is that business operates on a level playing field—the infamous level playing field. When you have donations, you have ways of influencing a decision and you immediately take it off the level playing field. That is what donations do—they actually advantage one person over another. That is what we should be trying to avoid I think.

Corruption corrupts totally. There is no doubt about that. Australia's ranking in its levels of corruption has actually fallen in the last few years. We should be very alarmed by that because that is how our overseas trading partners see us as well—as a more corrupt society. I think when you see that happening, you must take steps to bring that back, to try to bring things back to a level way of dealing with things.

Mr STEVENS: Thank you.

CHAIR: I move that the letter tabled by Ms Bragg from the Gecko Environment Council be accepted by the committee; seconded Ray Stevens. There being no objection, it is accepted.

Ms RICHARDS: I am happy for either Ms Handley or Ms Bragg to answer this question. In the Brisbane Residents United submission, it has been suggested that councils should not be permitted to set up investment corporations or industry advisory body panels that might be providing specific advice. Could you elaborate a bit further on why you think that should not be allowed to occur?

Ms Handley: What actually worries me—and I am sure Jo would like to expand on this, but this is just my point of view—is that we have a situation in Queensland now where virtually a council can decide the level that an application is decided at, whether that is a code assessable or an impact assessable development. They can actually decide, they can then look at that application and decide on it and they can make sure that the community never has a say in that application, never has meaningful input into that application. Do we really want our local councils setting up development companies that are totally outside any development regulation? That is what scares me if a council has got a development company that they are doing on the side.

The other thing about that is, quite frankly, if a council has money to be putting into an investment company while it is not providing affordable housing in its area, I would suggest to you that their priorities are incorrect. For the normal person, would that pass the infamous pub test of where you would expect your council's money to be put. Is it into services for the local community or is it into an investment arm? Personally, I want it put into the local community and I bet the majority of people who were asked would say exactly the same thing.

Ms RICHARDS: That covers the investment corporation side. Could you elaborate a bit further on the independent advisory panels that are established? We know there are plenty of those around amongst varying councils across Queensland.

CHAIR: I would like to add that, for the most part, we want to address what is in this bill, Belcarra 1. We know that it is stage 1 of Belcarra so you could be adding to the future discussion. This is the one we will be making a report on and focusing on. I just want people to know that.

Ms RICHARDS: I know the panels are often comprised of people who are involved within the development industry.

Ms Handley: Yes. How independent are a lot of these panels? The question is: how are those people being chosen for those panels and how much weight do their recommendations hold? Often, what we have found is that the use of these types of things is a way of stopping the general public from actually knowing what is going on. It actually cuts down on transparency in processes. I believe in information being freely available to the community—and by that I mean for free, that you do not have to put in a freedom of information request for. Every piece of information that affects a decision that is made for the community, unless it is commercial-in-confidence—and by that I mean the numbers; everything else should be out there—should be available for the local community to see. I am sure Jo would have more comments on that.

Ms Bragg: I am happy with what you have had to say.

Mr JANETZKI: I refer to Ms Handley's comments before about the banning of trade union donations. Ms Bragg, do you also believe that trade union donations should be banned?

Ms Bragg: I think this is a difficult question because trade unions are different types of entities to, say, a mining company that wants to get the Adani Carmichael mine up or a property developer that wants a rezoning. My view is, no, I do not think we should ban union donations because I think unions are a differently motivated, though still very clearly influential, player in relation to elections. I think the preferred position is, as I mentioned at the start, that we really heavily restrict expenditure by candidates and then it is less important about the breadth and effectiveness of the corporate ban.

I also think that, in terms of public funding of elections, it might appear a little bit unattractive because it sounds like the government is going to be paying out more money on elections than politician related work. It actually makes more sense because we will get a return in terms of good government where the public interest is closer and uniform in the way decisions are made, rather than decision-makers owing favours to donors.

Mr O'CONNOR: In terms of the contribution caps, I think the Brisbane Residents United submission talks about caps on the amount of flyers, TV and radio spots and there being one local newspaper article about each candidate. How would you foresee that working in practice and how would you mitigate the impact of a third-party campaign, for example?

Ms Handley: That is how I see it working in practice—that you actually give people a certain number of spots on TV and radio and flyers.

Mr O'CONNOR: Who would police that?

Ms Handley: Why wouldn't it be done through the Electoral Commission, as we already police that sort of process?

Mr O'CONNOR: Looking into the number of flyers that people put out or media that they put out.

Ms Handley: No. Let us face it, we all know that if you do everything through one supplier you can get a far more beneficial price. What would be wrong with the Electoral Commission actually negotiating a price with a printer in each particular area and they know each delegate only gets three rounds of flyers and there are this number of them printed. It does not actually have to be difficult. I think we try to make things too complex and we end up creating all sorts of avenues for people to get around things. I believe you make things as simple as you possibly can and then it is very easy to police.

For third-party people who are advertising in political campaigns, I think we need to say that that is not going to happen. You are not allowed to do it within a particular time of an election. The candidates need to stand by themselves and put forward what their policies are and how they see themselves representing a community. Surely that is the purest form of our democracy.

When I have spoken to people about this they have said that we are going to end up with a field of 500 candidates. I do not think anybody who has ever been involved in a political campaign—and I would say yourselves included—unless a very dedicated soldier, is going to make any headway whatsoever. Maybe you have a bar that says, 'If you have got over this and you are prepared to do the work that is involved to get this far, then we take you on as a reasonable candidate.'

Mr O'CONNOR: You mentioned the media. How would you police that? What if one candidate had more stories that they could get up than another one?

Ms Handley: I think the media does one story for each candidate. That is it.

Mr O'CONNOR: That would be the restriction that you would ideally have on the media?

Ms Handley: Yes, and they present their policies and procedures. If people are really serious about what they are looking for when electing somebody, they will be able to look at the policy that that person presents.

Mr O'CONNOR: More broadly, you talk about perceived and alleged corruption. What specific examples have you got from your jurisdiction, in particular, that you would be trying to combat? Is there any evidence that has alarmed you or is it all broad?

Ms Handley: No, it is not all broad. There are several things that have alarmed me. I am not saying this is corruption, but when I have spoken to people about this situation that is the perception. We were involved with a community group called CRAMED which was taking FKP to court over the Milton development near Milton Station. When we put in the application to take it to court, the proposed building was 31 storeys high on a site that had a three-storey limit at that stage. The company had asked for a change. There was a ministerial call in. That building with I believe 30 levels—I could be wrong on the detail; it was a number of years ago—was approved 'in the community interest'. From the time that building was approved to the present day, not every unit in that building has been sold. How much did that particular building prove to be in the community interest?

CHAIR: Thank you very much for your submissions and for briefing us here today.

DE CHASTEL, Mr Brett, Chief Executive Officer, Noosa Shire Council (via teleconference)

WELLINGTON, Mr Tony, Mayor, Noosa Shire Council (via teleconference)

CHAIR: Welcome. I am Linus Power, the chair of the committee. I am here with committee members including Ray Stevens, the deputy chair. I invite you to make a short opening statement after which committee members may have some questions for you.

Mayor Wellington: Brett will do the opening salvo and then we will take turns after that depending on the questions.

Mr de Chastel: Thanks very much for the opportunity to speak today. As you gather, we made a submission in 2017 on the previous legislation which lapsed due to the election, and we were interested to make a submission on the current bill as well.

What I would like to do in this opening statement is put our submission in context. We are very supportive of the overall intent of the legislation. We very much support anything that improves transparency and accountability in local government. I think we are pretty lucky at Noosa: we have a very good council. We thought it was beneficial to share our experiences that would hopefully improve the legislation and, in particular, how it can work in practice.

One of the key areas we are going to focus on is conflicts of interest. One of the sayings we have here at Noosa council is 'When in doubt speak out and when in doubt get out'. We are very much concerned about ensuring that we have standards in relation to conflicts of interest that are higher than the minimum that is set out in legislation. We think the legislation should be setting the minimum standard but we want to make sure that as an organisation—and I think as an industry—we should be going above and beyond the minimum standard set by the legislation.

You will see that in our submission we have also made some comments about developer electoral donations and how that should work. That is not the major focus of our submission. It is really just about how that might be improved in terms of some definitions. The real issue in our submission relates to conflicts of interest. That is our main area of interest. We have given a lot of practical examples for the committee which might highlight some problems. We think the intent of what is being sought in the bill is good, but there are some practical problems with it.

For us, we always come back to what is the problem that the legislation is trying to solve? Coming out of the Belcarra scenario, it was very much around some of the problems that have occurred in other councils in terms of contributions towards elections and gifts that have been received. Therefore, we think that is where the legislation should be heading—defining where that occurs as a real conflict, not a perceived conflict. There should be no choice about whether or not someone should leave the council chambers in those scenarios.

The other thing to talk about is that for all my sins this is my 30th year in local government. I have worked at quite a few councils. The best councils I have seen are those where the councillors work together as a team. I have been very fortunate to work in some very good councils. The legislation should be about encouraging and creating an environment where that can occur where councillors can work together as a team. The bill as it sits at the moment may lead to the alternative where it creates an environment where councillors are having to work against each other or make decisions about each other's behaviour that could lead to divisiveness within teams.

That is what sits underneath our submission in terms of why we have concerns about the practical impact. I am sure the mayor in a moment following questions about conflict of interest will give some examples. That is a short opening to put our submission into context. Both the mayor and I are happy to take any questions in relation to the matters we have raised in our submission.

CHAIR: I have a question for either or both of you. I notice from your submission you have concerns that there is a risk council meetings could degenerate into inquiries into fellow councillors and their conflicts of interest. If councils are running the policy, 'If in doubt speak out and if in doubt get out', it is unlikely that that is going to occur. It is only in councils which do not have that principle where that might be a problem. Would that be fair to say?

Mayor Wellington: We are not making a submission just on behalf of Noosa council. We are making it on behalf of future Noosa councils and local governments across the state. Fundamentally, we are very fortunate here that we do not have voting blocs or cohesive factions within our council, but I have sat on a council where that does occur. The problem is that, when a conflict of interest has to be decided by other councillors, a voting bloc could use it to preclude a councillor from a vote. In other words, where there was a possible close vote expected on a decision, a group of councillors

could gather together and make a determination that someone else's perceived conflict of interest was a real conflict of interest and thus they should leave the room. Obviously that would not help the democratic process, but that is one of the areas where we are concerned there may be some abuse of the suggestion that perceived conflicts of interest are declared by other councillors rather than the councillor involved.

You have mentioned a problem in terms of councillors making a determination on behalf of another councillor. Our concern in that regard is that the other councillors will not have the detailed information that the councillor with a potential conflict of interest will have—that is, they will not be aware of the finer details of their involvement in an organisation or their involvement with a developer et cetera. The difficulty is that you end up with a star chamber scenario in a council meeting whereby a group of councillors have to interrogate one of their colleagues in order to determine whether or not a conflict of interest is sufficient for them to leave the room. Our argument is that that determination should be entirely the responsibility of the councillor. However, we also believe that the documents to which we refer in order to determine conflict of interest could be improved to make it clearer where real conflict of interests occur, such as where there is pecuniary interest following electoral donations.

Mr STEVENS: I am very much aware of the fabulous Noosa area and the Noosa council when former mayor Noel Playford was there. I will keep this specific to Noosa. This legislation identifies property developers in particular for non-donation to councillors and state representatives. It does not capture the restaurants in Hastings Street—and I am just using that as an example—donating to protect their interests in Hastings Street, nor retired, quite famous businesspeople in the Noosa area donating to stop developments they do not really approve of. Would it not be a better mechanism to capture all political donations in this way: if they donate to a councillor—and, as we are aware, councils make decisions, not councillors—that councillor is not allowed to vote on that matter due to a conflict of interest. Would that not solve the problem, particularly in Noosa?

Mayor Wellington: Thankfully, we do not have such problems in Noosa. There is a register of interest in which we have to include our political donations. I am not aware of any significant developers having donated to campaigns for any of my colleagues or for me. There is no evident problem right now, which does not mean that such a problem will not occur in the future. However, there is certainly no reason why the legislation could not note that a pecuniary interest as a result of an electoral donation from any developer could be a mandatory real conflict of interest forcing them to leave the room. I believe that would be appropriate.

Mr STEVENS: Could you explain the difference between a property developer donating for their purported, or perceived benefit and a Noosa restauranteur donating for their perceived benefit in Hastings Street?

