



INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

Mr J Pearce MP (Chair)
Mr CD Crawford MP
Mr S Knuth MP
Mrs AM Leahy MP
Mr AJ Perrett MP

Staff present:

Ms M Westcott (Acting Research Director)
Ms T Struber (Inquiry Secretary)

PUBLIC HEARING—EXAMINATION OF THE LOCAL GOVERNMENT ELECTORAL (TRANSPARENCY AND ACCOUNTABILITY IN LOCAL GOVERNMENT) AND OTHER LEGISLATION AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 17 FEBRUARY 2017

Brisbane

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Committee met at 9.31 am

CHAIR: Good morning. I declare open the public hearing for the committee's examination of the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016. Thank you for your attendance here today. I am Jim Pearce, member for Mirani and chair of the committee. The other committee members here with me today are: Ms Ann Leahy, deputy chair and member for Warrego; Mr Craig Crawford, member for Barron River; Mr Shane Knuth, member for Dalrymple, who will be attending some time during the morning; and Mr Tony Perrett, member for Gympie. Mrs Brittany Lauga, member for Keppel, is unable to attend the hearing today. Those here today should note that these proceedings are being broadcast to the web and transcribed by Hansard. Media may be present, so you may also be filmed or photographed.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. Witnesses should be guided by schedules 3 and 8 of the standing orders. The Parliament of Queensland Act 2001 requires the committee to examine the bill to consider the policy to be given effect by the bill and the application of fundamental legislative principles. Today's public hearing will form part of the committee's examination of the bill. Before we commence, could you please switch off your mobile phones or put them on silent mode.

McFARLANE, Ms Dianne, Executive Director, Corruption, Crime and Corruption Commission

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

CHAIR: I now welcome representatives from the Crime and Corruption Commission. Would you like to make an opening statement?

Ms McFarlane: The Crime and Corruption Commission welcomes the opportunity to address the Infrastructure, Planning and Natural Resources Committee with respect to the current bill. In December 2015, the CCC published a report titled *Transparency and accountability in local government*. This report followed a commission investigation in 2014 and 2015 which dealt with allegations about activities and practices in one council in the lead-up to the 2012 local government election. These activities contributed to perceptions of corruption and drew to the CCC's attention the broader questions of the establishment, titling and use of incorporated associations by elected officials, the use of and disclosure requirements for funds raised during an election campaign and the regulation of gifts and benefits to elected officials. It became evident to the CCC during that investigation that current legislation did not adequately prescribe how a candidate or an elected official must treat campaign funds or donations in a range of circumstances. This is particularly relevant to the time frames for disclosure of donations, the transition from one disclosure period to the next disclosure period and a lack of alignment between local government legislation governing thresholds for donation disclosure.

The aim of our public report was to make recommendations for legislative reform that would increase transparency in the local government sector, reduce perceptions of corruption and promote public confidence in the probity of elected officials. We are pleased to acknowledge that of the six recommendations contained in that public report the government fully supported four recommendations and provided part support for another recommendation. In that regard, the bill addresses most of the concerns raised in the CCC's public report, and the CCC's written submission in relation to the bill noted our support for the proposed statutory changes. It is my intention to restrict any further comment to those sections of the bill where we feel further change would enhance the ongoing reforms needed to achieve full transparency and accountability in the local government sector.

With respect to disclosure time frames, the CCC would like to reiterate its support for the bill's inclusion of contemporaneous disclosure obligations and the new electronic system to facilitate improved transparency during local government elections. However, we would urge an amendment

to the bill to make it clear that not only is reporting on gifts prior to polling day required but it must be done so within a minimum time frame from which time the gift was received or in any event prior to polling day. This we accept is a balancing exercise between achieving best practice and transparency for the public who want information in relation to the donation and at the same time acknowledging that candidates are very busy prior to the election. The CCC is of the view that candidates should be given a reasonable time period to record the receipt of donations—for example, seven days—and that this should be prescribed in the act and/or the associated regulation.

With respect to transitioning from one disclosure period to the next disclosure period, the CCC supports the proposed changes to the legislation which require candidates to account for unspent funds donated for the purposes of their campaign by either retaining the unspent funds in a dedicated account for use in future campaigns and/or donating them to charity. During our activities, the CCC has identified a systemic issue of candidates not knowing what they can or cannot do with unspent election funds. While it is fair to say that most candidates seem to spend all or the majority of the funds that they raise for each election campaign, the changes proposed in the bill will in our view increase accountability in relation to unspent funds. We do, however, note that clauses 25 and 26 of the bill go beyond the recommendations contained in the CCC's public report.

As I have just said, the CCC's submission supports the proposed changes to the legislation which require candidates to account for unspent funds by either retaining them for future election campaigns and/or donating them to charity. Implicit in this submission is its omission of support for the proposal that the candidates who are members of a political party during the disclosure period may pay the unspent money to a political party. The purpose of this CCC's recommendation in relation to this issue was to improve accountability in relation to the expenditure of donations—that is, to align or restrict expenditure of donations to the purpose for which they were received; namely, a candidate's election campaign. The provision to allow a donation to a charity was to provide an appropriate way for candidates to divest themselves of unneeded funds at the conclusion of the election campaign. This would not create a conflict or be controversial in any particular way.

The CCC is not aware of the genesis of the provision to allow candidates to provide unspent funds to a political party. It may be that the proposal may have unintended consequences which have not yet been considered. The CCC, however, considers that such a proposal may be appropriate where a candidate has been endorsed by a political party to contest the election. In those circumstances it is likely that funds have been provided by the party to support the candidate and donations made to the candidate in the knowledge that they may or may not decide to return leftover funds to the party which nominated him or her. You would be aware that the CCC is currently conducting an investigation into local government elections held last year. This may provide an appropriate opportunity to consider this proposal further. At this time the CCC is unable to make any further comment in relation to the proposed legislative change to amend sections 126 and 127 of the Local Government Electoral Act as they relate to the payment of unspent donations to a political party.

With regard to the threshold for a donation declaration, the CCC notes that the committee received several submissions suggesting that the threshold for declaring donations should remain at \$200. While the actual minimum threshold is a matter of policy, the CCC's report noted the inconsistency in reporting thresholds for candidates in the various statutes, and we believe the bill addresses this issue. It is the CCC's experience that most of the complaints relating to the receipt or non-disclosure of donations come from a few large councils where total donations received are upwards of \$100,000 or \$300,000. This becomes a balancing exercise of recording donations that are significantly large such that the public would have a legitimate interest to know of their donors versus the administrative burdens associated with low level transactions. In this regard, the CCC supports the proposed change to \$500.

In terms of declaration of campaign expenditure, the CCC considers that full disclosure is important for utmost transparency with respect to the candidate's election campaign re expenditure. While dedicated bank accounts address the issue to some extent, we continue to maintain the view that the disclosure obligations governing donations should be expanded to include the expenditure of those donations. It is all about transparency and the perceptions of corruption. The CCC has recently seen a high level of noncompliance with candidates either not operating a dedicated account or expenditure for the campaign coming from their dedicated account and/or a mixture of other personal accounts. This often happens where candidates say they are self-funded. The reality is that much of the scrutinising of the expenditure of the election campaign comes from members of the public, other candidates and/or the media rather than from oversight bodies such as the QAO, the CCC or the Electoral Commission in Queensland. The scrutiny relies upon transparency of where funds are coming from and where they are being directed to.

While the proposed amendments will provide greater accountability in relation to the receipt and expenditure of funds, it will not in our view give greater transparency to the issue. The CCC is of the view that by showing both sides of the ledger—that is, the candidate's incoming funds and the expenditures—would give stakeholders greater visibility of the campaign funding. The CCC considers that there is also a strong public interest in seeing how candidates spend their funds—for example, consideration of payments to family members and/or vehicles, electronic devices and the like.

In conclusion, I would like to say that we are very conscious that we have an ongoing corruption investigation into allegations relating to the 2016 local government election, and I am limited in providing any details in relation to that investigation. I would like to thank the committee for the invitation to the commission to speak to the bill today.

CHAIR: Mark, do you have anything you wish to say?

Mr Docwra: No.

CHAIR: I know that we are going to have some questions around the candidate funds, so I might leave it to my colleagues to ask those questions. Could you give us a brief rundown on the complaints process and how that works? Are there any penalties for those people who make frivolous complaints?

Ms McFarlane: We receive complaints in a number of ways. We can receive them either directly from members of the public and/or from a referral from a public sector entity where a complaint has been made to them. We have an assessment of those complaints against what we call a case categorisation, so we have a number of criteria for which we look at and compare the information that we receive to determine whether (1) it is in the CCC's jurisdiction and (2) the level of the information provided, whether or not we say it is of importance to the organisation, whether somebody else can deal with it other than the CCC. We have a graduated process for dealing with that—a triage, if you like. The act provides for penalties in relation to frivolous and/or vexatious complaints. We do consider that as part of our discussion as to whether that is a possibility. We also consider whether or not it could be a false complaint. Again, the CCC Act provides for penalties in relation to that.

Ms LEAHY: In relation to frivolous complaints, that provision I think has been there with the CCC for quite some time. Have there ever been any charges laid for frivolous complaints in relation to candidates that you can recall?

Ms McFarlane: To the best of my knowledge, no. It is a complicated section of the act. Proof as to whether or not someone has knowledge that it is frivolous or vexatious is difficult. The act provides for a warning system to say, 'You have made this complaint before. We believe it is frivolous' or 'vexatious' and allowing people to not continue with that. It is not always easy to be able to determine from the point of view of prosecution that somebody has made a frivolous or vexatious complaint. To the best of my knowledge, we have not prosecuted an elected official for making a—Mr Docwra is reminding me that we often remind people that, if they continue to make that complaint, we believe that it is frivolous and that they should discontinue, and that is certainly correct.

Ms LEAHY: That was my next question—

Ms McFarlane: Yes.

