

6 June 2008

Secretary

Electoral Matters Committee

Victorian Parliament

(By email: emc@parliament.vic.gov.au)

Dear Secretary,

Submission to Inquiry into Political Donations and Disclosure

I congratulate the Committee for holding its inquiry into political donations and disclosure. It is particularly timely and important as the debate on political funding in Australia is at a turning point.

The bulk of my submission comprises the one I made to the federal Joint Standing Committee on Electoral Matters' inquiry into the 2007 federal election. This submission which accompanies this letter has three substantive parts. The first sets out the central aims of a political finance regime while the second identifies the key problems with the federal regime. The final part details a reform agenda. All three parts apply with little modification to the Victorian situation. The Victorian regime is largely modelled upon federal law: its election funding system is very similar to that operating at the federal level¹ and its disclosure provisions essentially picks up the obligations under the federal scheme.² The problems of the federal regime are also experienced in Victoria as the Victorian examples and data threading through the submission demonstrate. It follows that the regulatory solutions will be similar. The main matter that was not dealt with in my JSCEM submission, which I will now address, relates to political funding at the local government level.

¹ See *Electoral Act 2002* (Vic) Part 12, Division 2. Unlike the current federal election funding scheme, payment under the Victorian scheme is limited to actual electoral expenditure: *ibid* s 212(2).

² *Ibid* s 222. The only difference worth noting is that holders of gambling licences are prohibited from contributing more than \$50 000 per annum: *ibid* ss 216-7.

Regulating political funding at local government level

There are particular features of local government politics that makes it more susceptible to corruption than federal and state politics. With less intense party competition and media attention, there comes a diminished level of scrutiny. Abetted by a lax disclosure laws, the policing of political contributions tends to become a matter of self-regulation. The number of voters to be reached is also fewer and there is less reliance on expensive electioneering techniques like television ads; campaign costs are therefore much lower and are in the order of four-digit sums. The decisions made by local councillors can, however, involve sums of a much greater magnitude. Planning decisions, in particular, can affect development projects costing millions of dollars giving rise to a strong incentive on the part of property developers to influence local councillors.

In some cases, the result has been cases of outright graft. In 2005, the NSW Independent Commission Against Corruption (ICAC) found two councillors of the Strathfield Municipal Council and a property developer guilty of corrupt conduct because of bribes paid and received in relation to a proposed development of a car park.³ Similar allegations are being ventilated in relation to the Wollongong City Council. While the NSW ICAC has yet to hand down its final report on the conduct of the Wollongong City councillors, it has recommended that the elected positions of the council be vacated on the basis that ‘systemic corruption exists within the Wollongong City Council’.⁴

Even when conduct falls short of graft, there can be pervasive undue influence purveyed through the funding of election campaigns. The 2004 Gold Coast City Council Election saw a group of candidates secretly bankrolled by ‘donors with development interests’.⁵ These funds were raised by two sitting councillors, David Power and Sue Robbins, who successfully solicited money from ‘(m)embers of the various Gold Coast chambers of commerce . . . highly receptive to the idea of

³ NSW Independent Commission Against Corruption, *Report on investigation on the relationship between certain Strathfield Councillors & developers* (2005) 43.

⁴ NSW Independent Commission Against Corruption, *Report on Investigation of Corruption Allegations Affecting Wollongong City Council: Part 1* (2008) (available at http://www.icac.nsw.gov.au/files/pdf/Part_1.pdf; accessed on 3 June 2008).

⁵ Queensland Crime and Misconduct Commission, *Independence, Influence and Integrity in Local Government: A CMC Inquiry into the 2004 Gold Coast City Council Election* (2006) iv.

supporting pro-business, ‘sensible’ candidates’.⁶ These arrangements were, however, to remain covert with ‘a concerted effort to conceal both the existence of the fund for selected candidates, and the involvement of Power and Robbins’.⁷ The result, in the view of the Queensland Crime and Misconduct Commission, was a ‘barrage of secrecy, deceit and misinformation’.⁸ In a paragraph worth quoting in full, the Commission found that:

These (Power and Robbins-selected) candidates were presented as totally independent candidates, funding their own campaigns. In fact, they had received funding through the initiative of two sitting councillors (David Power and Sue Robbins), and the funding came exclusively from parties with development interests. If elected, the candidates would be, consciously or unconsciously, beholden to Power and Robbins for that funding during their four-year term. If they harboured ambitions of running for a further term, they would be aware that their chances of receiving funding through Power and Robbins at the next election would depend on their being still viewed by Power and Robbins as ‘like-minded’ candidates.⁹

A similar story can be told in relation to the 2004 Greater Geelong City Council elections. David Saunderson, a sitting councillor who was subsequently re-elected, solicited funds from property development company, Lascorp Development Group (Aust) Pty Ltd and six Geelong businessmen including Frank Costa.¹⁰ On their own accounts, Lascorp contributed to support a ‘productive Council’¹¹ and Costa, ‘higher quality candidates’.¹² Saunderson who controlled the disbursement of these funds channelled them to 17 candidates with six of them, including himself and current mayor, Bruce Harwood, elected to office.¹³ At no time during the election campaign was this financial support disclosed to the public and, indeed, there was further failure to disclose after the election with Councillors Saunderson and O’Connor initially

⁶ Ibid iii.

⁷ Ibid v.

⁸ Ibid ii.

⁹ Ibid ii.

¹⁰ Details of the amount of funds set out at Merv Whelan, Inspector of Municipal Administration, *Report on Investigation into Greater Geelong City Council* (2006) 13-14.

¹¹ Ibid 11.

¹² Ibid 10.