Mayor Wellington: I think that in both cases it is obviously apparent that, in the financial interests of the donor, if a development application to which they are attached comes before council, there would be a material conflict of interest if they had made a donation to a councillor. Obviously, there is nothing wrong with a local businessperson making an electoral donation. It is up to an individual as to whether they choose to accept that donation. However, they also have to realise that they are then placed in a position where any development application to which that donor is attached may or may not produce a conflict of interest. We would argue in Noosa that it definitely would.

Mr STEVENS: Thank you.

Ms RICHARDS: Brett and Tony, this question is to both of you. I noted within your submission under 'Other issues' you suggested that the bill could be strengthened and that one of the shortfalls is that the legislation currently is looking only at meetings in general and not necessarily workshops and briefings where councillors get together and positions are formed. I was wondering if you could shed any light on how you think the scope of this bill might be improved to capture those sorts of issues. Following on from that, in terms of a councillor's conflict of interest in a matter other than an ordinary business matter, with that exclusion, how could that impact on council decisions?

Mayor Wellington: I will start and Brett may want to follow up on the answer. We have a great many meetings in council where conflict of interest can potentially come into play. Therefore, the issue is not just at statutory meetings. For example, we have committee meetings that deal with agenda items prior to each ordinary meeting. Those committee meetings do not have the full council involved, nevertheless they have potential conflicts of interests.

More importantly, we also have workshops and discussions where we expect our councillors to declare conflicts of interest. The classic example of that would be that we are working on our new planning scheme. Thus if anyone has a relationship to a matter in discussions relating to a planning scheme that needs to be declared during a workshop or discussion, they are expected to declare it and leave the room.

Mr de Chastel: I think the point you raise is really good in that the legislation really focuses on what I call the statutory meetings—the committee meetings and the council meetings. The practice out in local government land is that there are a lot of informal discussions. It could be a briefing about a policy development, or whatever it might be. It is quite a normal course of business to have some informal discussions with the councillors about issues.

Here at Noosa, we apply those same standards to those meetings. If we are developing a policy about events, or use of public land, and one of the councillors might have an interest at some stage in a business or whatever, they voluntarily say, 'I won't be involved in this informal discussion. I'll leave the room.' We make sure that that occurs, but it is not a legislative requirement.

At the moment, the legislation really does not address the practicalities of how councils work. You cannot make a decision other than in a council ordinary meeting, or a statutory meeting, but there is a process that leads up to how policies are developed, or workshops, or whatever it might be. At the moment, there is a bit of a gap in terms of how that is addressed.

The other part of your question was about ordinary business matters. Certainly, it makes sense for a definition of 'ordinary business matter' to include things where a councillor has no greater or lesser interest in something than anyone else. The councillors probably own a house and they pay rates. Does that mean that they should be excluded because the budget decision about rates is going to affect them? Obviously, no. The way in which the legislation currently deals with ordinary business matters, I think, is pretty good. It recognises, as I said, there is no higher or greater impact on an individual councillor than the ordinary ratepayer, or the ordinary resident. Therefore, that does not give rise to a conflict. It is where there is something unique or different about the councillor, where they have an interest over and above or different from anyone else, that the real issue arises. I hope that answers your question.

Ms RICHARDS: I note that in the definition under both the Local Government Act and the City of Brisbane Act in terms of what constitutes ordinary business also includes discussions around a planning scheme, or an amendment of a planning scheme for the local government area.

Mr de Chastel: Correct. That is where it occurs in a statutory meeting. For example, our council might be adopting a draft planning scheme, or an amendment to a planning scheme, to refer to the state for a state interest check, but we may have 20 or 30 workshops with councillors in developing a new planning scheme. It is an informal way of saying, 'This is where we're going with this type of policy,' or whatever it might be. That is what is not covered in terms of the non-statutory meeting.

CHAIR: Is there anything else that you would like to add briefly or we can just thank you for your contribution?

Mr Wellington: I would like to emphasise that a local government works at its best when it has a cohesive and collegiate approach to decision-making by the council. Our serious concern with regard to the suggestions that conflicts of interests are determined by other councillors and that other councillors are beholden to identify those conflicts of interest with regard to their colleagues is that it will not lead to a collegiate approach to decision-making but, rather, a divisive approach. Really, it should be an individual councillor who determines whether they have a conflict of interest.

Certainly, at various meetings the chair can make a final determination, if necessary. That is a further brake on the possibility of conflicts of interest being exploited. We do not believe that it is in the best interests of public decision-making to have councillors dob one another in.

CHAIR: Thanks very much and thank you very much for your contribution. If you wish to follow the rest of the hearings, you can do so online on the parliamentary website, which is broadcasting this meeting currently. Thank you very much.

BRODNIK, Ms Kate, Senior Policy Solicitor, Queensland Law Society

POTTS, Mr Bill, Deputy President, Queensland Law Society

CHAIR: I now welcome Kate Brodnik and Bill Potts from the Queensland Law Society. I invite you to make a short opening statement after which the committee members may have some questions for you.

Mr Potts: I commence by thanking you for inviting the Queensland Law Society to appear at this public hearing of the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018. As the committee would be aware from our written submissions, the Queensland Law Society is an independent, apolitical representative body and the peak professional body for the state's legal practitioners, nearly 12,000 of whom we represent, educate and support. In carrying out our central ethos of advocating for good law and good lawyers, the society proffers views that are truly representative of its member practitioners. It is on that basis that we make a submission to this inquiry.

Our concerns about some of the provisions of the bill relate to the application of fundamental legislative principles. Specifically—and you will see this from the submission—we are concerned that the clauses in the bill impose an obligation on a person that relates to something that they have done prior to this law being enacted. Imposing such obligations is contrary to the fundamental legal right to know the law in advance. We believe that it is a clear breach of section 4(3) (g) of the Legislative Standards Act 1992. We have provided more detail in our written submission and, of course, we are happy to answer questions.

I say this broadly, because I anticipate that there will be some questions, no doubt, from the magnificent member for Mermaid—

Mr STEVENS: The self-adulation around here is rather suffocating.

Mr Potts: It is a terrible thing. The decision around donations from prescribed people is both a political and a practical decision, which the CCC identify is about questions of integrity, transparency and is, effectively, an anticorruption method. Similarly, the reporting conditions, the declarations of conflicts of interest, all seem to have some sense around them.

However, we are concerned that there be some certainty around definitions with respect to the legislation. By that I mean what indeed is a property developer? For example, if I have a block of land, which I break into three pieces—subdivide effectively—and start building houses, which I then sell, I am told that I may be, under the bill, a regular applicant, with ‘regular' holding its ordinary meaning of effectively more than once. New section 273(2) refers to—

A corporation engaged in a business that regularly involves the making of relevant planning applications.

Clearly, the New South Wales experience in the case of McCloy, which you would be aware of, and which went to the High Court, is that the parliament has the power to make such legislation. However, the practical effect of it will be, I suppose, a question for this parliament.

I am concerned that, in some ways, the definitions are not as clear as they perhaps ought to be, particularly dealing with the issue of what a ‘regular' planning application person is and, more particularly, under new section 273(2) (b), the definition of a 'close associate'. What is a close associate? We find that under subsection 5. The bill seems to have a great panoply of these things. In essence, these things have to be dealt with in such a way that they either close the perceived evil or not. For example, we see that a spouse may be a close associate but, presumably, not a sibling or a child. We see a whole range of people. Mr Cohen, who is Trump’s legal representative, paid some large amount of money, I think out of his own home loan, without his client knowing anything about it. Does the definition of ‘close associate' include a lawyer? A financial adviser? An accountant? An employee? Or a series of employees?

CHAIR: I think in Queensland the Law Society would probably have different standards of lawyers.

Mr Potts: I think so. We have a very high standard of lawyers in my organisation, of course. The point is the nexus of influence and that really is something that has to be dealt with.

The other issue is that there is an appeal process. You can go to the CCC and say, 'This is a donation that ought to be received,' or ‘ought to be able to be given.' I suspect that there is an implied appeal there, but it is not clear in the legislation where that appeal lies—whether it is judicial review or the like. Where there is to be an appeal process, I think it should be set out explicitly in the legislation. I throw myself open to the floor.

Mr STEVENS: Mr Potts, you may well remember the magistrate Mr Jock Rutherford.

Mr Potts: I remember Jock very well.

Mr STEVENS: He used to say that the inflexible rule is the easiest law to enforce. From the matters that you raise, there are a lot of legal discussions to be had for the future. I will not go into the philosophy of this. That is a government matter.

I want to ask about the legal ramifications of the breaking of fundamental legislative principles in terms of the retrospectivity of this law. Yes, we all know that it was mentioned as a probable legislative matter coming before the parliament in October or November last year. However, there would be some people who wanted to protect their rights—property developers and others, for instance—who made a donation on the basis that they did not want to see that law come to fruition. That is a reasonable thing for people to do in terms of the democracy that we all enjoy. Can the Law Society give some advice about the sustainability of the retrospectivity in this bill? What would be the Law Society's opinion on whether there are challenges to be had about the legality of the matter? What is the Law Society's opinion on the retrospectivity of the bill?

Mr Potts: One of the fundamental principles or policies that regularly come to these committees and this parliament through our submissions relates to a number of things; firstly, clearly, the rule of law. The rule of law requires that a society, if it is to punish criminally or to prescribe, should do so prospectively rather than retrospectively. The main reason, of course, is that people should know the state of the law. The Legislative Standards Act essentially says exactly the same thing. The government or parliament can legislate around that. It is not something which is precluded from it. There are some limited circumstances in which there has been broad approval, the most famous of which would have been the bottom-of-the-harbour scheme where there was literally billions of dollars lost to the economy if there was not retrospective legislation. But that was particularly egregious behaviour.

Our view is that it is perhaps legally sustainable, but it is highly inadvisable to do that. We saw I think last year, or it might have been the year before, under the legislation that was proposed around land clearance a retrospectivity to which we objected very strongly. Our view is broadly: do not go that path if you can avoid it. If you are going to do that, make sure that there is significant signposting and assistance to those people who may have fallen foul of that so that they can adjust their registers, adjust the records of their donations in a way that is meaningful. It is a matter of balancing a number of features, but the behaviours here, I would submit, are not so egregious as to require such retrospectivity.

Mr JANETZKI: I find it remarkable that the ECQ has not come along to address some of these questions today, but I hope that you can help us out with some of them. My first question probably relates to the drafting of the bill. Was the QLS consulted in the drafting of the bill?

Mr Potts: I think the answer is no.

Mr JANETZKI: You alluded to the implied freedom of political communication in your comments, and perhaps just speaking philosophically for a moment. In New South Wales it was revealed that if the corrupt conduct relating to property developers was of such a magnitude, then it may be appropriate to curtail that implied freedom.

Mr Potts: Certainly.

Mr JANETZKI: Certainly at a state level in Queensland there has been no evidence established in that regard at that state level.

Mr Potts: I have the distinction.

Mr JANETZKI: Do you believe it would have been appropriate to undertake some investigation to establish those facts?

Mr Potts: Firstly, the Law Society—I think I was talking about fundamental principles—believes and supports evidence based legislation. Mr MacSporran in his submission identifies that there has been no proper or thorough inquiry into whether there effectively is an evil at the state level. There is some nexus in relation to planning, but it is at a macro level rather than the micro level that we see in local government. Straying away from what is good law—and taking the lead, Mr Janetzki, with respect to the philosophy of these things—the thrust of Belcarra was to identify whether there was potential or actual corruption in the political system in a local government area, and the finding of that would seem to echo what was going on in New South Wales, which was that there was either evidence of it or a significant danger of it.

The broader philosophical question that has to be asked is: is it appropriate or proper for governments, in the absence of such a smoking gun, to effectively preclude people or organisations from political discourse. Political discourse includes the donation to parties or candidates who might have a political view which reflects or is supported by the person giving it. To use a slightly more topical view, do we then, for example, start to legislate that unions may not donate at the state level? Do we start to say that it applies to people of a certain racial background? It is a thin-edge-of-the-wedge argument.

My concern is that you have to identify a clear danger. It has to be specifically legislated to deal with that danger, and that danger only, and it has to be balanced by way of checks—that is, appeals—and that is one of the clear bits that we talk about. Finally, there has to be a means by which an actual or perceived conflict—indeed, a potential conflict of interest—is identified, declared and then there be clearly no vote or further undertaking. I take the point that the mayor of Noosa made as well, which is that there are many more possibilities of influence which go beyond statutory meetings.