Ms LEAHY: Whether there were warnings that may have been given to people. Obviously, as we know, there are vexatious litigants and there are various people—

Ms McFarlane: We would do that as a matter of course and, I would say, not infrequently would we advise people in that.

Ms LEAHY: You mentioned the expenditure of candidates' campaign funds. Was that part of the CCC's recommendations—the inquiry that was done into transparency and accountability in local government in December 1915? Was that a recommendation?

Ms McFarlane: In relation to unspent funds?

Ms LEAHY: In relation to just expenditure, because I understood—and please correct me if you feel that I am incorrect—that you were advocating not just any gifts or income but also how a particular candidate spent those campaign funds. Was that a recommendation?

Ms McFarlane: Recommendation 5 provided that the disclosure regime should be expanded to include a declaration of expenditure.

Mr CRAWFORD: Do you expect to see an increase in the number of complaints due to the transparency that we are likely to have out there now? Now that members of the public and the media will be able to see all of that extra information, do you think that your complaints will go up or down? What is the thought there?

Ms McFarlane: I think that is hard to predict, because it is a balance. Sometimes when there is more information out there, people will not make a complaint because they are better informed. Of course, you will get a temporary increase because people have more information and are misinformed. It is difficult to say one way or the other. I imagine that we may get more complaints. How we would deal with those is we would treat that as part of the temporary educative process and feel that the members of the public in particular may be better informed, but we would not see that being sustainable long term.

Mr CRAWFORD: You mentioned before the triage. You might be able to knock a lot of those complaints out at an early stage rather than commissioning investigations because of all of that information that is available?

Ms McFarlane: Certainly, that would be the case. We would have access to that public information. We would be able to go back and inform that we have looked at it and it is okay. It certainly allows our pre-assessment inquiries. It is much more visible to us what, in fact, occurred and we knock them out, as you say, very early without having to go through the use of powers, or investigation, or the like, yes.

Mr PERRETT: I want to talk about dedicated accounts and the expenditure that comes from that but, more importantly, the funds that go in there, be it donations or other means of fundraising for elections, particularly around self-funded candidates. I use the example of a lot of smaller councils where there are no political parties, where a lot of the candidates are self-funded. For example, they put in \$10,000. They expend \$8,000 of that and there is the remaining balance. Is there some merit in having a provision that, if they are self-funded candidates, those remaining funds in that account are then available to go back directly to that candidate—much along the lines of what has been suggested in this bill with respect to parties? What are your thoughts around that?

Ms McFarlane: I think that is a good question. Certainly, if the act was clearer in relation to, as you say, the self-funded and what you could do with unspent funds, I think that would be a good thing. I think that would assist. The issue, I suppose, is if they were completely self-funded, that would be very clear. If there was a mixture of funds in there—as in some self-funding, some from other donations—it then becomes difficult to say which money was spent, I suppose. I guess my preliminary view would be that, yes, it would, again, give that level of transparency. It would also come with those other issues of how, when you have a mixture of funds, you then separate them for the purposes of returning either to a political party and/or to a donor or even if that donor is the self-funded.

Mr PERRETT: I can see some merit in that—if they are fully self-funded. It may be a case of managing the process and topping up that account as necessary. There may be an initial amount that goes in—as I said, \$10,000—and you find out that you spent only \$8,000 during that campaign. I was wanting to hear your views around self-funded candidates. That is fine.

The other question that I have is around third parties and the disclosures there. I think it was mentioned in our discussions earlier this week with regard to ratepayers groups and the like that act in a political way against a candidate, or in favour of another candidate and that they may need to declare those funds—some of the process of disclosure around that and whether this bill covers some of the transparency issues that may be there where you have third parties that are acting on behalf of candidates, either for or against them.

Ms McFarlane: I guess my preliminary view would be that the current legislation provides for declaration by third parties for donations, so there should be a transparency in relation to that. I do not think that the bill enhances that in any particular way. The provisions at this stage would be considered adequate. I think that would be my preliminary view on that.

Mr PERRETT: Thank you.

CHAIR: If we have a situation where a particular person would like to donate a sum of \$5,000 to the candidate's campaign but really does not want the public to know that he or she is doing that, so they organise several friends to donate \$490 each, for example, which is going to come out pretty close to the \$5,000, is there any way that that can be stopped? Where is there a trigger for that to be investigated?

Ms McFarlane: Firstly, the declaration will simply tell what you was declared. It will not tell you how or why that declaration was made in that particular way. Falling short of an investigation and looking at the motives and the reasons behind why that occurred in that particular way, it is difficult to say. It probably would require some thorough investigation by the CCC as to whether there was any corrupt conduct or corrupt motive behind the payments.

CHAIR: So—

Ms McFarlane: Sorry, can I just say? Regardless of whether that is \$500 or \$200; it does not necessarily change the—

CHAIR: For sure. I understand.

Ms McFarlane: The structuring, I suppose, is what you are alluding to.

CHAIR: What would trigger you to take a look, if that were happening, to a specific account?

Ms McFarlane: We would have to look to see whether there was any evidence to suggest that there was any corrupt motive behind that structuring of those donations.

CHAIR: It does not really have to be a corrupt motive, does it? It is just out of friendship.

Ms McFarlane: I think it calls into question some bona fides and that can give rise to the perception of a corrupt motive. It really is about that transparency of the donation and the disclosures.

CHAIR: With the legislation that we are taking a look at, are there any areas where you think it can be tightened, or made better over and above your recommendations?

Ms McFarlane: Our submission in relation to what we call recommendation 2 with the Associations Incorporation Act, really, what we are saying is that, where there is a prohibition on the use of an associated incorporation for receiving and holding a donation, I think the bill currently looks at it by way of example and it addresses that issue. We think that it is probably more instructive to have that in a subsection on its own. I think that can enhance it. Of course, we continue to maintain that there should be a provision for the disclosure of expenditure.

CHAIR: Thank you.

Ms LEAHY: The Associations Incorporation Act 1981 is Queensland legislation. There is other incorporation legislation in other states. With Facebook, GoFundMe and all of those sorts of things, there are things that are international as well that funds can be channelled to. If a candidate was receiving something from something international, tell me what would happen then. Tell me how that would operate.

Ms McFarlane: I do not know that I could immediately answer that question. There would probably be some fairly complex legal consideration as to whether or not it was in breach of either the Associations Incorporation Act and/or the Local Government Electoral Act. We would probably have to do a fairly comprehensive legal analysis before we could determine—and I think it would be on a case-by-case basis—as to what, in fact, the particular structure was.

Ms LEAHY: Say, for instance, there is an organisation in America and there are sister organisations in Australia and that American organisation received funds from Australians in America and came back. Money moves around the world. There is no doubt about that. You can come back to us on notice. That is fine. I sometimes look at these things and think, 'We are only a state. We can only legislate for the state but there is a whole world out there where these things can happen.'

Ms McFarlane: I think I would prefer to take it on notice. It is a very interesting question.

Ms LEAHY: I am happy to. It is just one of those things and I am happy for you to take it on notice and give it some consideration.

Ms McFarlane: Thank you.

CHAIR: Would it be possible to have that back by Tuesday?

Ms McFarlane: I think so. I think we could give some response, yes.

CHAIR: Mark, you might be working over the weekend.

Ms LEAHY: Sorry.

Mr Docwra: I noted your earlier comment at the start about people having their weekends.

CHAIR: Unfortunately, time has expired. Those things that were taken on notice, if we could have them back by Tuesday, the 21st. That would be lovely, thank you.

HANNAN, Mr Luke, Manager, Planning, Development and Environment, Local Government Association of Queensland

LANGHAM, Mr James, Solicitor, Planning and Environment, Brisbane City Council

NICOL, Ms Sharon, Strategic Planning Manager, Brisbane City Council

CHAIR: I now welcome representatives from the Local Government Association of Queensland and the Brisbane City Council. I invite you to make an opening statement.

Mr Hannan: The LGAQ welcomes the opportunity to provide feedback to the Infrastructure, Planning and Natural Resources Committee on the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016. As stated in the submission before you, the LGAQ has already made a submission on the Crime and Corruption Commission draft report, *Transparency and accountability in local government*, was a member of the review panel which informed the government's response to the final CCC report and was consulted during the development of the bill. In principle the LGAQ supports the intent of the bill and we believe that the original LGAQ submission to the CCC has mostly been incorporated into the bill and the explanatory notes.

The primary reason for the LGAQ's submission to the committee and appearance here today is regarding the proposed amendments to the Building Act and planning legislation that are intended to clarify the relative responsibilities of private building certifiers in councils in assessing building work in a way that allows each to effectively address their respective interests. Although the objective of the changes and open dialogue with the department is welcomed, the LGAQ has identified a number of clarifying amendments to remove any possible ambiguity and achieve alignment between legislation. As stated in the LGAQ submission, recent decisions in the Planning and Environment Court have raised serious concerns for some councils. The effects of the decisions are being predominantly felt in Brisbane city at the moment but in the future could equally be felt in other councils if the building industry adopted similar approaches. Apart from the significant costs to the community of challenging these decisions in court, the impacts on the ground have resulted in uncertainty for the community on what can be built, what can be demolished and what checks and balances are in place to ensure community values are protected. With Brisbane currently being at the coalface of these issues, I welcome the attendance of colleagues from Brisbane City Council here today who can outline in greater detail the issues at hand. That ends my opening statement. Thank you, Mr Chair.

Ms Nicol: Brisbane City Council thanks the LGAQ for the invitation to add to their oral presentation today on the proposed amendments to the Building Act and planning legislation. Council has strongly advocated for amendments to proceed to clarify the application and approval pathways and the roles of local governments and private building certifiers with respect to building work application matters legitimately regulated by local government planning schemes. Council's interest in seeking clarity in the legislation is particularly in relation to the irreversible decisions on building work applications resulting in demolition of character buildings. In order to protect Brisbane's past and maintain the architectural heritage and character of our city and suburbs, the City Plan outlines requirements for appropriate development in Brisbane's older suburbs and for renovating, demolishing and removing some buildings.

Common accepted practice over many years prior to 2016 was that for development involving demolition of a pre-1947 character house identified in an overlaying council's planning scheme a preliminary approval was first considered and granted by council prior to the certifier assessing the development against the building assessment provisions and issuing a development permit. Council's preliminary approval assessment was limited to an assessment of the extent to which the development or demolition would impact on traditional building character. It is council's view that this is an amenity and aesthetics matter that should be the role of the local government planners.

In 2016 one certifier operating in Brisbane began issuing development permits for demolition of character buildings without prior preliminary approvals issued by council. This led to proceedings in the Planning and Environment Court, the Court of Appeal and the Queensland Building and Construction Commission. These proceedings have confirmed that there is ambiguity about the jurisdiction of a building certifier when development involves building work assessable under a planning scheme. In the past to our knowledge, six houses have been demolished in Brisbane arising from uncertainty around assessment pathways and jurisdiction of building certifiers and local governments with respect to building work assessable under the planning scheme. This has resulted

in significant media attention, community concern and irretrievable loss of character buildings in the city. Until these amendments are progressed, the uncertainty will remain and could lead to further loss of important character buildings in the city.

Due to a lack of support in the current legislation, council's experience has been that there is limited ability to pursue recourse for noncompliance with council's policy due to the timing of notification to local government of when a building approval has been issued by a certifier. Council has also found that there is a disproportionately low penalty should a certifier choose not to comply with the legislation in comparison to the financial benefit the certifier can recoup through fees issued to clients. Brisbane City Council welcomes the ongoing dialogue we have had with the Department of Infrastructure, Local Government and Planning officers on these critical amendments to the Building Act and planning legislation and we support the amendments proposed in response to our submissions. This ends my opening statement. My colleague James Langham will now briefly speak to the critical points that are raised in our submission.

Mr Langham: I think the council's submission can be summarised into four key points. The first issue relates to the timing of an approval being granted by a building certifier under sections 86 and 88 of the Building Act which relates to when that notice is actually given to the council. What is currently happening in some circumstances in Brisbane which is leading to some concerns is that a building certifier is issuing a development approval in contravention of section 83 which is a restriction on his power, but in those circumstances the demolition is being carried out before the local government is being made aware of the demolition approval being granted. In that situation we get to a position whereby the house which is a character house which is important to the character of the city is being demolished before the council receives the actual approved documents. The changes that we would be looking for around those particular provisions is to reverse that onus and ensure that the council is provided with the approval prior to the approval actually being given and granted to the applicant themselves. That way if there is a step that has not been undertaken—for example, the council's approval insofar as the character elements are concerned—the council may then be able to go down to the court and seek an injunction to stop that particular approval being granted before it is obviously too late.

The second point that the council submission seeks to address is the penalty units under section 83 for a certifier issuing an approval in contravention of that particular provision where another approval is warranted from the local government. The penalty is currently 165 penalty units. The council would be making a submission that that ought to be increased to 4,500. We understand that it is a significant increase in terms of the penalty, but as with all maximum penalties it is at the court's discretion as to how much of a penalty ought to be enforced depending on the severity of the actual offence in itself. Given the amendments that are suggested in the amendment bill to increase the penalty units under section 578 of the Sustainable Planning Act which relates to carrying out assessable development without a development permit to the same 4,500, we think in circumstances where a certifier could be arguably facilitating that unlawful development to occur that should then be increased and be on the same par as the penalty that could be issued to the applicant themselves.

The third point goes to that section 578 and it has come up in a lot of cases recently in Brisbane particularly whereby the certifier issuing the approval under section 83 unlawfully grants the development permit which the applicant then acts upon. In acting upon that development permit, the discretion for the applicant in a prosecution brought under that section is that they will say, 'We acted in good faith upon the approval given by the certifier,' in circumstances where that may or may not be a valid approval. The council is seeking to expand that to include preliminary approvals. Under the current system, the way that it is set up is that the council issues a preliminary approval prior to the development permit being issued by the certifier. However, there is no offence under the Sustainable Planning Act to prosecute an applicant for carrying out assessable work without the preliminary approval. It is simply without a development permit. There is arguably a defence available for an applicant who has been given an approval by a private certifier and in some circumstances knowingly accepted that approval without obtaining a preliminary approval from the local government. A good example of that is we have had applications that have come to council that have been refused and then subsequently there have been three houses that have been demolished by acting on a developer's development permit. It would be difficult for an applicant in those circumstances to say that they were unaware of the fact that they needed to obtain approval from the local government.

The fourth point is as Mr Hannan from LGAQ said. We are just seeking some clarification around those provisions. We are generally supportive and we have been working with the department in order to ensure there is clarity around those provisions and moving forward. It is easier for certifiers, applicants and local governments to distinguish who undertakes what roles. The suggestions that are

made are quite detailed insofar as drafting the elements are concerned, but the council's submission is that that adds clarity to the ultimate provisions and will obviously assist in the system as a whole. They are our opening remarks. Thank you.

CHAIR: Thank you very much. I am interested in the comments you have made around the activities of private certifiers and, from my own experiences as a local member, I have some concerns about some of the things that I am hearing. Are private certifiers audited or monitored in any way to make sure that they are applying and doing their work in accordance with the act?

Mr Langham: They are regulated by the QBCC. That is the regulating authority for building certifiers and they are the body under which they are licenced or registered and they do have their own powers to take action against certain certifiers. The concern we have and the reason for the penalty unit increase is to act as more of a deterrent than anything else in that for private certifiers when a penalty unit is 165 it comes down to a commercial decision in the short term. Ultimately as a cumulative effect it may result in them being deregistered, but in the short term it could be a commercial decision insofar as the fee that the owner received for the certification is significantly higher than the fee that they were otherwise paying by way of fine. Yes, they are regulated but it is to act as a deterrent insofar as saying that there should be no commercial gain out of the situation which is unlawful.

CHAIR: I take your point that they are regulated, but are they being audited or monitored to see if they are doing their job in accordance with the act?

Mr Langham: The way that the QBCC, as I understand it, acts on complaints is that complaints have been made and they then receive the complaints, look at the complaints and then take action on those complaints. It is something that is out of the local government's hands, but that is how I understand the system is currently working.

CHAIR: Okay. What about if they have a relationship with a builder and they are doing these sorts of things? I keep coming back to this point: are they monitored or audited with regard to the work they do?

Mr Langham: Yes.

CHAIR: They are, so somebody will go out and have a look at some of the jobs that they have approved?

Mr Langham: My understanding is that it works on a complaints based system. I am happy to take it on notice and clarify that point, but my understanding is that that is the way that it does work.

CHAIR: Yes, and I accept that but it still does not give me the answer as to whether there is a process in place that monitors and audits the work that these guys do where somebody can turn up and say, 'Give us a look. Show us what you've approved.' We will follow that up, because I am a bit concerned about that.

Ms LEAHY: Given the impact on the private certifiers by the proposed amendments, what sort of mechanism do they have to provide feedback as a stakeholder group to the Brisbane City Council or LGAQ? Do they provide any feedback to you?

Mr Hannan: Through the discussions on the amendments, just to clarify?

Ms LEAHY: Yes.

Mr Hannan: Yes, they have been involved. I believe the department has involved them in discussions on the issue and the solution. How much they have been involved, that is probably best left to the department.

Mr PERRETT: I have a couple of questions on different angles. I have one probably to the LGAQ not dealing specifically with this matter that we have just been discussing now but something I raised before with regard to the process of self-funded candidates—you may have heard the question I put to the CCC—and your thoughts in and around self-funded candidates being able to retain those funds providing that the due and proper processes are in place for them to declare those funds going into that dedicated account and then obviously the relevant expenditure and having a set amount—as I mentioned earlier, \$2,000—left over. It seems that the CCC seemed to see some merit if that can be established. I ask for the LGAQ's thoughts given that you represent so many smaller councils and no doubt a lot of those candidates would be self-funded.

Mr Hannan: Regarding self-funded, I will probably have to take that one on notice and refer to our earlier submission to the CCC. I am happy to take that question on notice, Mr Perrett.

Mr PERRETT: The other one just deals with that specific issue we have been talking about and obviously private certifiers providing that process. I think Mr Langham mentioned about the fact that Brisbane City Council would like to be notified prior to any work being carried out. What process would the BCC put in place to ascertain that the approvals which are given are in accordance with the act or the amendments that you are seeking to this legislation?

Mr Langham: It comes down to our normal development assessment process, in that under the planning scheme development is also assessable development and the situation that we are in in these particular matters is it is assessable development under the Building Act and the building assessment provisions, which is the jurisdiction of the private certifier, but it is also made assessable development under the planning scheme. When they were referred to council ahead of time we would undertake the assessment to see whether they would trigger an assessment under the planning scheme, and in circumstance where a trigger under the planning scheme was activated we would write to the applicant saying that there is a need for an approval, but in the meantime when you get a response that was positive we would be able to have time to go down to the court to seek an injunction on that approval being granted so that we could preserve the house until such time as the relevant approvals were put in place.

Mr PERRETT: Would that be a lengthy process? I am just playing the devil's advocate here. Could it potentially hold up the development of that site for weeks or possibly months?

Mr Langham: No. What we propose is that it is currently within five days of granting the approval the notice is given. We would simply reverse that and say five days prior to if you do not hear from the local government then there is taken not to be an issue and you can go ahead and issue your planning.

CHAIR: The LGAQ submitted that an example should be reinstated in relation to section 83(1)(b) regarding granting building development approval where relevant preliminary approvals are required. Can you explain that a little more for me, please?

Mr Hannan: That is simply to put the matter beyond doubt. It is to solve any ambiguity. From the discussions held with the department I believe there is some in-principle support that an example should be included. That is obviously at the discretion of the department; however, this is to put the matter beyond doubt that this is how it should operate.

CHAIR: Can you give us an example?