Mr JANETZKI: On a similar topic, because we have the government and the department and the ECQ relying on a New South Wales ICAC investigation in particular to impose a new legislative framework in relation to election laws in Queensland, do you think it would have been appropriate to have had an investigation as to the circumstances on foot in Queensland and not simply superimpose another jurisdiction, which operates quite differently in respects, onto a Queensland environment?

Mr Potts: Absolutely. In New South Wales there were state based issues. Clearly, I think one of the appeals ran out last week for Mr Obeid. Evidence based laws require that you do not make laws without a purpose, without a social evil to address or a social good to promote. In the absence of clear evidence, whilst you have the power to do so, it seems to me to be an exercise in second-guessing rather than an evidence based process, however well-meaning.

CHAIR: We saw in the report there was what you identified as a smoking gun at a local government level.

Mr Potts: Without a doubt.

CHAIR: The state government obviously had a decision to make about how we maintain the standards of transparency and confidence in the decisions that come with planning. We also saw really clear evidence from the New South Wales experience. The New South Wales government thought it important and presented the evidence. Those who had to make planning decisions faced a similar ban from property developers. It seems that prioritising and valuing that evidence which was considered by the executive and whether it relates to Queensland—I note the confidence that members have in the probity of the Queensland state system—but it would be reasonable to apply that evidence to the Queensland state system.

Mr Potts: Without a doubt. I think I was making the point that, however well-meaning, the reality is that there is always the danger in political systems of corruption occurring.

CHAIR: With respect, Mr Potts, I would have also thought that the application of the understanding that other state systems suffered major lapses was a lesson learned and an evidence base which we could take forward in the Queensland system.

Mr Potts: Certainly. To support the point you make, can I say that we have in other states houses of review. In Queensland with a unicameral system—and I do not mean this in an insulting sense—we have effectively an elected dictatorship in the sense that the power lies with the one party that has the majority. We have a review system, and a very valuable review system in these committees, but there has to be, in my view, two things: one is we can inform ourselves by the activities in other states and the way in which they have dealt with that, but that does not mean that we lose our individuality, because we have to apply laws to our own citizens and to our own circumstances.

I think that in New South Wales some of the powers that the state government had exceed that of Queensland because some of the state parliament things there were dealing with things, for example, like mining leases and the like where there were clear and absolute conflicts. At the state level in Queensland we tend to deal with macro issues rather than the micro issues. I think you need to be comparing horses to horses and apples to apples in those circumstances. The purpose of parliament is not merely to deal with problems as they presently are but to also apprehend how those problems may develop, because laws can last for a very long period of time, as we know.

Mr O'CONNOR: Mr Potts, in your submission you talked about custodial sentences and how you believe they were not proportionate. Could you just elaborate a bit on that and why you oppose those sentences? In relation to penalty units, did you think they were appropriate?

Mr Potts: I think a current penalty unit is $126. Proportionality, I think, was best sung or at least set out by Gilbert and Sullivan when they talked about the punishment fitting the crime. The question of proportionality in these things is always going to be a question of judgement. I regularly find myself defending what some members of parliament might refer to as weak magistrates or weak judges. There has to be a proportion between the gravamen of the offence and the offending. My concern is merely raised that we think it is too high, but that again is going to be a question of judgement. Some people may take the view that it is too low because the desire to deter is in fact represented by the quantum of the potential penalty. Ultimately the courts have a discretion and they can effectively, hopefully, either take into account those things which mitigate or those things which aggravate.

Mr STEVENS: Mr Potts, you are a Gold Coast solicitor and would be well aware of the particular political climate on the Gold Coast.

Mr Potts: Absolutely.

Mr STEVENS: Could you advise me why the union movement, in particular the CFMEU, would make a very large donation to a candidate for the mayoralty position on the Gold Coast?

CHAIR: With respect, Deputy Chair—

Mr STEVENS: It gets to the point of interest. Obviously property developers have a direct interest—

Mr Potts: If I could assist you?

CHAIR: With respect, seeking the opinion of the attributions of a third party is difficult for the witness.

Mr Potts: In fact, I can assist by saying that I act for that individual and therefore cannot comment.

Mr STEVENS: That finishes that. You act for most of them.

Mr Potts: Yes. I do apologise, but I have a conflict of interest and cannot direct my opinion to that.

Mr JANETZKI: Mr Potts, in your opening statement you started exploring some of the definitional challenges. What kind of challenges do you see with definitions like 'regular'? There have been all kinds of scenarios ventilated in the public arena as to what that might mean.

Mr Potts: Mr Janetzki, you would remember your time at law school and the concept of the 'reasonable man on the Clapham omnibus', something that I think never existed, no-one has ever seen and no-one has ever been able to find. I have significant concerns around words like 'regular' and in some cases words like 'reasonable' because it always seems like a movable feast for lawyers.

It seems to me one of the ways in which the legislation could be dealt with is to give actual examples of it, as we often see that legislation does. It will set out not a determinative list, that is, a list that sets out all circumstances, but gives examples which give guidance to a court and the people to whom the law applies as to, for example, what is 'regular', what a 'close associate' may be, what an 'agglomeration of groups' may be. We see that in the definition around candidates who appear to be acting in concert and have similar sources of income and the like, all of those matters which were seen on the Gold Coast. It seems to me why have specificity there, but nothing around the word 'regular'?

Mr JANETZKI: Otherwise we are going to be turning to the *Oxford Dictionary*, because I cannot locate any judicial interpretation of the word 'regular'.

Mr Potts: I agree.

Mr STEVENS: Further to that, we had officers from the Department of Local Government here in relation to the very question of what is regular and even in terms of consultants, town planners, for instance, architects, are they part of a developer definition. Basically their response was that that would be determined by the Electoral Commission. Are they going to get legal advice? How is the Electoral Commission going to try to police the matter?

Mr Potts: With no disrespect, why do you put someone in charge of policing something but give them no help around the definitions of it. I think it is unsatisfactory for an organisation such as the ECQ to be making those kinds of decisions without some form of guidance from parliament and it is simple to do. It is simple to put in. Without giving you a list, because I have not turned my mind specifically to it, it seems to me that what you would do is you would work out the obvious evil that is intended to be dealt with—and that is that nexus of influence which may give rise to either actual, potential or perceived conflict—and either eliminate it by, for example, making them into prohibited

donors, or tighten it up by such definition so that it is not just a catch-all and include the person who, for example, might be a lawyer but who might have developed two properties. We would need to have some definitional certainty. The ECQ, I suspect, would be grateful for that.

Mr STEVENS: You believe the legislation would be enhanced if we had specifics provided by the department so that people knew if you were a developer of three blocks, as you mentioned earlier, you are now a regular developer or you are not.

Mr Potts: I think it would be helpful if it was promulgated so that it was put into the legislation. For example, we see in some pieces of legislation very specific definitions and we sometimes see legislation which takes a slightly different view. What it does is it says this is what we are trying to prevent, here are examples of what we are trying to prevent so that the court or the ECQ or whoever is policing it is able to look at that and say well what parliament intended, however well the legislation was drafted or not, is incorporated in these examples.

Mr JANETZKI: Just picking up on the member for Mermaid Beach's comments, at the last public hearing the department, quite unsatisfactorily in my opinion, said five or six times, 'That would be a question for the ECQ.' I think your comments on some legislative directive would be useful. At this stage it looks like the ECQ, and they have said so in their submission, could take three to six months to pull it all together. They are also going to have to draft some regulatory guidelines of some description to actually guide the implementation of these laws.

Mr Potts: My concern with that is that we do not let the regulators regulate by those sorts of things. The primacy of parliament is to enact legislation that could be followed by organisations where there are clear definitions or clear guidance on what parliament, which is the ultimate expression of the people's democracy, meant. If parliament gets it egregiously wrong then there is an appeal process that allows citizens who find themselves aggrieved on either side to have the matter resolved. To simply say it is all too hard, we will leave it to the ECQ, is not either satisfactory or a particularly pretty method of dealing with legislation.

Ms RICHARDS: Thank you, Mr Potts, for your presentation. Following on from the conversations, it comes down to the definition and possibly the definition of that one word 'regular'. The definition within the act at the moment says—

A property developer—

(a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation—.

(i) in connection with the residential or commercial development of land; and

(ii) with the ultimate purpose of the sale or lease of the land for profit;

Trying to quite laser in focus on that, it is the word 'regularly'.

Mr Potts: Absolutely, which is why we were focusing on it, but regular in its ordinary English dictionary definition means more than once. Do you stop it at three? Do you start it at two? Do you make it to be 50 or 100?

Ms RICHARDS: Coming back to it again, it is just that point of quantum that requires clarity.

Mr Potts: Exactly, but our point is that the quantum is not sufficiently precise. If what we are dealing with is, for example, a large corporation with masses of land which it wants to develop where there is a financial interest in them corrupting local government politicians—

Mr STEVENS: Or state.

Mr Potts: Exactly. Then that is the evil that is being looked at. But if you have got someone who has done it once or twice, redeveloped their own home farm, why should they be precluded from the political discourse by giving to their local member or their local councillor? That is the point we make. I understand what regular means. It could be better dealt with by examples.

CHAIR: Thank you, Mr Potts, and Ms Brodnik.

BUCKLER, Ms Sarah, General Manager, Advocacy, Local Government Association of Queensland

FYNES-CLINTON, Mr Tim, Partner, King and Company Solicitors

O'KEEFE, Mr Joshua, Team Leader, Strategic Policy and Intergovernmental Relations, Local Government Association of Queensland

CHAIR: I invite you to make a short opening statement, after which committee members may have some questions.

Ms Buckler: Good afternoon, Mr Chair, deputy chair and committee members. Thank you for the opportunity to appear before this committee and present the position of Queensland local government on this bill. It is important to stress to this committee that the local governments of Queensland and the LGAQ overwhelmingly support almost all of the reforms proposed by the Crime and Corruption Commission following its Operation Belcarra investigation. Local government in Queensland wholeheartedly embraces the principles of transparency and accountability and works hard to maintain the respect of the communities it represents.

In relation to the current bill, we would urge the committee to go further than is currently being recommended. We at the LGAQ are wanting public perception to be at its highest level when it comes to local government decision-making and therefore the recommendations within our submission go well beyond Operation Belcarra. It is in this vein that we do believe it would have been better to deal with the proposed Belcarra reforms in their entirety rather than to take a piecemeal approach. This bill currently only addresses just five of the 31 recommendations.

In some of the instances we are seeing proposals almost go full circle and recreate formerly unworkable solutions. For example, in 2011 the former Bligh government, the then Crime and Misconduct Commission and all of the integrity agencies agreed with the LGAQ's assertion that it is wrong to empower councils with the capacity to decide and subsequently force councillors to leave a meeting over a conflict of interest, a conflict they may not even have. That is why it was removed from the Local Government Act back then. Yet this bill would return that power. Instead, we would propose that there is another way to deal with issues surrounding political gifts and donations and conflicts of interest.

Rather than discriminate against a particular type of donor as this legislation would do, the LGAQ proposes that the Local Government Act be changed to require a councillor, with a gift or donation above $500 on their register of interest, to treat it in the same way as if it was a material personal interest and remove themselves from a decision-making meeting.

Local government is an important institution in this state. It manages more than $150 billion of community assets and employs more than 40,000 people who spend their days working very hard to make their communities better and delivering essential public services. It is for these reasons the LGAQ supports Operation Belcarra but recognises the need to maintain and improve public respect for our sphere of government very seriously. We need to make this work beyond Belcarra but in a practical way every day. The LGAQ is representing a sector which is prepared to go beyond Belcarra in terms of its recommendations. That is why we have taken strong positions on election campaign spending limits, why we believe enhanced transparency should apply to all candidates in declaring their register of interest and recommend even further clarity of the expectations of elected members when they receive a donation from anyone over $500.

All of these were detailed in our submission to you. These reforms would actually take local government well beyond where the Belcarra recommendations would put it in terms of accountability and transparency, but it would seek to do it in a way that will work. Thank you again for the opportunity to appear before this committee.

Mr JANETZKI: Thank you for being here today and for your submission. Do you believe that the definition of who will be a property developer or prohibited donor is clear in the bill?

Ms Buckler: As you would have heard from our opening statement, for us a lot of those questions become less relevant if the recommendations that the Local Government Association is putting forward were to be considered and enacted within the bill. Ultimately, any indecision around those types of definitions is problematic and for us it should be a much clearer, simpler system.