Mr Hannan: The example used in this submission is something that we can talk about or refer to directly. The example in the recommendation under 83(1)(b) refers to a proposal comprising building work which requires assessment against both the building assessment provisions in a planning scheme under the Planning Act. The private certifier is engaged to carry out the assessment against the building assessment provisions and decide the building development application. The building development application must not be decided until all relevant preliminary approvals—as iterated earlier by James—for the building work assessable against the planning scheme under the Planning Act are effective. It really just maps out that it is a sequential process.

CHAIR: Which is often very helpful. There being no further questions, thank you very much for your attendance this morning.

Proceedings suspended from 10.19 am to 10.32 am

WILLIAMS, Ms Jennifer, Queensland Deputy Executive Director, Property Council of Australia

CHAIR: We will resume proceedings. I welcome the representative from the Property Council of Australia. Do you have an opening statement?

Ms Williams: I do. Would you like me to read it or go straight to questions?

CHAIR: Do it how you like.

Ms Williams: All right. I do not have too much to add to our submission, which I am sure you have all read. The issues that we have touched on are ones that the Property Council in the past has raised during consultation on the planning legislation. There are three main points. The first one is temporary local planning instruments. As per our previous submissions, we do not support the retrospective operation of temporary local planning instruments. The bill seeks to bring forward provisions that will take effect from 3 July, and our key concern is the retrospective nature of this.

Under the current process for making temporary local planning instruments, local governments have to notify the public by gazette that the laws have changed and the changes take effect from that day of public notification. Our key concern is that due to the retrospectivity of them there could be an instance where a person undertakes an action that is legal that subsequently is changed to become an offence. An example would be a person who seeks to demolish a house on land that they own. They contact council to confirm that they are allowed to do that. Council says, 'Yes, you are,' and they proceed on that basis. Unbeknownst to them, council then moves to place a TLPI over that house. The person continues with the process of demolishing the house and in the background council is putting together a TLPI. The TLPI, under this bill, will still have to go through the process of getting ministerial sign-off and public gazetting, but on the date of public gazette it can be backdated to the date it went through council. If the person demolished the house after the time of that TLPI being introduced into council, they have committed a development offence. Under the bill before you, the penalty for committing a development offence is going to increase significantly as well. There is a real risk that people could act in the best of faith but because of the retrospective nature of the TLPI be committing a development offence. We do not support these provisions and would prefer to keep them as they are in the current legislation.

The second point in our submission relates to court costs. We are very much on the record on this issue as well. We believe that the court is best placed to have the discretion to determine the awarding of costs on appeals. The court hears the matters. They are best placed to understand the basis of an appeal and to make that decision. Under the current legislation, there is a list of factors that they can take into account but ultimately the discretion is theirs. Under this proposal, the starting principle is that each party bears its own cost and the concern for us is that this then opens up the doors to frivolous and vexatious appeals, and appeals not based on legitimate planning grounds. It is our preference, as we have always stated, that the current discretion of the court remains.

The third issue we raised in our submission was the Gerhardt provision—the interaction between the building and planning legislation. As I was just saying to James Coutts, the Property Council typically defers to organisations like the Housing Industry Association to take the lead on issues such as this because their members are the certifiers and the ones who deal with this interaction, but it is a matter that affects our members. I do not fully profess to understand all the ins and outs of the Gerhardt decision, but I do understand that this legislation in front of us is meant to simplify the interaction between the planning and building acts.

What has become clear to me from reading submissions of other parties is that there is still considerable confusion about what these proposed changes will mean. I do not believe that they have simplified or clarified what is required under the legislation. With the new planning act coming in, I am not sure how much clarity there is going to be. I think it has been quite rushed and it would be our preference that greater consultation with affected parties goes into simplifying those provisions. I am happy to take any questions you may have.

CHAIR: There is a lot to think about. I need to let it all sink in. You referred to temporary local planning instruments. I hear where you are coming from with your argument. Do you have any suggestions for how an outcome could be achieved that would address the concerns you have raised regarding the monitoring of local government meetings?

Ms Williams: People would have to monitor every local government meeting including minutes and agendas.

CHAIR: People?

Ms Williams: People as in anybody out there who is considering undertaking any form of development. Anyone from the public would have to understand every day what goes through local government in order to be sure that the laws have not changed overnight, and that is impractical. Local governments do not publish their minutes and agendas. It is not going to work from our end. We think that temporary local planning instruments currently are being overused. Local governments, particularly in Brisbane, are using them for heritage control and placing them over a pre-1946 building that they fear is at risk of demolition. In our opinion, they have had 70 years to identify that building. If they suddenly decide to do it overnight, I think that is a bit unfair on the person who has acted in good faith and purchased that building under its current zoning.

We think that the current situation whereby you can go to the minister, get it signed off and then publicly gazetted is the best way to go about it, particularly when that is the instance in which temporary local planning instruments are being used. With regard to their original purpose for things like the Brisbane floods, I can understand that potentially the minister could fast-track a public gazette on the temporary local planning instrument to put out to the public that the laws are going to be changed, but I do not think it should be retrospective to the date of a local government meeting because people cannot monitor what is happening in those meetings. Does that make sense?

CHAIR: Yes, it does.

Ms LEAHY: You mentioned that it is a fairly complex area and the legislation is meant to try to simplify it. I get the impression that it is not quite doing that. What suggestions does the Property Council have to try to make this simpler and better understood by people who are involved in that particular area?

Ms Williams: As I said in the beginning, this is not my area of speciality and it is typically something we defer to the Housing Industry Association on. However, I believe a lot of the issues have come about because the Building Act says that local government has to give a receipt of fee to the building certifier before the certifier can pass on the approval to the party to undertake. Small things like allowing that to be a five-day acknowledgement notice, allowing the council time to review it before saying, 'Yes, that is okay, go ahead,' would make a difference. Then we would not end up with the situation of having to seek a preliminary approval and then a building approval and adding extra layers to the legislation.

Again, I am not an expert on this. I believe that the parties involved in it need to work through it. I think a lot of this is in response to an issue in Brisbane which is not an issue in other areas across the state. Again, a lot of it is to do with heritage houses. All building matters will potentially be affected by a massive change that is targeting an area in a local government area. My concern is that there needs to be more consultation broadly and potentially simpler solutions looked at rather than what is currently before us.

Ms LEAHY: That is my other issue with this. We all want to conserve heritage values. They are particularly important to the whole of Queensland. It may be an issue in Brisbane City Council but it may be a very different situation in the town of Boulia, for instance, as to how that operates.

Ms Williams: Agreed. I think it is a one-size-fits-all solution—well, it is a solution that is catered to Brisbane and so everybody else has to do what suits Brisbane.

Ms LEAHY: It is a Brisbane-size-fits-all.

Ms Williams: Yes, that is what I meant.

CHAIR: I do not think we have any more questions. Thank you very much.

Ms Williams: Thank you.

STORK, Mr Tim, Co-chair, Legislative Review Committee, Queensland Environmental Law Association

CHAIR: I welcome Tim Stork from the Queensland Environmental Law Association. Do you want to make an opening statement?

Mr Stork: Yes, I do. Thank you for the opportunity to appear before the committee. I thought it would be useful to give a very brief outline of what QELA is. It is a multidisciplinary association whose members include lawyers, town planners, engineers and a broad range of consultants who represent and advise those who participate in the development industry. QELA's submission focused on the amendments proposed in the bill to the Planning Act and the Sustainable Planning Act. There were three clauses that I would like to touch on today, if I may. They are all amendments proposed to the Planning Act.

The first of those is clause 34 which would amend section 49 of the Planning Act. There was a divergence of views in the submissions from QELA, the Property Council and the department in terms of what the amendment meant. In our view, we think that means there is a need for some better clarity about that provision, even if that is just in the explanatory notes or preferably in the legislation itself.

The proposed clause is ostensibly to make it clear that a negotiated decision notice for a change application is not a part of the definition of a decision notice for the purposes of section 49. Section 49 makes it clear, in the relevant parts, about what is done by the different parts of a decision notice. It makes it clear that the part of the decision notice that is a preliminary approval does not authorise the carrying out of assessable development. On the other hand, it makes it clear that the development permit part does authorise the carrying out of assessable development.

The definition of decision notice is included in section 49(6). It makes it clear that the decision notice term being used in section 49 means one of three things: a decision notice providing the decision of an assessment manager on a development application, which is the normal course of events; a decision notice that follows a deemed approval; and a negotiated decision notice that follows change representations made during an appeal period for a decision notice. What it does not include on those terms is a decision on a change application because that occurs after the applicant's appeal period and it is not referred to in those three things in section 49(6). In our view, that makes the amendments unnecessary.

It does raise a question about why a decision notice or a negotiated decision notice for change applications is not relevant for section 49(6). Given that those parts of section 49 are about what is authorised by a development permit or a preliminary approval, the section should make it clear that it is about what is authorised as amended from time to time. That would include by a change application.

We read through the department's response to our submission and found that very useful, particularly in respect of other sections as well. What the department suggested is that no further amendment is necessary as a result of QELA's submission beyond what has been proposed in the bill. That is on the basis it seems that the department considers that the definition of decision notice in section 49 is only relevant for clarifying the notices that act to give effect to a development approval. That is the sections that say the development approval has effect on X date or the time period from which it has effect. That is not what section 49 does. There are other parts in the act that do that. Section 71 does it in combination with the different sections that deal with when an approval is given to an applicant.

Section 49, the one in question here, is not called up by those sections. The dictionary definition of decision notice applies to those sections that give effect. They do two different things. We would be perfectly happy to work with the department on this, and we do on plenty of things. The whole planning reform agenda has been collaborative and consultative, including with QELA. We would be happy to work with them further on that.

The next clause is mention is clause 37. That is the amendments in relation to building certifiers. Having read the department's response to submissions on that we agree with the department's view. What we would say, though, is that the provisions are pretty difficult to understand. In part that is what led to the need for the changes in the first place and the series of Gerhardt decisions. While they improve the legal position, and we agree with the department's perspective on that, they do not really improve the ability of local governments or certifiers or the industry to understand the provisions. Again, we would be happy to work with the department on that.

The final clause that I would like to deal with is clause 43 which would amend section 82. Having considered the department's comments, we accept that proposed provision as is. Effectively, we will withdraw our submission in that respect.

CHAIR: You have spoken about decision notices as referred to in section 49(6). Could you give us a little more detail as to how you think your concerns should be addressed?

Mr Stork: If the department wishes to exclude change applications, which is ostensibly what it seems to do from the explanatory notes and the amendment proposed, then we do not think the amendment is necessary because they are automatically excluded. I think the way it is currently phrased it would do that already.

We would say that the definition should include change applications because section 49 is about what the parts of a decision notice authorise. That should be what they authorised as changed from time to time and what changes them from time to time can be a change application. We would say that it would need to have explicitly in there—and I would not like to have to draft on the run—a reference to it including a decision on a change application.

Mr PERRETT: Clause 69 deals with a temporary local planning instrument and the reading of local government minutes. What are your thoughts in and around that and also in terms of retrospectivity?

Mr Stork: The issue with that is that it would make it possible for someone to commit an offence without realising it at the time. They would have to work out what has been approved in a local government council meeting to work out whether at any point in time they were committing an offence. That retrospective commencement would be of concern.

Mr PERRETT: Council minutes are notoriously not clear on issues as well. You have concern that there is potential for a development offence to have taken place without expert knowledge of being able to read minutes and understand—

Mr Stork: That is the concern. We raised the concern in the relation to the Planning Act more broadly as well. It is in the Planning Act as well.

Ms LEAHY: You have suggested that proposed new section 73A of the Planning Act should be amended to allow a private certifier to grant a development permit where the preliminary approval or development permit for the part requiring the assessment is in effect. Can you give an example of a situation where the addition of a development permit would be necessary?

Mr Stork: Having read the department's response on the submissions on that, we agree with the department's view that the provisions do the right thing and do not need amendment from a legal perspective. It would be useful if they were a little clearer in terms of having the industry understand what the effect of them was. We would not see that change that we had put in our submission needing to be made from a legal perspective.

Mr CRAWFORD: In your submission you talked about supporting the position that each party bears its own costs. Others have argued differently. Can you expand your position there?

Mr Stork: It has been a longstanding position of QELA that it considers that the process works fairly and adequately with each party bearing its own costs and that there are adequate provisions in place to protect parties from frivolous and vexatious appeals. That is probably about the best way I could put it. It is not something that we have seen standing in the way of good developments being approved or developments that are inappropriate not being approved.

CHAIR: There was some discussion earlier this morning about private certifiers. I am asking you this question because I would think somewhere over the past years that this may have been raised with you. My concern is that there does not appear to be anything in place to monitor or audit the performance of private certifiers in terms of the quality of their work and the integrity of their work. Do you have any comment with regard to that?

Mr Stork: It is not something I am aware of having been raised with us. I would be reluctant to comment on that.

CHAIR: That is fair enough.

Ms LEAHY: Your organisation is a multidisciplinary association of professional who would obviously strive for best practice. Is this legislation and these amendments really best practice that will work for the industry? I suppose I am wondering whether there is a better way to achieve the outcome?

Mr Stork: I am not pausing because I do not think it is best practice. We think it would work. We support the Planning Act in its form. There will, of course, be improvements that need to be made along the way, as there would be with any piece of legislation. Our submissions generally have been to improve little pieces here and there where necessary with any fundamental issues being addressed through the consultation process.

Ms LEAHY: Do you feel there could be more consultation on this? We did hear earlier from the Property Council that they felt there should be broader consultation because the impacts of these changes impact right across the state not just in the metropolitan area?

Mr Stork: No, I do not think that it would be the position of the association that there would need to be more consultation. I think there has been sufficient.

CHAIR: Do you think there is anything that can be added to the act to strengthen it? Do you think there are any additional amendments that might improve the whole process?

Mr Stork: You are talking in reference to bill before the committee?

CHAIR: Yes, the bill.

Mr Stork: Nothing further than perhaps some clarity about the operation of the provisions in relation to private certifiers to make it clearer. The effect is there, as anticipated, and we accept that, but it could be made clearer. That would be it.

CHAIR: Thank you very much. We appreciate your time.

Proceedings suspended from 10.59 am to 11.06 am

COUTTS, Mr James, Executive Director of Planning, Department of Infrastructure, Local Government and Planning

RYAN, Mrs Barbara, Director, Legal and Legislation Services, Department of Infrastructure, Local Government and Planning

CHADWICK, Mr Jesse, Technical Specialist, Legislation, Department of Infrastructure, Local Government and Planning

HAWTHORNE, Ms Josie, Manager, Legislation, Legal and Legislation Services, Department of Infrastructure, Local Government and Planning

FORD, Mr David, Deputy Director-General, Department of Justice and Attorney-General; Commissioner for Fair Trading

REINHOLD, Mr Peter, Director-Office of Fair Trading, Department of Justice and Attorney-General

TIMMS, Mr Logan, Executive Director, Building Industry and Policy, Department of Housing and Public Works

CHAIR: I welcome the Department of Infrastructure, Local Government and Planning; the Department of Housing and Public Works; and the Department of Justice and Attorney-General. As there are no opening statements, I will start off. You probably heard me ask a question about a private certifier. I am a little concerned, because I know of complaints about the way these guys or women are doing their work. Is there a procedure whereby those people are monitored for the quality of the work that they do or are audited to make sure that they are doing the job properly and that there is nothing going on between them and a builder?

Mr Timms: The short answer is, yes, there is monitoring. As I think the Brisbane City Council indicated, the QBCC regulates building certification. It is established under the Building Act. You are not isolated in having those concerns. The QBCC commissioner at the moment is looking at ways to beef up that monitoring, bearing in mind that within the building certification industry we have about 300-odd building certifiers. By and large, they do a fantastic job. They approve all of these buildings and make sure that they are structurally sound. I think overall we have a really good system there and it works really well.

There are, of course, circumstances where people are not satisfied with the outcomes and that deserves greater scrutiny. That is why the department has currently got, in public documentation, consultation on what ways people think we could actually enhance building certification. There is that content piece about how the Building Code of Australia is implemented in Queensland, how it then bleeds over into the planning requirements and then, of course, how the certifiers link in with their local government—obviously, they work very closely with local government and previously it was a function of local government—and how we can make sure it is clear. I think with these proceedings, there is absolutely no-one who comes in here saying, 'We don't want to protect pre-1946 character houses'. People just want to make sure that the response we have is fit for purpose and fits everyone's needs. That is the long answer to that question.

CHAIR: The bill seeks to bring forward three features of the new planning legislation: temporary local planning instruments, court costs and penalty increases. Could you explain to the committee why those features are being fast tracked?

Mr Coutts: Those three elements were and are features of the Planning Act that were quite a deliberate intention to address those matters through planning legislation. The current government had made its position on the court cost arrangements quite clear in the lead-up to the last election and had committed itself to restoring the situation where each party bore its own costs. In proceeding to introduce the planning legislation into the House, it contained that intention to restore those cost provisions to what they were prior to 2012.

The observation was made while we have been conducting consultation in the lead-up to the commencement of the Planning Act, in particular, concerns about the community, that with the persistence of the current arrangements, which are the ones introduced in 2012, there was a strong perception from those people who might have otherwise sought to take a matter to court that, in doing so, they were extremely exposed to the prospect of an adverse cost order. That was effectively

detering people who did have legitimate cases to bring to court from doing so. Therefore, the government felt that it was appropriate to address that matter as soon as possible and to bring that matter forward, so that its policy position could be established as soon as possible, which is what these amendments are intended to achieve.

In relation to the penalty units, I note in our session on Wednesday we received some questions about the size of the penalty units and what was the basis for the increase. That again was a matter where the Planning Act is, by and large, in relation to the penalty units, increasing them to a point that makes them comparable with other legislation and is, in effect, seeking to address quite a long period where those penalties have remained unchanged. To keep pace with the contemporary costs of development and, therefore, to represent a reasonable deterrent to inappropriate action, it was felt that those costs ought to be increased. Likewise with a number of situations, which we have heard about this morning from Brisbane City Council citing unlawful demolitions or what they at least at this stage are claiming are unlawful demolitions, the clear view was that the sooner those increased penalty units could be given effect, the more likely it was to act as an appropriate deterrent to unlawful building activity of that kind.

The Temporary Local Planning Instrument provisions are not dissimilar in the sense that there have been a number of instances where temporary local planning instruments have been proposed. I note the commentary from one of the earlier presenters that it is not possible for people to find the record of when a TLPI is proposed. The TLPI cannot be made by council without a resolution. In our experience, it is common for those resolutions to be easily found as a matter of record.

While we appreciate that there will be what I would regard as a very unusual circumstance where someone who was intending to do something would inadvertently be caught by that matter which would have what is called a retrospective effect, the much more common situation when somebody would come under that retrospectively is where parties we know are doing precisely that—where they are checking the resolutions and they are seeing when properties are listed for protection under a TLPI. Knowing that the TLPI does not have effect until the minister has made the decision to approve it, for some there is, in effect, an open invitation. They may not necessarily own that property, but there might be somebody in whose interest it might be to contact the owner to bring their attention to it and say, 'If you had an intention at any stage to do something with this property, particularly to demolish it'—it is not just demolition; it relates to tree removal and a whole range of other matters that are commonly dealt with as a matter of urgency through temporary local planning instruments, bearing in mind that a temporary local planning instrument can only be made where the matter is urgent and the very thing that it is trying to prevent would occur if it were to take longer than need be to address the matter, so it is given that degree of urgency.

It was almost certainly the case when the matter was looked at that it is much more likely that the retrospective effect, as it is being called, would only catch those people who are intending to do something that would be made illegal by the temporary local planning instruments, not inadvertently so but quite deliberately so. Like all of these things, it is a balance. Again, there have been a number of instances in recent times where the inability for the council's decision in relation to a TPLI to have immediate effect and protect that property has been an impediment and properties are at risk in that circumstance. Again, it was felt appropriate that that provision, rather than wait until the commencement of the Planning Act, should commence as soon as possible.