Mr JANETZKI: You would have heard me ask this question of the Queensland Law Society. Was LGAQ at all consulted in the drafting of the bill? If so, what was the extent of it?

Ms Buckler: The Local Government Association was consulted as part of the drafting of the bill and the content of our submission was made very clear during that process. There is nothing contained within our submission that we have not been enunciating throughout the process.

Mr JANETZKI: Again with the problematic situation we have with the development of guidelines and regulatory direction from ECQ, has there been any discussions between the LGAQ and ECQ over the last period of time?

Ms Buckler: Not in relation to this matter, no.

Ms RICHARDS: I want to follow up and ask a similar question that I asked the Noosa council representatives earlier in regard to the LGAQ's thoughts around increasing the scope of legislation to include more than just the statutory meetings, to look at the workshops and the committee structures?

Mr Fynes-Clinton: Can I start by saying that in our view under the legislation as it currently stands, having regard to the local government principles of councillors acting ethically, legally and transparently, if they go to one of those informal briefing sessions or workshops knowing that the matter in question ends up at a council meeting, in our view they have an ethical obligation to make that known to the councillors in that workshop. It follows from that that if they do not that would arguably be an act of misconduct as presently defined in the Local Government Act, which is a matter that gets reported off via the local government councillor disciplinary processes. I am unaware of any complaint being made to that effect under the current regime, but I would suggest that is the way it should be addressed. Moving forward and in response to what you say, the LGAQ would support the legislation being strengthened to make that clearer.

In section 176 there is a definition of 'misconduct'. You could add to that definition. A fairly simple solution is to add another paragraph to the effect that it includes participating in any form of communication with another councillor or a council officer about a matter in which you will subsequently be disclosing an MPI or a COI. In broad terms, the LGAQ supports it being broadened. We would also say that it would not take much tweaking to achieve it.

Ms RICHARDS: Would you think similar in terms of where the legislation speaks to the exclusion of ordinary business matters, and we know that within ordinary business matters the definition of that includes discussion around planning schemes and amendments?

Mr Fynes-Clinton: Yes. That definition has been fiddled with a number of times since before the current act. It was changed to include planning schemes or parts of planning schemes because of problems which occurred because of the way it was written prior to that. It is a bit of a difficult one to get a landing point on. It did not work before, and there is a suggestion that it is not quite working now. It is hard to say what the right solution is. The council as a whole is required to make planning schemes. It is not a matter that can be delegated. The legislation will not permit it to be delegated. All I can say is that what there is now, I would suggest, is not the perfect solution but the best way to deal with it without it being perfect.

Mr STEVENS: Ms Buckler, there are about 77 member councils of the LGAQ.

Ms Buckler: That is correct.

Mr STEVENS: Many of those after recent amalgamations are very large councils in the South-East Queensland area in particular. I think there would be about 280,000 voters, or somewhere around that, in Gold Coast City and 800,000, or something like that, in the Brisbane and Sunshine Coast areas. Particularly in mayoral campaigns—I do not know how many property developer donations are involved in those campaigns—without those campaign donations, does that mean for your members that only rich people can apply to be mayor of the city in terms of the campaign costs for a large council?

Ms Buckler: I understand the question. I am not sure that I could answer in terms of prospective candidates. As you would have seen in our submission, however, we do look to suggest that expenditure caps would be one solution to try to ensure that there is a more level playing field not only in terms of who can stand as a candidate but how much is spent during those processes.

Mr STEVENS: You would be aware, as the LGAQ representative, that—if you take the Gold Coast City Council as an example, with 280,000 people—to send out one brochure to voters in your electorate to say that you are a good candidate would cost in the vicinity of—I do not know what Australia Post charges on their discount rates today—$300,000. I do not think everybody is on Facebook or Twitter. Maybe they should not even be on Facebook these days. That is a very large amount of money for a person on a lower wage who may have to mortgage their house to try to be

mayor. I can assure you from experience that there are no guarantees in being a mayor of a city. You must have an idea of your membership and the concerns that they must have about mayoral campaigns.

Ms Buckler: We have put a recommendation in place in terms of what we see as the appropriate expenditure limits. That has come from us talking to our membership around what they would see as appropriate in those circumstances to run an effective campaign. The way that we have presented the submission is looking to seek not to exclude any particular sector but simply to ensure that where those donations are made they are up-front, they are clear, the public is aware and the councillors or elected members are equally aware of what their obligations are once those donations are made. We think that is a better situation to have—that, instead of fighting over definitions, it is very, very clear up-front what your obligations are once you are in receipt of those donations.

Mr STEVENS: In respect of this legislation, it specifically precludes one group of people from donating. That will have a major effect, I would have thought. I am not aware—you would be more aware than I would be of the amount of donations that go into local government campaigns. There are some big councils and there are quite a few candidates in South-East Queensland. I am sure everybody has their own preferred candidate in those areas. That will be an enormous impost. When you say that the LGAQ has figures that limit the expenditures, can you give me those figures? For instance, what should the Gold Coast City Council be limited to?

Mr O'Keefe: In relation to the proposal that has been put to government, the LGAQ Policy Executive has endorsed that proposal. There would be an expenditure cap of $2 per voter for mayoral elections and $1 per voter for councillor elections. Upper expenditure limits would be set at $200,000 for mayoral elections and $50,000 for councillor elections, given that in most cases—our CEO said this at the Belcarra hearings—90 per cent of candidates do not receive donations in local government elections. That aside, and because of lower populations in western communities particularly, the lower expenditure limits would be set at $10,000 for mayoral elections and $5,000 for councillor elections to ensure that candidates in councils with low populations are guaranteed a minimum allowable level of expenditure.

Mr STEVENS: I have been doing some quick calculations in my head, which is always a worry. That would be $560,000 on $2 per head for a mayoral campaign on the Gold Coast, but you are saying it is limited to $200,000 for a mayoral campaign. Which half of the electorate do you ignore during your campaign?

Mr O'Keefe: That is a difficult question for us to answer.

Mr STEVENS: That is what I am saying. The figures that you have just given me do not add up in terms of coverage of a local government electorate.

Ms Buckler: We are presenting the position of our policy executive who have been through these processes. Based on our intelligence from our membership, this would be an appropriate recommendation to achieve the objects which we believe Operation Belcarra originally sought to do.

Mr O'CONNOR: You talk in your submission about the New South Wales jurisdiction as being the only jurisdiction that has implemented a similar such ban. Would you be able to elaborate on that? You also talk about how it has been proven not to work in that jurisdiction.

Ms Buckler: The evidence that New South Wales has not worked by prohibiting one class of donor and seeing the way then that donations have been funnelled through to individuals in our view is not ideal. Hence our preference is that there is openness and transparency as a primary consideration in every situation. Therefore, it is not about the exclusion of one particular sector. It is about all sectors being seen to have equal and fair access but where that occurs the public is made fully aware of that and equally an elected member is aware then of their obligations once a particular threshold is triggered.

Ms RICHARDS: The legislation in the Queensland context versus New South Wales inserts provisions around schemes to circumvent which I think possibly address some of those issues within the New South Wales legislation. Would you agree?

Ms Buckler: I would have to take that on notice.

CHAIR: There are sections in the act about workaround schemes. Do you wish to take that formally on notice and report back to us?

Ms Buckler: Yes.

Mr STEVENS: I understand the intent of the bill in terms of improving the operation and image of local government, and I support that 100 per cent. Would it not be better served for all, rather than identifying individuals which this particular bill has, that we identify all donors, as you have requested,

in relation to donations to political campaigns, particularly at local government level, once that donation has been made? That then excludes that councillor—given that councils make decisions, not councillors—from being involved in any decision-making on a particular item that is associated with any donor, if you like, from whatever sphere—whether it is mining, agriculture or whatever, not just property development. If they have received a donation then that excludes them. Wouldn't that satisfy everything?

Ms Buckler: That is the intention of our submission—that, regardless of who it is, once it hits $500 that elected member then treats it as if it were a material personal interest and excludes themselves from a decision-making process.

Mr STEVENS: Correct. That includes all groups such as union groups—all of those sorts of matters—rather than individualising and picking on one particular sector.

Ms Buckler: That is absolutely our position.

CHAIR: With regard to the local government sector, is there a greater concern where, in the case of developers, a decision is made by the power of local councils to change situations regarding land or development and there is immediate and direct gain for that person, and that makes that class of donors different from others?

Ms Buckler: I think it is fair to say that I cannot comment on the individual interests of particular donors. Our view is that at the end of the day we want to have the highest level of transparency and accountability and public perception in the system and the decisions that are being made. Therefore, any donation should require an elected member to exclude themselves from that. That is not making a relative decision about the class of donor and their ability to influence or otherwise an individual which I simply cannot make.

Mr STEVENS: I have a question for Mr Tim Fynes-Clinton of the famous King and Company Solicitors, second generation Local Government Association solicitors. In relation to the terminology being used in this legislation, you have heard from the Law Society today of the ambiguity created by the use of the word 'regular'. Do you see a better way for the legislation to go forward in terms of the prescription, if you like, rather than just using the word 'regular'? I think there will be a lot of consultants out there associated with developers. We had some advice from the department of local government who were not clear on whether they would be involved. Mr Potts referred to whether different family members would be involved. In fact, it is not clear even in terms of 'regular' being the number of applications—one to cut up the family home into three or whatever. From the local government's point of view, can you see a better way legally to go forward on this matter?

Mr Fynes-Clinton: Mr Potts responded to that particular issue very well. I really cannot add a lot to what he said other than certainly it is up to the legislature to define this correctly. Leaving it in the hands of the ECQ or any other department is not appropriate. Having regard to the debate we have heard this afternoon, I think examples around numbers need to go into the legislation. It cannot be left anywhere else. Acknowledging that the LGAQ's position is that we do not want to go down that path at all, I think the LGAQ would respectfully adopt what Mr Potts had to say about that problem and how it should be solved and how it should be solved by the legislature.

CHAIR: There being no further questions, I thank the LGAQ and you personally for the work that you put into your submission. We do have a question on notice that I have recorded. Thank you for your contribution here today.

I now welcome Chris Mountford from the Property Council of Australia.

MOUNTFORD, Mr Chris, Executive Director, Property Council of Australia

CHAIR: Good afternoon. I invite you to make a short opening statement after which committee members may have some questions for you.

Mr Mountford: Good afternoon, all, and thank you for the opportunity to be here this afternoon. The Property Council's focus in relation to this legislation is the proposal to ban political donations by developers. From the outset I want to make it clear that the Property Council itself has had a policy position for over two years of not making political donations or attending political fundraisers. This policy applies right across the country.

The first point I want to make today is that if you look at pages 77 and 78 of the CCC Belcarra report it highlights that there is, in fact, little evidence that political donations result in preferential treatment for developers. Through this report and subsequent public statements the CCC has made it clear that the integrity of the electoral system can be damaged merely by the perception that political donations may lead to corrupt conduct.

It is this perceived risk of corruption that is the basis for proposing a ban on developer donations. Let's be clear about this. The proposed yardstick for banning political donations from particular groups is whether or not there is a perception within the community that those donations may influence decisions. For us, the question then arises: how have the CCC and the state government come to the conclusion that this perception only exists in relation to property developers? Why not the large amounts of moneys donated by mining, unions, environmental groups, government contractors and others who are impacted by government decisions and tenders? In our view the answer lies in the scope of the review that has led to us looking at this legislation.

The CCC has specifically noted in its submission and in correspondence to us, which is attached to our submission, that state government issues and donations were not considered as part of this review. It has also made clear in their report that Operation Belcarra was an investigation into the 2016 local government elections confined to four local government areas. The state government's own South East Queensland Regional Plan, released last year, identifies that these four local government areas will need to accommodate approximately 450,000 dwellings over the next 23 years to keep up with population growth. To put this in context, these four local government areas currently have around 580,000 dwellings in them, so we are talking about nearly doubling the amount of houses in these local government areas over the next 23 years.

It is, therefore, not surprising in our view that an investigation of these four local governments found the community's radar was focused on council's role in planning and development assessment and its interactions with developers. If the review encompassed a more representative sample of local government areas in Queensland we suspect that different communities that are not grappling with such high levels of population growth may have raised other issues or industries as their primary concerns.