CHAIR: Have you had much consultation around that particular issue?

Mr Coutts: All three of those provisions in the form that they are in the Planning Act were subject to exhaustive consultation and a great deal of consideration of submissions at the time. The intention to introduce them earlier has been discussed but not subject to the same degree of extensive consultation that the intention to introduce them in the first place was conducted. It would be fair to say that no party is unaware of the intention for this to commence relatively soon. I doubt whether anybody would feel themselves particularly disadvantaged by them commencing sooner given that there will be only a matter of months at best between them commencing now and when they would have taken effect under the Planning Act.

CHAIR: There is more positive support for it rather than negative?

Mr Coutts: Certainly in the processes that we have been conducting around the commencement of the Planning Act it has been mentioned. In our consultation efforts we have conducted sessions statewide in every region of the state where every council has been invited to attend and all industry groups have been invited to attend. We have held sessions with the community both in what we can call 'talk to a planner' arrangements but also in sessions run by organisations

such as the Environmental Defenders Office. The intention to commence those elements early has been drawn to everybody's attention. At none of those sessions has there been any strong view expressed about the undesirability of doing so.

CHAIR: That is good to know. Could you explain to the committee what the rationale is for, and the intended effect of, the proposed amendment to section 49(6) of the Planning Act?

Mr Chadwick: The proposed amendment is to reflect another change that has happened later in the bill. It is not really a substantive arrangement. It is to reflect the fact that the Planning Act actually omits to provide a negotiated decision notice process in relation to a change application. That is later in the bill. We have proposed an amendment, which is in the bill, to address that. This amendment to section 49 is, if you like, a companion piece that recognises that there will now be a negotiated decision notice process for change applications. The definition of 'decision notice' in section 49 relates only to that section. That section is about development approvals. A change application is not an application for a development approval. It is a different sort of thing. In making that change, we found that it was necessary also to make a change to section 49 to reflect the other change that we had made and say, 'By the way, now that we are allowing negotiated decision notices over change approvals, please note that that does not mean that a decision on a change application is a decision notice for this section.' It is quite a technical amendment. It is not intended to be substantive.

We are certainly looking in a degree of detail at QELA's submission and others. We are still fairly much of the view that the section is correct. It reflects the fact that it is possible that in making their submissions the couple of submitters who have suggested that have probably not read the whole thing in context, that they have not read it in relation to the other amendment being made. There is also a more general definition of 'decision notice' in the dictionary in the back of the act which applies universally. This particular definition is only for the purpose of section 49. As I mentioned, because we were making a change elsewhere, it affected what section 49(6) said, so we felt we needed to make an adjustment to that as a companion piece to this. I appreciate that that is a reasonably complex explanation. I think the key thing is that it was a companion piece to another amendment. I think we are on reasonably firm ground in saying that the provision is correct.

CHAIR: For the record and for the benefit of the committee, could you run through what a change application is and when it is likely to be submitted? Would it go to the department or to the council?

Mr Chadwick: It generally goes to whoever was the assessment management for the original approval. I would be happy to run through the process. Under the Sustainable Planning Act at the moment we have a development approval process which is set out fairly exhaustively in the act which results in a decision notice which becomes your development approval. There is capacity under the act at the moment—and we all know that circumstances change. You often have several years to commence development, so circumstances can change and market conditions can change. It is sometimes necessary or appropriate for a proponent to want to make changes to their development approval.

At the moment SPA provides for somebody to come forward—again, as I mentioned, usually to the original assessment manager—to apply for what is called a permissible change. Under SPA, a permissible change is relatively restricted. It is quite minor. You cannot, for example, ask for a permissible change that would result in substantially different development. The reason for that is that the change approval process under SPA at the moment is quite simple. If, for example, the development application was publicly notified and subject to impact assessment, to change it you need to make sure that the rights of the community are not being compromised so that we do not get a situation where, for example, a development was subject to extensive community consultation and then a change application that comes along later does something that is inconsistent with the community's views on the project. SPA limits change applications quite significantly to very minor things. If you want to make a significant change, it is a matter of going back through the development approval process.

During the development of the Planning Act and over time before that we had received quite a few submissions from industry saying that this often created difficulties, costs and time for them in circumstances, for example, where they may have got a development approval for a project that consisted of several different parts. It may be a shopping centre with a cinema, some retail warehousing or whatever. They may have wished to make a change that was not a permissible change to one particular part of it. They are then faced with going back through the whole development approval process for the whole thing.

The Planning Act has a further refinement in it that extends the capacity to make change applications. It now distinguishes between a minor change that has always been a feature of the system and any change that is not a minor change. It allows that change to be dealt with on its merits without having to go back through the whole development assessment process again. Significantly, if it is not one of those minor changes that is subject to a quite quick process, it has to follow the same process that the original development application followed. While only the change is being considered, it will need to go back, for example, through public notification if that is what the original approval needed.

Change application and approval processes under the Planning Act are significantly more extensive than they are under SPA. As I mentioned in answering the question about section 49, they are not in themselves an application for a development approval. They are something quite different. However, when you give a decision notice about a change application, if you agree with it, the effect of that notice is to change the original approval. In fact, you have to give the applicant a copy of the amended approval. The technical issue over section 49 comes about because it is not actually a development approval process. I hope that answers your question.

CHAIR: That is fine.

Ms LEAHY: Can you give me some examples of temporary local government planning instruments in Brisbane and also in regional Queensland?

Mr Coutts: A temporary local planning instrument is used for a range of different circumstances. The one that possibly springs to mind most readily is after the 2011 floods. In those floods we experienced flood levels that we had not seen in parts of the catchment of the Brisbane River in particular previously. The flood mapping, which sat in either the Brisbane City Council planning scheme or the Ipswich City Council planning scheme, was based on assumed flood levels prior to that. You had an immediate need that for anybody who wanted to do something on their property that constituted a development from as simple as building a house extension in an area that was flood liable they needed to immediately know what level they needed to build their house at to be flood free should there be a repeat of that event.

In that instance, revised flood mapping was rapidly introduced via a temporary local planning instrument in both Ipswich and Brisbane. That was set at a Q100 level, which is a one-in-100-year flood event or the level arrived at in 2011, whichever was the greater. The 2011 flood was a little bit unusual in that parts of the Brisbane River catchment experienced a significantly greater than one-in-100-year event and other parts of the Brisbane River catchment experienced only a one-in-50-year flood event. It was quite spread across that catchment. That is one example.

Another one that we have been reasonably routinely receiving, if you call TLPI routine—none of them really are; by the very nature of them, they are intended to be for urgent matters—is where a council, and Brisbane is a common one, receives advice about the potential threat of the modification or demolition of a property that the council has only recently become aware of has heritage value, for instance. One that was recently introduced—in the last 12 to 18 months—was the intention to protect a hotel at Shorncliffe which had ceased to operate as a hotel but was a significant building in that locality. It was intended to be purchased by the adjoining school and there were concerns that in using it for administrative purposes associated with the school the hotel's form might be significantly altered. All of that was afoot quite quickly.

The normal process for dealing with that would be to prepare a scheme amendment to seek the state's permission to proceed to consultation, conduct a consultation process, receive submissions, assess submissions and remit the plan for adoption purposes. That process typically takes around 12 months, if not more, and the concern was that the damage would be done well and truly by the time that plan could take effect. A temporary local planning instrument simply says that for a period of 12 months new provisions apply. That property gets added to the heritage overlay so that any proposed development on that which would modify the form of the building would be subject to an application being made to seek approval for that. It does not mean that they could not rearrange the building or affect it; it simply means that the council has an opportunity to consider a proposal to do that under their heritage provisions.

I think there was a conversation earlier about the threat of amendments being made in relation to the practices of certifiers. It was trying to address the threat to heritage buildings. In the vast majority of instances these are what are called character buildings. They are not actually subject to heritage listing, but they constitute a building that has character value to the particular locality. They are typically houses perhaps pre-1946, some of them date back to what is called pre-1911. Those dates are really only significant to the extent that those were the periods when there were very clear

records of what existed at that time. For example, there was aerial photography flown just after the Second World War where you can see every single house in Brisbane that was in existence at that time, so you can tie that to being the case instead of arguing whether it was 47 or 48 or 45 and what the significance was based on some often unattainable records.

Occasionally there are commercial properties in those listings as well. There might be an old shop that is intended to be retained as part of a row of shops. We recently received a request for a temporary local planning instrument that added around 148 additional properties to the character overlay of the Brisbane City Plan, and that council is in the process now of preparing the full amendment for those properties to be included in that overlay. I hope that gives you some sense of the sorts of things that temporary local planning instruments are used for.

Ms LEAHY: It does. I have some further questions. You mentioned that temporary local planning instruments were generally used for urgent matters. If we take a community that has had successive flood events—because we are very seasonal in Queensland—you might have someone who is in the process of planning a new back deck. They have the quotes, they have not quite been to council yet, and then all of a sudden a temporary planning instrument comes in over the top that changes the heights and everything. They cannot do it, so they cannot add value to their property. In a situation like that it begs the question that, if it was urgent and the council did it and put that instrument in place, then a lot of community members would be seriously disadvantaged, particularly when it comes to flood mapping. I think there have been communities where that has happened and the community is not notified. What process is there in place for local governments to notify those who are affected in their communities?

Mr Coutts: In a recent change to an instrument called the *Statutory guideline for making and amending a local planning instrument* there has been introduced a requirement in relation to updated hazard mapping. That mapping does not just apply to flooding; it is bushfires and landslide et cetera, pretty much any natural hazard that could have the potential to threaten life or property. What we found, especially since the 2010 and 2011 events—some parts of Queensland experienced that flood event in late 2010—is that a very significant number of Queensland's local governments, obviously partially in response to the findings of the Queensland Floods Commission of Inquiry, have been conducting quite extensive studies of flood risk in their area. There has also been work around updating bushfire hazard mapping in response to better mapping around vegetation types and increased understanding of how climate is affecting the capacity for there to be bushfires in those areas.

Having completed those studies, the view was arrived at that content of those studies—because they are based on extensive and exhaustive scientific research and engineering analysis and take account of all the available information and all the forecast factors—is not something that is suitable or appropriate to consult on in that they arrive at a clear conclusion; that is, if you were given an opportunity to comment, I am not sure what you would say other than, 'It is a shame and it affects me,' but it does not change the fact that it does. Whether or not your property will flood or whether or not it is in an area of bushfire hazard or newly included in an area of high bushfire hazard, for instance, is not a matter that anybody would probably have the opportunity to dispute in any reasonable way. That MALPI allows for a council to introduce those as a minor amendment through their scheme. The situation with the updated 2011 flood mapping predated this, so it was an example of where a TLPI had been used because these provisions were not in place.

Under the circumstances where a council updates its scheme by way of a minor amendment, the making and amending a local planning instrument statutory guideline requires every council doing so to write individually to each property owner affected by a change in that mapping. That change might be that somebody is newly added, for instance, to a flood layer, or they might have been removed—because that happens occasionally—or there might have been a change to the level they are affected but it is lesser or greater. Council is required to do that where the number of people affected by that or the properties affected by that is less than 1,000, recognising that the onus of sending out individualised letters to each of those properties is significant. If the number of properties affected is greater than 1,000, then the council is required to distribute information via a broadly available mechanism throughout their local government area—the suggestion there is a brochure put in with a rates notice that is received by every rate payer—of the existence of updated mapping, whether it be flood or bushfire, and what that means for individual property owners and where they can go to find out more information.

Ms LEAHY: Just to clarify, you are saying that local governments are required to notify if more than 1,000 people are affected?

Mr Coutts: They are required to notify either way, it is just the difference in the means. If there are fewer than 1,000, it is an individualised letter to every property owner. I do not know if I could say it is rare for there to be more than 1,000 properties affected in flood situations—

Ms LEAHY: We hope.

Mr Coutts: Yes. In a catchment the size of Brisbane with the intensity of development in Brisbane it certainly will be when the flood study is eventually finalised. From recollection, Bundaberg revised its flood mapping in response to the events there and I think it was a figure of 643 or something of that kind, the majority of which had some degree of change. Rather than being added, a few were added and a few were taken off. All of those individual property owners received a letter from the council. The decision when it is more than 1,000 means that, for instance, on the Tablelands when they updated their scheme their revised bushfire mapping meant an additional 8,900 properties were included in some form of bushfire mapping risk area.

Ms LEAHY: Who makes sure the council actually does that?

Mr Coutts: It is part of the requirement under the making and amending local planning instruments statutory guide, and that has the force of law. If they do not do that, then action can be taken to require them to do that.

Ms LEAHY: Action by whom?

Mr Coutts: By the minister. The minister enforcing that can issue a direction to the council to undertake that action should they fail to do so.

Mr Chadwick: I might just add that I think your question initially was about accountability around temporary local planning instruments and the capacity for somebody's property or plans to be blighted by a TLPI being imposed. I think it is probably worth just a quick observation about the context of TLPIs. They are, as the name suggests, temporary. Yes, a local government with the minister's approval—and there is a check and balance there—can impose one, but they only have a life of two years. The intention is that during that two-year period the council will initiate a planning scheme amendment to reflect the policy. It is like a holding pattern. During that planning scheme amendment the community is consulted at that point. If they do not initiate a planning scheme amendment—and it may well be that on closer examination they decide not to—the temporary local planning instrument will ultimately just fall away after two years. They sort of have the effect of hovering over the top of a planning scheme and affecting its operation, but they do not actually amend the scheme. If nothing happens in terms of a scheme amendment within two years, they fall away. If the local government then does go along and amend the scheme, then that triggers a set of mechanisms which might end in compensation claims and those sorts of things, so there are checks and balances through the scheme amendment process that way.

I might just finally offer what is probably described as a shameless plug for government for another new mechanism in the Planning Act called an exemption certificate. The examples given for the use of exemption certificates include one which is almost exactly the example you gave, where somebody had been planning a deck and suddenly the council comes along and imposes a TLPI with a flood limit on it that either prohibits or requires them to go through an impact assessment process. There is now a tool in the Planning Act which will commence midyear for someone to seek an exemption from the need for a development approval. In that case the qualification is that if what they are proposing to do—in this case a deck—is a minor or insignificant impact having regard to why the TLPI was imposed in the first place—in this case to control flooding—if the council is of the view that this particular deck is not a danger in terms of changing flood flows or anything like that and it is not a danger to persons, they can give an exemption certificate which will allow the deck to go ahead. There are a number of pathway streams, and the TLPI itself has to be seen as part of a broader system of planning instruments.

Ms LEAHY: I have a few problems with some of that as well. As you know, I am fairly familiar with floods and how they operate. I think there is certainly some room there for improvement.

Mr PERRETT: I have some questions regarding that too. I spent 13 years in local government before being elected into this role. Obviously, being from Gympie I know a fair deal about floods and some of the potential issues and problematic situations you end up with with these temporary local planning instruments. I understand the need for them, but one of the areas I want to seek clarification on is the management of them and community awareness around flood lines affecting perceived property values and ultimately compensation.

Mr Chadwick touched on that compensation—whether this opens up issues around compensation where there is a perceived or actual loss of value in property through a lack of understanding or knowledge, whether that be through a temporary local planning instrument or, as mentioned before, where there is an amendment to a planning scheme that then starts to include properties and property owners not being aware for one reason or another until they go to sell those properties and a property search is done that identifies that land. I have a couple of other questions that link to compensation. Do you have some thoughts around those issues and what may come of this?

Mr Chadwick: From a purely technical viewpoint, I might touch on some changes that have been made to compensation arrangements for natural hazards under the Planning Act. There is nothing in this particular bill that seeks to alter those but, as you may be aware, under the current arrangements for compensation, compensation not would be payable if a local government changed its planning scheme in an effort to protect properties from flood or any other form of natural hazard. There is a test in there for that and the test is whether the local government could have imposed conditions on a development approval for the site that could have addressed the concerns. That has been a fairly longstanding provision and subject to quite a lot of debate.

I think the overall view, particularly coming from local government, was that they were often put in the difficult position of defending claims for compensation based on hypothetical situations—‘Could I have put a condition on that that would have meant that I didn’t have to down zone the land.’ As a result the Planning Act has a change to the basis for an exemption for compensation for natural hazards. It points you off to the ministerial rules and guidelines—and they are being developed and consulted on at the moment—but the explanatory notes for the bill envisage that the sorts of requirements that those rules and guidelines will put on local governments is to conduct technical studies based on the best available information in good faith. That would then provide a basis for saying, ‘There is a definite need in this particular instance to change the zoning of land to protect life and limb.’ It is intended to be a more objective approach. It is a bit hard to evaluate at this point how it is going to work out in impacting individual landowners and development interests, because it is an entirely new approach. James, is there anything that you would like to add?

Mr Coutts: Perhaps going back to some of the underlying concerns that I think you were expressing, property owners have found themselves at different times, when councils have chosen to take action to address a matter that is urgent—such as flooding—of being unaware of what they are being exposed to. I am conscious of situations throughout this state where that has occurred. The examples that I can think of is where people have submitted an application to build a house, which normally only goes to a building certifier, and the certifier has said to them, ‘Instead of the habitable floor level and your property being either around about ground level or a little bit off that, it is now needing to be two, or 2½ metres up in the air.’ People have found themselves in a position of having to outlay the cost of effectively building a new house at that higher level. The deck is moderately easily dealt with, because it does not constitute a habitable space in that sense, but if you had an intention to build an extension—it might be a couple of extra bedrooms and an expanded kitchen or something like that—you find yourself in that awkward situation of a split-level house, which would not necessarily make much sense. That was certainly the case in a lot of Brisbane properties immediately post flood.

It is bad enough when it is a metre; it is much worse when it is like 40 millimetres, where you get this odd little curious step in a property. In the situations that I have seen, particularly in what I would loosely call Central Queensland coastal locations where exhaustive flood studies have been undertaken, you will see the new houses built where the floor level is sitting at the gutter height of an old house next door. It is challenging and it looks out of place. The estimates we have heard is that it adds somewhere between \$20,000 and \$30,000 to a house to lift it up there, because it is not just putting it on matchstick stumps; it is enclosing it and making that area unable to be habited in at least the longer term.

In those circumstances, I think the largest difficulty is in the extent to which councils make that known in advance. I appreciate the situation that councils find themselves in, as does the state, that being in possession of information of that kind is, I think, irresponsible and perhaps even unforgivable to not ensure that people build to the appropriate levels. In conversations that I have been in, often with mayors and councillors around those requirements, there have been suggestions, ‘If you own that property and you decide to take that risk on and you build at the old height rather than the new one, you could indemnify the council from any action that you might have otherwise taken should you be flooded. What is wrong with that?’ Except you sell the house in 20 years time to a person who does not know that indemnity was given and says, ‘I did not know that was indemnified and I’ve just

been flooded and why did the council let this house be built when it was clear that it was built after that new flood level was established and what's the council going to do to compensate me for the cost that I've incurred in acquiring a house that is now damaged beyond repair?'

I think the issue is not identifying new levels or requiring people to build to them; it is the ability for people to understand that that is the case before they proceed to purchase. When something is done via a mechanism like a TLPI, that happens quickly, often with little information, because of the speed of it. I would admit there that there is an obligation on councils to broadcast that information as widely as possible.

As a slight qualification to that, in none of the circumstances that I have been drawn in on in conversations—and those go back some time—did I get the sense that the community was unaware of the situation. They were very aware of it and knew what it meant for them. The matter was getting almost immediate media coverage. Even though the council probably had not done its job in making that information available, it became available in any event. Your comment is right: it possibly points to the need for clearer advice to councils about when introducing a TLPI—what they should do to promote the TLPI to those who are affected.