We also suspect that if the review encompassed political donations and corruption risk at a state government level, the community would have raised concerns about a different set of issues and a different set of groups yet again. For example, the state government regulates the gambling industry, a hot topic in the recent Tasmanian election. The gaming industry is banned from making political donations in New South Wales but, because the investigation that has led us to this bill did not encompass state government donations, the perception of that industry is not up for debate as my industry is.

I want to make it clear that the Property Council absolutely supports holistic review and public debate on ensuring integrity, accountability and transparency in the political system. The CCC itself has confirmed on multiple occasions that Operation Belcarra was itself not a holistic review of political donations and corruption risk in Queensland, as I outlined earlier. In this context I also note the CCC has raised concerns in its submission about the bill's proposal to extend the recommendations to the state level.

It is our view, therefore, that our industry, one that is employing about 300,000 Queenslanders, is being unfairly isolated as a result of the limited scope of the investigation that has led to this bill. A great example of the bizarre implications of this is the fact that registered lobbyists in Queensland will still be permitted to make political donations under this legislation. These are people who openly promote their ability to get access to politicians and their expertise in influencing government decision-making is what they sell to their clients. Many of them make significant political donations and at times work directly on election campaigns for political parties and are engaged by political parties to undertake polling and focus groups, but somehow there are no perceived concerns relating to money paid by these groups.

In relation to other matters raised in our submission, I note that many of the submissions have raised similar concerns about the definition of a property developer in the bill, and I heard the conversation about that earlier. I particularly draw attention to the examples raised by HIA and the UDIA also in their submissions. I think that actually highlights the problem of picking up a definition from another state and plonking it here where we use different terminology quite regularly as it relates to planning and development assessment. I am happy to talk about that a little bit more shortly.

In conclusion, it should be obvious, we believe, to everyone that there are many sectors and interests that are impacted by government policy, regulation, tenders or subsidy. The community should rightly expect that political donations do not distort decision-making in any area. It is, in our view, appropriate that all businesses, environmental groups, community groups and unions should be treated the same when it comes to donations. If we start singling out individuals or groups we are unsure where it will end and how the community will have confidence that the definitions and delineations are relevant. We are certainly open to changes aimed at ensuring community confidence in the political system is strengthened, but in the interests of this confidence we think those rules should apply to all and be based on a far more wideranging review of the issues.

CHAIR: Are there any questions from the committee?

Mr STEVENS: Do your members across-the-board feel they are being identified as not being of good character by this particular legislation in terms of identifying them—perceived or not—as donating for dubious purposes?

Mr Mountford: There is certainly concern across our membership that our industry is being singled out and being tarred with a brush in this way when other industries are not under the same scrutiny through this process, yes.

Mr STEVENS: I take it that you would have been well aware of the inquiries that have been going on into local government per se, particularly the 2006 inquiry by the then CJC—I am not sure, they changed their name a bit—under Mr Bingham I think it was and then in 2016 under the current CCC. Basically in terms of property developers they were not, as far as I am aware, identified as creating corrupt activity in those investigations. How do you then transpose that outcome on the fact that you are being identified whereas other groups and corporations, as you mentioned before, are not involved in this piece of legislation?

Mr Mountford: As I was alluding to before, if you go back to the basis of where this conversation started, which was the review into the 2016 local government elections and those four local government elections, if you start the scoping at that point you kind of end up where we are now in our view. If you had a broader scope that was looking at the role and influence of political donations across local government and state government—and not just in the south-east corner but across the rest of the state—I think you would have found that it would not have just been our industry where this perception issue would have arisen.

Mr STEVENS: In relation to state government parties or members of state parliament being part of this legislation, from the Property Council's point of view, has there been any major association, if you like, in terms of donations from your member groups for what we might term regional outcomes in relation to the state overseeing all those sorts of plans?

Mr Mountford: I am certainly not aware of any. If I fall back to my high school education, my understanding is that different levels of government do different things. Planning and development assessment is certainly something that is very much in the focus of local government. There is a whole raft of other things that the state government is responsible for and there are different industries and groups that, therefore, have a greater level of interest at the state government level.

I think that goes to the point that I was trying to make earlier, which is that with a narrow scope commencing where it did, it is not surprising from our point of view that we have landed where we. If we had a broader scope that considered both levels of government equally and on a statewide basis, I think we would have found that if we are using perception as the benchmark for concern there would be many other industries, individuals and groups that would have come forward as well.

CHAIR: I represent an area that has quite a lot of new developments and where there are other areas under the auspices of economic development of Queensland. One of the major developers who is undoubtedly a member has made the decision that at no level of government will they give any political donations. They are probably the largest developer. They have made that decision obviously in trying to react against perceptions and to ensure that when people are making decisions about their developments they can point to the fact that they have that policy. Would there be membership that take a different view in that they would almost be relieved that this has cleared off the decks and they proceed with a different perception for the industry?

Mr Mountford: Yes, I think if we are honest about this, my membership probably falls into three groups.

CHAIR: I notice the Property Council does not make donations.

Mr Mountford: No, we do not. My membership probably falls into the three groups. There is certainly a large cluster that do not make donations now—I believe another group to the one you are referring to and many others are the same—the typically larger national players because that is a decision they take at a national board level. That is one group: people it has no impact on whatsoever because they do not make donations as it stands now.

The second group, if I am honest, will be very pleased not to be asked anymore to make donations at any level of government. They quite often feel obliged to make donations to all parties at all times. Many of them are saying, 'This isn't necessarily a problem for us.' There is a third group that is saying, 'It is actually my democratic right to participate in this process as much as anybody else. Why am I being singled out in a way that is distinct from other groups and industries that interact with government just as much as the development industry does?'

CHAIR: In relation to the declaration of an area for a change in use, often it makes a direct material benefit to the people making those decisions. They often have a large stake in the process. Is that not a reasonable reason to explain why the property developers would be better and clearer to be free of political donations? That is why they are different.

Mr Mountford: If I am a major contractor tendering for hundreds of millions of dollars worth of government work I have a fair bit of skin in the game as well. I think there are plenty of industries and examples where individual businesses or individuals have a lot to gain or lose from a government decision. To your point about rezoning—and I listened to the conversation earlier on—I do want to make the point that the definition that is being used now is utterly worthless and will not work. In my view it kind of shows a lack of basic understanding of how the planning system operates in Queensland. I will give you a few examples as to what I mean by that.

If you look at a major rezoning, imagine a farmer owns land on the urban fringe of an urban area. There is no planning application to get that rezoned for an urban use. That is a decision that is made potentially by the state government through its regional planning processes or through the council through its planning scheme processes. Communities are open to make submissions to those changed processes but there is actually no planning application that is made. I could get a huge windfall gain for having my farm rezoned as urban purpose, but I have never made a planning application.

Similarly, in an infill urban context, I might own five industrial sheds in the inner city, and the council is saying, 'We've got to try to work out how to get more urban infill into our existing area.' I have owned those sheds for 20 years. I have never made a planning application in my life, but it would stand to reason that there is a good opportunity that if that land is rezoned as urban I might benefit from that in the long term. I may have absolutely no intention of making a planning application for years after the rezoning. I might be getting a good income from those industrial sheds and have leases on them that extend for another five years, but in essence it might still be in my interests to lobby hard for that rezoning to give myself an opportunity in the future.

The definitions are quite challenging. If I give you one final example—and the HIA submission talks particularly to this—in Queensland we have this funny situation where we sort of blur the lines between what we call a planning application and a building application. Quite often local governments will put in their planning scheme matters that we would say require a building application to be made but because they are in the planning scheme they require a planning application to be made.

I am talking about things like carports, patios and sheds. You could have one local government where there is a planning application required to put a carport on a house and then in the next local government over it is a building application that is required to put that carport on. You might have a carport builder who generally operates in one local area who never makes a planning application and one in the adjacent local government area who always makes planning applications. It is just particularly unworkable.

CHAIR: Is the suggestion that they extend that definition beyond what New South Wales put forward to include those that actively lobbied for material changes of use or changes to town plans?

Mr Mountford: I am not sure how you define an action as a person; that is what I am getting at. Development is an activity or an action; it is not necessarily a person. I might undertake a development at some point in my life, but I am not a developer. I might undertake three developments at some point in my life, but I am not a developer. I think that is part of the challenge that we are

grappling with in terms of a definition like this. Ultimately, I think if the intent here is to give the community confidence about people who potentially will gain from planning decisions made by councils, I do not think this definition fits the bill. To be brutally honest, I do not know what definition would in order to give that level of confidence in Queensland.

Mr JANETZKI: In terms of background information, what proportion, or what number of planning applications would be determined by council officers as against decisions made by councillors themselves?

Mr Mountford: My understanding is that the vast majority are made by council officers. I do not have a particular number or percentage in mind, but I think the LGAQ in its submission made reference to some numbers. It would certainly be in the order of one out of 10 that would ultimately be made by councillors or thereabouts.

Mr JANETZKI: And planning applications approved by state members of parliament?

Mr Mountford: That is an interesting question in the sense that there is obviously Economic Development Queensland where the minister responsible is, in a sense, a developer from the definition that is there. EDQ on its own website defines itself as the state government's developer. It is responsible for zoning as well as dealing with planning applications under its own legislation. Certainly, EDQ would be a developer in that context.

Mr JANETZKI: And the call-in process?

Mr Mountford: Yes, there would be a similar concern. Also, many applications are made to state departments for referral in their assessment capability, but that is very different from the case where they would be themselves undertaking a development.

Mr JANETZKI: State MPs generally will never get to vote on a planning application. That is what you are saying. It is vested in the ministerial body. That is in very stark contrast to a council that votes on planning applications and DAs all the time.

Mr Mountford: Yes, I absolutely agree with that.

Mr JANETZKI: I want to turn to the definitions a little more. You spoke broadly. Bearing in mind that we have not had any guidance from the ECQ as to regulatory guidelines, which we have already broached today, have you had any discussions with the ECQ at the Property Council level?

Mr Mountford: No, we have not. Our concern about that would be that the guidelines would be as long as your arm. They would almost need to be unique to each individual local government as their planning schemes are different.

Mr JANETZKI: The ECQ said in its submission that we could be facing three to six months of delay. That delay will only be exacerbated by the potential for having to regulatory guideline this to death.

Mr Mountford: I think in their submission they made the point that they expect to get overrun with people seeking clarification and the potential risk of people looking to dob in others for what they perceive to be a concern and having to deal with those matters as well. I agree with the earlier statements that, if we are going to go down the path of trying to define individuals by what they do, then there needs to be a much better definition than what is in there now. Having said that, I do not know that there is necessarily a great definition for all the reasons that I have described.

Mr JANETZKI: The definition of 'regular'?

Mr Mountford: Yes. Another great example of that would be there might be a trust that owns a shopping centre. They have owned that shopping centre for 15 years and they have never made a planning application on that shopping centre. They are going to expand that shopping centre quite significantly and they are making one planning application. That is a pretty significant deal, particularly in many local governments. That certainly does not fall within the bounds of 'regular'. We have no sense of what 'regular' would mean. I imagine the carport fellow would do it pretty regularly.

Ms RICHARDS: Can I add that within the definitions in the preliminaries there is quite a detailed breakdown on what a relevant planning application means. Although I concur with Chris that there are nuances within different local government areas that need to be considered within that, it is quite detailed.

CHAIR: When legislation went before the New South Wales parliament, did the Property Council of Australia have similar feedback at that stage about their concerns?

Mr Mountford: I think at the time the basis of the issues was substantially different in that there was pretty widespread evidence of issues in the New South Wales political system at the time, which created a different political environment from what exists here in the way that these issues are being debated. I was not around at the time when that occurred in New South Wales. We are looking at the facts on the basis of what is being proposed here and our concerns relate to that.

CHAIR: Thank you very much.

Ms RICHARDS: I have one more question. Earlier we heard from Brisbane Residents United. One of the concerns within their submission was councils establishing both investment corporations and industry advisory panels. I was wondering if you could provide some commentary or reflection on that.

Mr Mountford: Sure. One of the things that we are keeping an eye on across the state is councils establishing development corporations. I do not think that there are necessarily good or clear guidelines for councils in relation to doing that. There is certainly an opportunity for the state government to have a closer look at what is the appropriate bounds for those things for councils. They are set up very differently—uniquely—in each council they are being set up in at the moment.

In relation to the role of panels, one of the points that I would like to make is that I am not sure that we have necessarily cast the net quite wide about the different ways that we could deal with these issues and some of the other opportunities and examples that exist around the country to deal with some of these perceptions.