Mr PERRETT: I have one final question dealing with these TLPIs. Once again, I spent have 13 years in local government. There are not very many people who either come to meetings or sit there and read through minutes. That is the concern about the retrospectivity of this, particularly in relation to the penalties and the proposed increase to 4,500 penalty units. Is there another mechanism for stakeholders to quickly and easily check or be notified of proposed temporary local planning instruments over those properties so that they are aware of it? Ratepayers—my constituents—simply do not sit there and read council minutes.

Mr Chadwick: It is probably not an entirely satisfactory response from the tenor of your question, but there are publication requirements, but they are a bit arcane, like it has to be published in the *Gazette* and locally circulating newspapers. I know and appreciate that there are often gaps there. People do not read those as well. Again, I would only reinforce the observation that James made in that, in the fairly limited exposure that I have had to these circumstances, the community tends to get to know through their usual channels—the local press is usually pretty assiduous in promoting these things. Yes, there are certainly notification requirements under the legislation, but I would be more than happy to concede that they are not going to notify everyone immediately which, again, I am sorry to say, is partly the reason for the checks and balances that are involved—the ministerial approval and the two-year time frame. Certainly, I acknowledge that it is an instrument that can blight the value of somebody's land. We need to get this balance right between the need to make a decision in the public interest and the ability not to blight someone's land indefinitely.

Mr Coutts: Perhaps the only other thing that I would add to that is the example where a temporary local planning instrument is made by a council and then, under this legislation, it is given what amounts to immediate effect, which the minister has a right to overturn should the minister decide to do so. The examples given, I would say, are hypothetical. They have to be, because it is not in at the moment. In my experience, I cannot think of an instance something was done—a tree was a moved or a property was demolished—other than with the specific intention of subverting the effect that the TLPI would have. I only know of situations where somebody, knowing that that is the case, has sought to act immediately to take the action that the TLPI was trying to prevent, because there is a lag time between the TLPI being made by the council and being approved by the state.

Yes, there is a possibility that somebody acting completely innocently and inadvertently might get caught. I would have thought the probability of that happening is incredibly low compared to the opposite situation—I appreciate that the average person does not read the council minutes, they might not read a public notice. We are talking about people who are not average people who are scouring council minutes. As I have said, it is often not the property owner; it is somebody who might have some benefit from going to a property owner. We have heard of certifiers who are not doing the right thing who might say, 'Do you realise that this is now in train? If you don't act, you might not be able to do what you want to do. How about I help you out and get this thing processed before this affects you.' That is a far higher probability than I think the inadvertent effect it might have on a very small number of otherwise innocently acting individuals.

CHAIR: Thank you. On Wednesday, you heard us talk about a dedicated account for a candidate. You may have taken it on notice, but we talked about where a candidate has borrowed money for him or herself, put it in that account and then we have those rules there about what must happen to any of the funds left in those accounts. Have you had any thoughts about that situation where you have a candidate who puts all of their money in him or herself? What should be done with any funds that are left over?

Ms Hawthorne: The department's view for self-funded candidates I think was the issue that was raised in Wednesday's departmental briefing. Currently, the obligation for the dedicated account in the legislation is that a self-funded candidate and candidates must keep a dedicated account and any expenditure that that candidate spends from that account must come out of that account. It figures then that any amounts must go into it for the political activity of that candidate.

CHAIR: We are still not in a situation where, to ensure that a candidate gets fair treatment, any funds leftover that really belong to him or her should be able to go back also. Do we need to put something in the legislation to make sure that that happens?

Ms Hawthorne: The CCC's recommendation did not include specifically what would happen for self-funded candidates. The CCC's recommendation was that the remaining amounts in that account be spent according to a registered charity, or kept in that account if they intended to stand for the next election, or used for another campaign. The government's response to the CCC's recommendation was to endorse that, but also include that, if you are a member of political party, to put that money towards back into the political party. That was the government's response to the CCC's recommendation.

CHAIR: I understand that. My question is really not being answered. We will have to deal with that, because I understand your position.

Ms LEAHY: We have more questions, Mr Chair, if that is all right.

CHAIR: We are running out of time, but I will let you go.

Ms LEAHY: I want to come back to the chair's question in relation to a self-funded candidate. If a self-funded candidate borrows money against their other assets, receives absolutely no gifts—we were talking about what constitutes the definition of a gift, and you might give the committee the benefit of some guidance on that—and they are paying interest on that money, what happens if they borrow \$10,000 and they spend only \$8,000? What happens to the \$2,000 in that dedicated account when it is borrowed money?

Ms Hawthorne: If it is in a dedicated account then it must be disbursed, according to the bill, to the registered political party if that person is a member of the party; to a charity; or be retained in that account if they intend to use it for campaign purposes in the future.

Ms LEAHY: Let us go outside of local governments that have endorsed candidates by political parties. Say we have the 'Council of Timbuktu'. A couple of them are members of the Labor Party, a couple of them are members of the conservative party and they are self-funded. Does their membership of a political party impact at all on whether it should go to a charity or whether it should go to a political party given that they are just a member and not endorsed?

Ms Hawthorne: The provision in the bill says 'a member of a political party' and it says 'the remaining amounts or part of the remaining amounts'. I understand the provision to work that it could be 'or', 'or', 'or' for those three criteria.

Ms LEAHY: Even if they are not endorsed and they are just a member?

Ms Hawthorne: That is what the bill says, yes.

CHAIR: Josie, in your position you are able to make recommendations back up to the minister, are you not? There is obviously a problem there because we keep coming back to it. I understand where you are coming from, but I cannot understand why no-one is prepared to say, 'There is a problem here. Let's try to address it.'

Ms Hawthorne: Under schedule 8 of the standing rules, I am not able to answer that. I am not in a position to give an opinion or personally make recommendations to government.

CHAIR: All right, thank you.

Ms LEAHY: We accept that. We can, though, can we not, Mr Chair? I do not have the bill or the schedule in front of me. For the benefit of the committee, can you give us an indication of what the definition of 'gift' is in the legislation. I think that would be helpful to the committee.

Ms Hawthorne: The bill does not amend the definition of gift. It is under section 107 of the Local Government Electoral Act. It is quite long but bear with me. A gift is—

- (a) the disposition of property or the provision of a service, without consideration or for a consideration that is less than the market value, but does not include—
 - (i) transmission of property under a will; or
 - (ii) provision of a service by volunteer labour; or
- (b) payment for attendance at or participation in a fundraising activity.

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- (2) However, the disposition of property or provision of a service to a candidate is not a gift if it is made in a private capacity, for the candidate's personal use, and the candidate does not use, and does not intend to use, it solely or substantially for a purpose related to any election.

Subsection (3) talks about the disposition of property and defines that. Would you like me to read that too?

Ms LEAHY: Yes, please.

Ms Hawthorne: It states—

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including, for example—

- (a) the allotment of shares in a corporation; and
- (b) the creation of a trust in property; and
- (c) the grant or creation of a lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in property; and
- (e) the exercise by a person of a general power of appointment of property in favour of someone else; and
- (f) a transaction by a person with intent to diminish, directly or indirectly, the value of the person's own property and to increase the value of someone else's property.

Section 108 talks about the value of a gift and defines that. May I check the provision in the bill that talks about the disbursement of the amount in the dedicated account just to make sure that it is in relation to the membership of a political party?

Ms LEAHY: Please do. I note, Mr Chair, we have officers from Fair Trading here as well. We have a couple of questions for those officers. I would not like you to come without a question.

Mr Ford: We could cope I fear.

CHAIR: Just be aware of the time.

Ms Hawthorne: The amendment to section 126 around the dedicated account and the amount remaining is a new subsection (5A), which states—

If an amount remains in the account at the end of the disclosure period, the amount or part of the amount may—

- (a) be kept in the account for the conduct of another election campaign by the candidate; or
- (b) if the candidate was a member of a political party during the disclosure period—be paid to the political party; or
- (c) be paid to a charity nominated by the candidate.

An amount mentioned in that subsection must not be dealt with in any other way.

Ms LEAHY: Thank you very much for that clarification. It is greatly appreciated, Ms Hawthorne.

Ms Hawthorne: It also applies to groups.

Ms LEAHY: Okay. We had some questions earlier in the week in relation to the Associations Incorporation Act—for instance, a ratepayers association started up, it wanted to be incorporated for various reasons and it held sausage sizzles to raise a couple of dollars. If it wanted to publicly endorse other candidates or groups of other candidates, would it be contravening the recommendation and provisions of the act under the Associations Incorporation Act?

Mr Ford: It would depend on the circumstances that prevailed at the time. The prohibition is for an incorporated body which has as its main purpose the funding of election campaigns or funding of candidates for election campaigns. We would have to look at the circumstances that prevailed at the time to see whether or not they had breached that provision. If it were incidental to their actual purposes and it was a very minor part of their activities but it was something that was allowable under their constitution and their objects, it may well be that that would be possible. This is very hypothetical obviously. If it were something that were outside their remit, if as a ratepayers association they had certain objects that were unrelated to supporting election candidates, then arguably they would be acting contrary to their objects and that would be a grounds to show cause as to why they should cease to be registered as an association. As I say, one would really need to look at the circumstances of a particular case.

Ms LEAHY: If their objective were the best representation of ratepayers in that particular area and a candidate said, 'I can see their wish list and we endorse that,' would that be considered an indirect connection with that candidate?

Mr Ford: Yes, it would bring on the effects of the legislation. The extent to which it enabled action to be taken against them would depend on the circumstances. It would enliven the situation but whether it would enliven it to the point where we had the opportunity to seek to deregister them or to take action against them is an interesting question.

CHAIR: Thank you very much. It is always good to have you here. We appreciate the work and the effort you put in. I think you get a lot more than most other agencies, but I notice you keep smiling. We appreciate your attendance here today. We certainly got some valuable information, and we now look forward to putting it all together and reporting back to the parliament. I declare the hearing closed.

Committee adjourned at 12.09 pm