In Western Australia, a few years back they established something called independent development assessment panels. Effectively, that meant that there were independent experts who sat with councillors to make informed decisions about significant planning decisions. The Western Australian government took that view, because it thought that it would not only increase transparency and accountability but also ensure that some of these perception issues were dealt with along the way as well.

I think that there is certainly an opportunity to explore how some of those independent type of panel arrangements might support independence. Whether some of the panels that exist now in different councils fulfil that function, I think that is a different question—I think it might have been your question—but I think that there is potentially an avenue to look at what some of those entities might look like and how they could work as well.

Mr STEVENS: I have a follow-up question on that. I understand that those independent panels usually get paid for their work. We have independent financial advisers for different government matters and they get paid for their work. Rarely do they stray far from the direction of where the government would like to go in terms of their independence, because they do not come back again for more independent panel evaluations. How would you deal with that if you passed all of those matters across to an independent panel?

Mr Mountford: Ultimately, development is about answering a fairly simple question, which is, 'Can I build this thing here?' The basis of starting to assess that question is what is written in the state and local government planning regulations, legislation and schemes and making a decision based on that. My answer to your question is that, in order for those things to be established and work, you need to ensure that the systems, the processes and the understanding of how those decisions are made are clear, transparent and set out properly in the planning scheme.

Certainly, there are challenges associated with that when you are relying on professional judgement—when someone is making an impact assessable application for a larger development than what the scheme might anticipate, but there may be good community outcomes as a result of that development and, therefore, there is a desire to see it proceed. I take your point that it is a challenge to deal with those trade-offs and issues. Ultimately, I think those panels are about providing greater levels of transparency and input into the process and trying to provide rigour around the rules and assessment that goes on.

Mr STEVENS: Does that scenario you just outlined not deny the democratic process? That is why we have politicians in the world. I know that not many people argue that politicians have a use, but in a democracy that is what it is all about.

Mr Mountford: I think it is why in WA they still have local members on those panels. It is about saying that there is value in independent expert advice in those discussions and those decisions as well.

Mr O'CONNOR: I have a follow-up question. You were talking about the EDQ and how it and the minister might be classed as a developer under the definitions.

Mr Mountford: Yes. To be honest, we did not interrogate that in great depth in the work that we needed to do to prepare our submission given the limited time in which we had to look at these issues. Certainly, EDQ regularly makes planning applications and it sells land for profit.

Mr O'CONNOR: You could have the minister not being able to make a personal contribution towards their own re-election campaign.

Mr Mountford: I think there is something that allows you to make a personal donation to your own campaign, but their spouse might not be able to—potentially; I am not sure.

Mr O'CONNOR: In terms of state MPs more generally, would it be fair to say that they do not operate in the same way as councillors in that we do not have state members voting on development or planning applications regularly?

Mr Mountford: Yes, that would be correct.

Mr O'CONNOR: In your submission you referred to not-for-profits. You talked about the proposed definitions regarding the sale or lease of land for profit. In your view, is there a potential for this bill to impact on the charity or not-for-profit sector? Do you have any examples of where this impact may occur?

Mr Mountford: I think what we were getting at there was the affordable housing sector. There are a number of entities that undertake development for those purposes. Again, we did not delve into that in significant detail, because it was not a primary focus, but it was an issue that we wanted to flag as potentially requiring further thought, because—

Mr O'CONNOR: They could get captured by it.

Mr Mountford: They could get captured. The purpose of them generating revenue or profit is to reinvest in more affordable housing, which I think is the right outcome.

Mr O'CONNOR: Of course. Thank you.

CHAIR: Are there any further questions? Thanks, Chris, for your submission. We do not have any questions on notice. I now turn to the Crime and Corruption Commission.

DOCWRA, Mr Mark, Assistant Director, Crime and Corruption Commission

MacSPORRAN, Mr Alan, QC, Chairperson, Crime and Corruption Commission

CHAIR: I would like to welcome Alan MacSporran and Mark Docwra from the Crime and Corruption Commission. Good afternoon. I invite you to make a short opening statement after which the committee members may have some questions for you.

Mr MacSporran: Thank you and I thank the committee for the opportunity to appear and give evidence before you on this important initiative. I do not intend to repeat the commission's submission, which you have before you. Instead, I will speak to the importance of the bill for implementing recommendations of the Operation Belcarra report. As you know, the report provides a blueprint for integrity and addressing corruption risk in local government. The report made 31 recommendations that were intended to apply to all councils in Queensland. The commission considered it necessary that all of these recommendations be implemented to improve equity, transparency, integrity and accountability in Queensland local government elections and decision-making. In other words, all the recommendations were not constructed as stand-alone recommendations; they were part of a huge package to achieve the purpose that I have outlined.

The issues under investigation in Belcarra had previously been identified by the agency, or its predecessor. In 1991 the then Criminal Justice Commission—the CJC—examined property developer donations and conflicts of interest on the Gold Coast. In 2006, the then Crime and Misconduct Commission—the CMC—examined property developer donations and undeclared groups of candidates, again, on the Gold Coast. In 2015, the CCC, as it is currently named, examined the practices relating to the receipt, management and disclosure of electoral donations by the former mayor of Ipswich City Council.

Despite increased regulation and oversight of local government elections and political donations over time, the recurring nature of these issues highlights their inherent potential to cause concerns about corruption and adversely affect public perceptions of and confidence in the transparency and integrity of local government. Indeed, if media reporting reflects public sentiment, it would appear that the Queensland community is calling for local government to be held to higher standards for that reason.

It was important that the commission identify the deficiencies of the current system and strategies to decrease corruption risks and increase public confidence in local government. We found widespread noncompliance with the legislative framework. In the commission's view, this noncompliance is largely caused by a deficient legislative and regulatory framework. The commission recommended an extensive package of reform that addresses these deficiencies and will improve equity, transparency, integrity and accountability in council elections and decision-making. Each the 31 recommendations addresses a deficiency in the current system but, as I mentioned before, their impact is consolidated and amplified by the implementation of the other recommendations. For that reason, the commission encourages the government to implement the whole package of reform.

If it is supported by parliament, in my view the package of recommendations will result in the most substantial reform of the local government sector in Queensland's history. As you know, the government has already indicated support for all of the recommendations.

This bill that we are now talking about—Operation Belcarra report recommendations—implements recommendations 20, 23, 24, 25 and 26. The bill also extends the application of the recommendations to Queensland state elections and decision-making. The commission commends the bill's implementation of these recommendations for all councils.

In the context of local government, it is essential that each individual councillor and the whole council take responsibility for promoting confidence and integrity in the management of council conflicts of interests and material personal interests. This is fundamental to the public interest and extends beyond matters concerning political donations.

Turning to the proposed prohibition on political donations by property developers, the bill adapts New South Wales laws to Queensland circumstances related to the Planning Act 2016, the State Development and Public Works Organisation Act 1971 or the Economic Development Act 2012. The commission is not aware of any New South Wales case law to indicate that the laws operating in that state have been found to be deficient in any respect. The LGAQ submission refers to the ICAC Operation Spicer as being an example of how it is not workable. No doubt, however, those involved in attempting to circumvent the legislative scheme in that state were aware that the scheme actually applied to them and, as you know, there is a proposed provision in the bill which makes it a serious offence to try to circumvent the scheme as outlined.

The commission acknowledges that the extension of the Belcarra report recommendations concerning political donations by property developers to Queensland state elections and decision-making is a policy matter for government. We have, however, expressed some concerns about that extension in our submission at pages 3 and 4 and I am happy to talk about that if you need to have that elaborated any further.

At the heart of the Belcarra report blueprint is removing the danger that office holders will decide issues not on the merits or the desire of constituencies, but according to the wishes of those who have made large financial contributions valued by office holders. As noted by the High Court, this arises from dependence on financial support that is apt to compromise the expectation fundamental to representative democracy that public power will be exercised in the public interest. That is a reference to the case of McCloy v New South Wales that found as valid the ban in New South Wales on property developer donations.

The commission's task is to promote public confidence in elections and government decision-making. The commission considers that the bill, implementing stage 1 of Belcarra, is both important and necessary to promoting both public confidence and to ensure that public power will be exercised in the public interest.

Much has been said about the difficulties and whether the definition of property developer is practically workable. Can I just say in respect of that generally that it is not a good reason not to have such a definition if there are circumstances that can be conjured that fall outside the definition. It may be an argument for widening or broadening the scope of the definition, but it would not be a good argument for doing away with the ban altogether. Many of the arguments against these proposals fall into that category. Whether you single out the property developers as unfairly being targeted by this, well, if the evidence is there it is there and justifies the measure. If evidence emerges of other groups which are equally a corruption risk in reality or in fact, well, they should be dealt with as well.

In an ideal world, and my personal view would be, you would ban all donations, but the High Court has said, and the law is, that there needs to be an evidence based response which is proportional to the threat identified. That is why we singled out in our case in Belcarra property developers and not others because the evidence simply did not meet the expectation. I am happy to take any questions.

CHAIR: Members are aware of the sub judice rules, but respecting the ongoing investigations of the CCC any questions should be framed keeping that in mind. Mr MacSporran, if there are any concerns you have about questions obviously we would be respectful of that.

Mr STEVENS: Unfortunately we have a bit of a badly and unfairly earned reputation for a sunny place for shady characters. I have been witness to the CMC 2006 investigation which was quite extensive by Mr Bingham. You would have been all over that. Basically it resulted from an 80-page dirt file from a disenfranchised councillor which was then not accepted as part of the evidential matters that went before the CMC at the time and resulted in very little outcome in terms of identifying any corruption, particularly from property developer folk.

Then we move to the CCC investigation in 2016 in relation to further property developer donations which, as I am aware, did not result in any particular charges against property developers or corrupt behaviour being identified out of that particular investigation. I understand that there is a charge going forward but basically, as I brought up in parliament, it was on a matter of an undeclared union donation, not a property developer donation.

What I am saying particularly is I know it is an easy group that you single out in terms of perception with council donations, but how does that perception relate to the taking away of a democratic right, if you like, and also how does it, even more importantly, that perception that you have identified, translate into state election campaigns and are your recommendations, you mentioned pages 3 and 4, particularly relevant for enforcement through state legislation on state election campaigns?

CHAIR: That is a very long question.

Mr STEVENS: The Speaker of the House would have kicked me out for preamble.

Mr MacSporran: I think I got the gist of it and if I miss some part of the question you can come back to me. Fundamentally the answer to that question is this: if there is a perception of corruption, whether it translates to a reality or not, and we would argue that on many occasions it does translate to reality, but even if it does not, if there is an ongoing perception, which these inquiries have clearly evidenced, that fundamentally undermines public confidence in the system. Even if people are misinformed, wrong-headed, if they honestly believe, and I can assure you that most people who

make complaints about this sector are not ratbag, mischievous, vexatious complainants, they are honest people who feel as though they need to do something to clean up the area. On occasions they are found to be misinformed, their complaints are baseless, but they are not mischievous, most of them. That just illustrates that there needs to be some better, more transparent system that serves their interest because public confidence in this sector is fundamental to democratic government. That is the fundamental answer to your question.

As to how it translates to the state sector, as we have said in our submission, and it is really implicit at least if not directly referred to in the report itself, we examined the local government sector, we said in one line in the early part of our report that the government may wish to consider translating or expanding it to the state sector. We did not mean by that that it is an automatic translation, what we meant is that it needs to be considered in that sector, which should be an evidence gathering exercise, public consultation, sufficient to get a sense of what is really happening in that area. There is no reason in principle why the measures should not translate to the state, but that needs to be considered because absent consideration of it there is a potential successful challenge to the constitutional validity of the measure. That is the concern we simply had, that you cannot simply automatically translate it without giving it due consideration.

Mr JANETZKI: Thank you, Mr MacSporran, for your appearance. I wanted to drill down a little bit further on the honourable member's first question. To take you to your comments in the submission where you said, on the same topic, that the CCC did not contemplate that the proposed reforms would be introduced without preliminary review to identify and mitigate corruption risks in state elections and decision-making, did you communicate that opinion to the government prior to the introduction of the bill?

Mr MacSporran: No. All we had before the bill was introduced was the report itself. Then when the bill was introduced we were invited to make a submission, which we did, and that is the submission you know was made to the lapsed bill. In essence, our current submission is a repeat of that earlier submission.

Mr JANETZKI: You were not consulted between the tabling of your report and the introduction of the bill?

Mr MacSporran: No.

Mr JANETZKI: You did mention it briefly, but I am just trying to get a better handle on what you believe the appropriate process would be in contemplation of extending the ban beyond local government to the state arena. You mentioned public consultation. Are you thinking a more formal investigation by the CCC? What kind of investigation do you believe would be necessary?

Mr MacSporran: It might be as simple as reviewing the number of complaints and the sort of complaints in this sector at the state level to see whether there is any correlation between what is happening in the local government sector vis-a-vis the state. Certainly a public consultation period sufficient to allow interested stakeholders such as you have had in this forum coming forward and having their say and arguing why it is not necessary and it is a different system.

Subject to reviewing the complaint history and the information in the public domain about what has been happening in the state government sector, you might need to have a further more formal investigation to gather more evidence. It will just depend on what emerges. Because it is not something we looked at I really cannot say what that position would look like. As I say, and as I said just a moment ago, there is no reason in principle why there will not be similar areas of concern. The reason I say that is that it has been said, and it was said in Belcarra in evidence from various councillors, that the planning decisions are not made by councillors 99 per cent of the time, they are made by committees.

Mr JANETZKI: Or council officers.

Mr MacSporran: Council officers, public servants, which is true. There is a similar disconnect, if you like, in that sense in the state government field. Although the minister, as we heard before from Chris Mountford, has a greater personal role involved, what that does not address is that that separation does not take account of the fact that there is the ability, which we suspect at least if not have evidence of, for it to translate to influence behind the scenes from councillors and others who might want to influence those committee members as council officers who actually make the decision.

It is not farfetched to suggest that a councillor in a position of power like that could wander into a council officer's office and simply say, 'X is coming up as an application soon. Friend of mine. I know him personally. I know his business. Very good fellow. Squeaky clean. Be great for the area. Of course that is a matter for your committee to decide this, but all I can say is I recommend it highly.

But it is a matter for you.' It is very open for that sort of influence to occur. You cannot blame the council officers being influenced, even if subconsciously, when they make their decision. I think it is a bit naive, frankly, to say that the councillors themselves do not routinely make those decisions and that therefore there is no corruption risk. That is simply not the case.

Mr JANETZKI: Turning for a moment to union donations, I am wondering what consideration was given to that particular question. I know there has been a referral in relation to one mayoral candidate and donations that the member for Mermaid Beach referred to. I am wondering what consideration the CCC gave, particularly in an environment where we have plenty of evidence on the record now of a minister with back channel emails through to union officials.

Ms RICHARDS: Point of order.

CHAIR: Is there a question there?

Mr JANETZKI: To focus my question again, what consideration was given to trade union donations?

Mr MacSporran: What I did say about that is that, without dealing with the specific matter that is before the court now involving the union we are talking about, because that was the only evidence that came up in respect of that candidate and donations made by that union, ironically, and I have said this publicly before, the charge that is currently before the court does not relate to an attempt to—

CHAIR: Mr MacSporran, I advise that one of the TV channels has requested to come in. That is the kerfuffle behind you.

Mr MacSporran: The union, as required as a third-party donor, had filled out the declaration form and disclosed their donations to various candidates quite properly, accurately and in a timely way. That is how we knew that the candidates had received that. We were doing a cross-matching exercise to see whether the candidates had disclosed those donations. That is where the issue arose for a particular candidate that we looked at.

The union had done nothing wrong other than to—and this is not wrong; it had donated and disclosed it. In the Belcarra proceedings, its rationale for making the donations was because they did some homework and they liked the policies being publicly espoused by those candidates. They interviewed the candidates to see whether they were true to their publicity. Having satisfied themselves that they were worthy candidates and supported things that the union was interested in pursuing and promoting, they donated in that sense.

The unions have been forever, as you know, public supporters of the Labor Party openly. Their funds are routinely disclosed. We found, as part of our investigation, no evidence that they were improperly influencing the process. What they did was transparent, part of the democratic process and not potentially corrupt in the sense that we are talking about, as opposed to the perception that is routinely recognised from developers in that same sector over a long period of time.

Mr JANETZKI: Mr MacSporran, you alluded to it again briefly in respect of the implied freedom of political communication. In New South Wales there was clear evidence at the state level of corrupt conduct which the High Court found meant that it was a justified curtailment of that particular freedom. In respect of the proposed changes to the state arena in Queensland, what is your opinion on particularly that implied freedom and any potential curtailment of that?

Mr MacSporran: I think that is the issue. It arises in a couple of respects as we have outlined in our submission to the committee. Because the High Court has said that it is impermissible to interfere with that unless there is evidence justifying that response as being a proportionate response to the threat identified, essentially as the High Court case in New South Wales reveals, you need to be able to point to something.

Furthermore, the purpose statement for the act needs to refer to that being the reason why it is being promoted as a necessary legislative response. Absent that, you run the risk which may or may not materialise that the legislation will be challenged. Then, of course, you have delay, expense, controversy. It is always better to be aware of the potential pitfalls and address those. As I said, it may well be the case that there is sufficient evidence to justify the transition from local government to state, but absent reviewing it and assessing it you run the risk—

Mr JANETZKI: We have no knowledge of any wrongdoing in the state—

Mr MacSporran:—that you are simply saying because it exists in New South Wales that it must exist here which might or might not be sufficient.

CHAIR: We might give the member for Redlands a go.

Ms RICHARDS: The bill contains provisions that result in what could be significant impacts on the operations and functions of council. I am not speaking specifically, but if a councillor or mayor were to face criminal proceedings could you reflect on whether it would be wise to consider amending the Local Government Act to establish safeguards that would provide public confidence and ensure the effective ongoing operations of council? Could you also reflect on what ministerial powers might be put in place to mitigate the impact of such circumstances?

Mr MacSporran: With the proviso that you have quite correctly identified that it would be inappropriate for me to talk about any matters currently before the court or indeed any matters that are currently operational from our point of view—it would be inappropriate for me to comment and speak about specific matters—as a general principle, the whole reason for the Belcarra recommendations is to increase, ensure and maintain public confidence in the system of local government. It is a very important sector in our democratic process. There are huge corruption risks in that sector, probably the greatest corruption risk of any sector. You need to have the public understanding that it is transparently governed and the measures that are in place are sufficient.

If, for instance, you have a serving councillor who is charged with a criminal offence, there should in our view be measures in place to allow the minister in an appropriate case to have the power to make a determination that that person should be stood down, suspended with or without full pay, pending the determination of the matter of controversy before the court. That is not to deny a particular person the presumption of innocence. Everyone is entitled to the presumption of innocence. Fundamentally, the first reason the minister should have that power in our view is to ensure that there is public confidence ongoing. That is the first thing.

Secondly, for a person who is charged with a criminal offence it is understandably an extremely stressful time. If someone is going to defend the allegation, as they most often can and do, there is a huge amount of work to be done, a huge amount of time and effort into mounting a defence. It is distracting frankly, understandably. It is human nature. You cannot possibly be a sitting councillor charged with a criminal offence and hope to be able to perform your role as a councillor to the necessary degree that people can be confident that you are well and truly focused and will react appropriately.

If in fact your criminal charge relates to an allegation that concerns your conduct as a councillor, the difficulties are compounded because you would find it hard to divorce your ongoing role as a councillor from your need to stay clear of the areas where the allegations are concerned. Again, no-one is making a judgement on the guilt or innocence of people. You are presumed to be innocent, but for transparency you should not be dealing with areas in which you are accused of breaching your trust.

At the moment, as I understand it, the minister only has the power to step in and appoint an administrator or dissolve the council where the council is in fact dysfunctional, where it cannot function—in other words, it cannot pass motions or resolutions. That does not address the situation where there might be a block of votes that allow you to pass motions but for any practical purpose the council is dysfunctional. That needs to be addressed.

I think it is a similar situation here where, if the minister had the power to at least conduct an assessment and in an appropriate case order that someone stand aside or be suspended on full remuneration until at least the air was cleared, there would be no detriment, especially if they were on full remuneration, to the individual pending the outcome of the criminal proceedings and the public could be assured that appropriate measures had been taken to guarantee that their matters before council and the way council functions more generally would be entirely appropriate and conducted with integrity and transparency in the short term.

The classic example of that is the Queensland Police Service. If a police officer is charged with a criminal offence, it is reasonably routine these days for one of those steps to be taken for the officer to be stood down or suspended with or without full pay. That is again for the simple reason that there needs to be public confidence in the service. The local government sector is no different in our submission because it is a very important sector and its reputation is extremely important for public confidence.

Ms RICHARDS: You would suggest it would be reasonable to look at the Local Government Act?

Mr MacSporran: I think so. Whilst there is nothing in this at the moment, these measures are designed to increase transparency and accountability in this sector, so it would be an ideal opportunity to at least consider that topic.

Ms RICHARDS: Yes, particularly when the penalties imply custodial sentencing. It is quite serious in nature and that impact could be quite significant on councils across Queensland.

Mr MacSporran: That is very true.

Mr O'CONNOR: One of the biggest queries that has come up today is about the implementation of these laws. I am sure that you have noted the absence of the Electoral Commission here today. Are you able to comment on how these laws will be implemented?

Mr MacSporran: I think the Electoral Commission's concerns are clearly legitimate and well founded in this sense that these things cannot be done overnight. We are talking about a raft of measures that do involve the ECQ and a ramping up, if you like, of their presence and role in this sector.

As opposed to simply being a box checker, they need to be proactive and actually manage the risks in this sector and manage the disclosure obligations and so forth and the compliance obligations. Bear in mind that the next election for the local government sector is not until 2020, if I am right, and likewise at the state level it is also late October 2020, there is sufficient time to properly resource and upskill the ECQ to implement these measures in a way that will ensure that they as a regulator and a watchdog can be effective in this space.

We are not talking two years to get the ECQ up to speed. It is a matter of employing the right people, upskilling those who are currently there—some of whom I know and clearly have the capability. It is a matter of getting that culture changed to reflect what is intended out of this.

CHAIR: Earlier you made reference to the definitions. Because the definitions might not include everybody who has the potential, there is still a worthy reason to go forward with this. That is true too of the enforcement by a body. Because it is a process of ramping up and changing attitudes, that is not a reason necessarily not to do this, not to make this change to have more confidence in government.

Mr MacSporran: That is entirely true. What it is a reason to do is ramp up more quickly the regulator's capacity because the reforms are absolutely necessary and important. It is necessary that they be monitored and regulated. You need to expedite the regulator's capacity. It is certainly not a reason, as you say, to drop the whole reform bundle because there is no-one who can enforce it.

Ms RICHARDS: Where we saw in the New South Wales situation it had been circumvented, do you think the legislation is solid enough in terms of penalising those who seek to develop and create schemes to circumvent using prohibited donors?

Mr MacSporran: I think so. We thought long and hard about the definition of 'property developer' because of the obvious means by which it might be circumvented. For that reason, it is a very broad definition. We looked at the New South Wales definition, and it is clearly very broad. It may not catch everyone it is intended to. With the addition of the provision that allows it to be an offence if someone tries to circumvent it, I think it is a very useful combination of measures to act, firstly, as a deterrent which it should do and, secondly, to catch those who do step out of line to try to circumvent it.

In practice, as is often the case with these sorts of measures, there will be examples thrown up that are not currently covered that should be. That can result in submissions to make amendments to capture those cases. With legislation, as savvy as the draftsman is and as all of us are in trying to assess the needs for what it is designed to cover, there are always loopholes and there always will be, especially in this field. Human ingenuity even surprises me sometimes, to see how people attempt to get around legislation, especially without creating offences and so forth, but it can be a learning experience. We think at the moment that this is broad enough to cover most of those that are likely to be in this space and, for those that are not, we may need to look at them more carefully down the track.

Ms RICHARDS: That clause might alleviate the concerns of the likes of the LGAQ, who are suggesting that it might go underground further. That is the counter to that?

Mr MacSporran: Exactly. The fact that someone is going to go underground to beat the legislation does not mean you should not enact the legislation. It is no reason at all. At least if you deter some, you are ahead. You are winning and then you just need to—

CHAIR: Spread the principles of your goal.

Mr MacSporran: Yes.

Mr STEVENS: Given the CCC budget is around $80 million a year and about 300 staff—

Mr MacSporran: $55 million unfortunately.

Mr STEVENS: If I were there, I would give you $80 million.

Mr MacSporran: We might take you up on that.

Mr STEVENS: Given that the ECQ, Electoral Commission Queensland, is now charged with policing this matter, what budget will they need, in your view, to police it effectively?

Mr MacSporran: It is very hard for me to put a figure on that. For that very reason, all we could say in our report is that they should be adequately resourced. That will be a matter for the Electoral Commissioner to advise the government on what he or she needs to do the job effectively—again, bearing in mind that their role becomes most acute at election time, in the lead-up to that and the campaigning time and a more general monitoring time throughout the other periods. They will need extra staff for a short time in those very busy periods but, fundamentally, they will need an ongoing long-term capacity within the organisation to deal with most of these issues. Really, to be fair to them, I could not put a figure on it, but it is extremely important—

Mr STEVENS: Substantial.

Mr MacSporran: It could be substantial. In fact, it would be, I think, for them to do the sort of work they need to do to be effective.

Mr STEVENS: To address all of these matters that were raised through the perception out of your inquiry, did you consider that if a group donates money—a mining group, a developer group, or a union group, for instance—to a councillor, then that councillor would then have to absolve themselves from all discussion and voting. Does that not fix the problem without banning one particular area and not others?

Mr MacSporran: I think the problem with that is that councillors are elected to represent their division. If, in fact, because of a donation to their campaign they are prevented from taking part in the democratic process, the voters are being let down, as it were. Ultimately, if you have a lot of councillors standing down because of that fact—they have a conflict through a donation being disclosed—who is going to vote? Really, it is the best reason for having a ban on all donations. The other way you can do it, as we had evidence from one councillor in Belcarra, is to say 'On 31 occasions I declared a conflict of interest because I had donations from developers but, in the public interest, because I am elected by my constituents, I felt the need to vote and I did.'

Mr STEVENS: I am aware of that, yes.

Mr MacSporran: You can see the problems. Then you get the developers who donate to all candidates, because they are hedging their bets about who is going to get in and who is going to give them access. Access at the very lowest level is a form of corruption. You are getting something that the average person on the street does not get.

Mr STEVENS: So lobbyists are corrupt? Is that what you are saying?

Mr MacSporran: No, it is a risk of corruption and that is recognised by the need to have a lobbyists register and to carefully monitor who is in there and for what purpose and what they are doing. It is all about transparency.

As I say, if it were not for the High Court's view and the current law being that you need an evidence based proposal to ban any sector, we would have recommended that you ban them all. That is the only way you can guarantee that there is no improper influence from a donation point of view. That would not protect you from backdoor lobbying and so forth but, at least you would be removing the greatest corruption risk. That is not possible at the moment given the state of the law currently.

CHAIR: In your initial statement you talked about the perceived corruption wearing away at the confidence that people have in their local government. Is the state government immune from that process?

Mr MacSporran: I think it is fair to say, as the deputy chair acknowledged earlier in one of the questions he asked or statements he made, regrettably, the general public does not have great confidence in politicians of any kind—federal, state or local. That is the sad fact in our current democratic system. That gives rise and can give rise to this perception problem. As I say, how insidious and pervasive that is in the state sector is something that needs to be considered to justify this transition into that sector. I think it would be naive to say that it does not exist.

CHAIR: We heard the members of Brisbane Residents United speak. They were very passionate, honest and direct. They had very little confidence in any of the democratic systems. I would like to see legislation that continues to build trust and belief that people are making the right decisions for the right reasons.

Mr MacSporran: Yes. We have the same view. It is all about people believing that there is a system in place that is the best practice system that it can be to prevent corruption. That is the first stage. If corruption is occurring, it will be identified and dealt with. That is what generates public confidence. You take the old system of donations needing to be declared 16 weeks after they had voted. Frankly, that just destroys public confidence. Someone finding out four months down the track that a developer has given a huge wad of money to a councillor who sat on the decision to okay a development going up beside their house, nothing destroys public confidence more readily than that. Equally, the reverse is the best panacea to that lack of confidence.

Mr STEVENS: Just following on from that, that is an absolute classic example in terms of the recent inquiry. Without commenting on the case itself, you mentioned earlier that the unions were quite happy to make a donation to a candidate who they liked in the Gold Coast campaign. There were major declarations that there was no involvement one way or the other. I find it incredible that anyone would believe that, just like they do not believe that property developers give for no reason, they would give to an Independent candidate. As I understand it, the unions have been notorious for funding the Labor Party for many years and out of the blue they want to fund an Independent candidate. I find that incredibly difficult to swallow in perception.

Mr MacSporran: If I remember—and I am going solely by memory here—their evidence was, as I said before to Mr Janetzki, that they assessed the policies being espoused by the particular candidates concerned. They then interviewed the candidates to see if they were true to those policies and more generally what sort of people they were. Then their executive decided on that basis to make a donation, because they thought that the sort of things that those candidates stood for were similar to what the unions stood for and were promoting for their members and, in that sense, it was a good thing to do.

We all know the reputation of the CFMEU in the industrial scene, but that is quite a different issue from that scene that we are talking about—making donations and so forth. In our inquiry, we found no evidence of those donations being given for potentially corrupt practices. It may be that there is evidence of that kind. If that evidence were uncovered on review, we would welcome these initiatives being extended to that sector as well, as well as the mining sector if there was evidence that they were improperly corruptly influencing decision-makers in that and other sectors.

Mr STEVENS: The CFMEU is quite strong in the building industry, as you are aware, and the building industry is very strong in major property development, particularly on the Gold Coast and Brisbane. There is a great nexus there between that section and the property development industry.

CHAIR: I think this is the third time that this has been asked. The member for Redlands has a question. Do you have anything to add?

Mr MacSporran: I say again that it is a matter of evidence. We would support any move to ban donations from a sector where the evidence showed that there was a corruption risk, perception or real. We are totally at one about that. As we said in our report, we were constrained to recommend reform where the evidence justified it so there was really no realistic prospect of a successful challenge to the legislation. That is the last thing that we wanted—to recommend something that was going to be knocked over in the High Court. That is just a waste of everyone's time. You could not ignore those High Court cases. We needed to account for that. Absolutely, if there is evidence of improper donations for a corrupt purpose, they should be banned—if that evidence is there.

Ms RICHARDS: I think it is fair to say that those donations have possibly been values based by comparison. In speaking with the Noosa council this morning and the LGAQ in regard to the scope of the current legislation as it sits with statutory meetings only, there has been discussion around workshops and committee meetings and the potential in terms of declaring conflicts. I was wondering if you could reflect on that.

Mr MacSporran: The whole purpose of those recommendations, the conflicts of interest suite of reforms, was to make it very clear that every councillor and every group of councillors had an obligation personally and collectively to get it transparently right. It has been said—I think it is in the LGAQ submission, from memory—that the laws changed from this regime essentially back to what we have now before this bill was introduced because of advice that the CMC gave. I must say that that would have been before my time. Yes, we have checked our records. We cannot find any advice that we ever gave to warrant the repeal of that legislation. We recommended the current bill recommendations.

People who are concerned about, 'Wouldn't you get people coming into those council meetings with a bloc of votes that would, with numbers, exclude a councillor who had no conflict but the bloc said that that councillor had a conflict and should be excluded so that they could improperly exclude

that councillor from that process?' That is a genuine concern. If that happened, that would be an allegation that should come to us. That is corrupt. We would deal with that ourselves. That would be an extremely serious allegation. It would not be hard to prove that it was a device to sideline a councillor whose vote was important to redress the numbers. If there were no basis, that is clearly corrupt conduct. As I say, that would potentially be a criminal offence.

We think that is sufficient to address that concern. The greater good is served by everyone at the meeting thinking, 'Should we all stay and vote? You have not declared what we think is a conflict. I know your brother is a recipient beneficiary of this. Let's talk about it.' 'Okay, I didn't know that. You've convinced me there is no impermissible conflict and you can stay. Do we agree on that? We all agree. Can we get on with the business?'

I think the concerns about this suite of recommendations is not a real concern. I think that you will find that, if this goes through, once councillors start to operate with that mindset and using those principles, this is a very good reform that protects everyone on the council and, more importantly, protects the integrity of the council decision-making process. It encourages them to document reasons. If you say that Joe Blow has a conflict, you have to document why, and on what basis. It is not easy to do if there is no legitimate basis. I can see the concerns, but I think that is really dancing at shadows.

Ms RICHARDS: Thank you.

Mr O'CONNOR: The local government election that you looked into was before the introduction of real-time disclosures. Does that impact the recommendations that form the basis of this legislation?

Mr MacSporran: They came in after the local government election and before the state election, yes.

Mr O'CONNOR: But in terms of the local government election, does the fact that we now have a real-time disclosure system impact on the recommendations that you have made to form the basis of this legislation?

Mr MacSporran: It helps. It is certainly in the right direction. I think we tweaked that to say that we had a seven-day period to tighten up some of the loopholes in the way that it had been working before.

Mr O'CONNOR: Would you perhaps have had different recommendations if this were in place for the particular election that you were looking into?

Mr MacSporran: I do not think so. I think it is just part of a broader suite of reforms that, as we say, all interrelate to give a package of reforms that altogether produce a more transparent and accountable system.

Mr O'CONNOR: I am interested in the perception versus the evidence, or reality. Does that mean that anyone could create a fuss with perhaps a shred of evidence and create a perception around something and, in your opinion, that would lead to the need to have these sorts of reforms?

Mr MacSporran: No. I would not say 'perception'.

Mr O'CONNOR: There are a lot of vexatious complaints.

Mr MacSporran: Yes, you are right and, as we have sadly found, they usually ramp up at election campaigning time, although I must say that the state election last November was a clear exception. Those sorts of allegations that have no substance at all are usually very easily dealt with. You find more often people who know part of a story and add two and two together to get five. Often, there is something in it. The perception problem is created because the system has not been transparent.

That perception is extremely damaging to public confidence. The example I quote is in the 2016 election. You might remember the opposition mayoral candidate in Brisbane made an allegation against the sitting Mayor that he was corrupt because he had favoured in a land deal recommendation an LNP donor. It came to us. It was very close to the election. Luckily, we were able to investigate it fairly quickly and clear the Mayor. We said so and we gave the reasons.

The Mayor, who had been chair of the committee and who made the recommendation to the state government to give this person the benefit of the land sale, had not declared at that committee meeting that he was an LNP donor. They had not documented properly the reasons they preferred him over some other candidate. The reality was that, yes, he was a donor, but there were five or six very good commercial reasons, not the least of which was that his offer to purchase the land was about half a million dollars more than the previous offer that had been made 12 months earlier. There were good commercial reasons. All they had to do was to declare the fact that he was a donor, but

say that it had nothing to do with the decision to recommend him as the recipient of the recommendation because of these five good commercial reasons, all of which were noted in the minutes of that meeting.

The allegations are then made to us. We go to the Major and ask, 'What's this about?' He says, ‘Here are the minutes contemporaneously compiled. The conflict was declared. It was managed. Here are the reasons, not involving his donation to the party, we recommended him to get it.' We wrote to the Mayor and said, 'That would be the way you could avoid placing yourself in jeopardy.' Unfortunately, he said, ‘Thanks, very much' but he did not think that he should change his ways about how he managed those things. That is how they could have been managed.

In terms of the person who made that complaint, you could see that it was bona fide. He honestly believed that there had been some corruption involved, because he was a donor. Frankly, on the evidence that we saw, that is a reasonable conclusion. It is only when you dig down—and, of course, that wasted our time and resources. When that happens in these things we have to drop everything if we can and divert resources from things that are more important and deal with these things in a limited time frame.

That is why the perception is as damaging as the reality of corruption, because if you undermine the confidence of the public, you might as well be corrupt, because people think you are. If you have not taken steps to put in place a system that guards against that, you are not doing your job. You are not operating with integrity.

CHAIR: It being 4.30 pm, we will conclude. Mr MacSporran, I thank you for your contribution. I know that all of us here throughout our careers in representing people want to build confidence in local government and state government. Thank you very much for your contribution to this debate in the submission, the initial report and in your ongoing investigations. That concludes the hearing. I want to thank everyone who participated today. I also thank the Hansard reporters. A transcript of these proceedings will be available on the committee's web page in due course. There were some questions taken on notice earlier. Answers to those questions will be required by 5 pm on Tuesday, 3 April, so that we can include those in our deliberations. I declare this public hearing of the committee's inquiry into the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill closed.

The committee adjourned at 4.33 pm.