¹³ Ibid 15-16.

denying these funding arrangements.¹⁴ Even worse, the penalty for these failures has been minimal with only Saunderson convicted for failing to disclose under the *Local Government Act 1989* (Vic) and fined a derisory \$1000.¹⁵ This conviction does not even seem to have elicited much contrition from Saunderson. In declaring that he would stand for re-election in the November 2008 council elections, he had no qualms in saying that the people of Geelong would not benefit if these elections became embroiled in questions surrounding the funding of candidates.¹⁶

As a consequence, there is a systemic conflict of interest resulting from half of the current Greater Geelong City Council¹⁷ being bankrolled by particular business interests. The observations made by the Queensland Crime and Misconduct Commission in relation to councillors selected by Power and Robbins could apply equally to these councillors: would they not be consciously or unconsciously beholden to Saunderson and/or his business supporters for the length of their term? Normalcy seems, however, to have descended upon these arrangements. Rather than being viewed as improper, they may, in the words of Frank Costa, be treated as a sign of a ‘high quality’ council with ‘some good, proactive people’.¹⁸ For Costa, councillors who accepted campaign contributions need not declare this interest nor excuse themselves from voting on matters affecting their financiers. In his words, ‘(i)t could be seen as an issue (but) not by me it’s not’.¹⁹ There is a strong sense here that systemic conflicts of interest has been normalised. Like the Local Government Association of Queensland’s view of the conduct of Power and Robbins, they are being treated as part of a ‘perfectly ordinary political process’.²⁰

¹⁴ Liz Minchin and Royce Millar, ‘King Cat: the millionaire who helps shape Geelong’, *The Age*, 28 January 2006 <http://www.theage.com.au/news/national/king-cat-the-millionaire-who-helps-shape-geelong/2006/01/27/1138319450839.html?page=2#> at 6 June 2008.

¹⁵ Royce Millar, ‘Geelong Mayor may face charges over planning’, *The Age*, 16 February 2007 (available at <http://www.theage.com.au/news/national/geelong-mayor-may-face-charges/2007/02/15/1171405370980.html?page=fullpage>; accessed on 3 June 2008)

¹⁶ Peter Begg, ‘Saunderson plans to stand for re-election’, *The Geelong Advertiser*, 26 May 2008 http://www.geelongadvertiser.com.au/article/2008/05/26/14332_news_pf.html at 6 June 2008.

¹⁷ The six elected candidates are Tony Ansett, Lou Brazier, Bruce Harwood, Peter McMullin, Tom O’Connor and David Saunderson while there are 12 members of the council in total (see http://www.geelongcity.vic.gov.au/Accessing_Council/Councillors_and_Wards/; accessed on 3 June 2008)

¹⁸ Quoted in Liz Minchin and Royce Millar, ‘King Cat: the millionaire who helps shape Geelong’, *The Age*, 28 January 2006 <http://www.theage.com.au/news/national/king-cat-the-millionaire-who-helps-shape-geelong/2006/01/27/1138319450839.html?page=2#> at 6 June 2008.

¹⁹ Quoted in Liz Minchin and Royce Millar, ‘King Cat: the millionaire who helps shape Geelong’, *The Age*, 28 January 2006 <http://www.theage.com.au/news/national/king-cat-the-millionaire-who-helps-shape-geelong/2006/01/27/1138319450839.html?page=2#> at 6 June 2008.

²⁰ Quoted in Queensland Crime and Misconduct Commission, *Influence and Integrity in Local Government: A CMC Inquiry into the 2004 Gold Coast City Council Election* (2006) v.

These accounts reveal that there are two key problems that Victorian regulation of political funding at the local government level should deal with. It should:

- prevent corruption in the form of graft and undue influence/conflict of interest;
- ensure that local council voters are fully informed of the funding received by candidates and other participants in council elections.

There are three regulatory methods that can be used to pursue these aims:

- registers of interests for local councillors;²¹
- conflict-of-interest rules that prohibit participation by local councillors on matters affecting their financial interests;²² and
- disclosure obligations in relation to election campaigns.²³

All three regulatory methods are currently used in Victoria. First, newly elected councillors are required within 30 days of taking office to lodge a primary return. Re-elected councillors are exempt from this obligation but are subject to the obligation that applies to all continuing councillors to lodge ordinary returns within 30 days of 30 June of each year. Both types of returns must disclose details of gifts received exceeding \$500 and are lodged with the Chief Executive Officers of the relevant councils who must make them available for inspection upon an application in writing.²⁴ Second, Victorian local councillors are required to disclose interests they have in matters being considered in council meetings²⁵ including matters giving rise to conflicts of interest.²⁶ In the latter situations, the local councillors subject to a conflict of interest can still participate in the meeting through discussion but cannot propose or second a motion or vote on the matter²⁷ unless exempted from this prohibition by the relevant Minister.²⁸ Third, candidates in local council elections are required to lodge a return disclosing gifts exceeding \$200 used in connection with the

²¹ See, for example, *Local Government Act 1993* (NSW) s 449; *Local Government Act 1993* (Qld); *Local Government Regulation 2005* (Qld) reg 25; *Local Government Act 1999* (SA) ss 65-66; *Local Government Act 1995* (WA) ss 5.75-5.76.

²² See, for example, *Local Government Act 1993* (NSW) s 451; *Local Government Act* (NT) s 20; *Local Government 1999* (SA) ss 73-74; *Local Government Act 1993* (Tas) s 48; *Local Government Act 1995* (WA) ss 5.65-5.67

²³ See, for example, *Local Government Act 1993* (NSW) s 328(d); *Local Government Act 1993* (Qld) Part 8; *Local Government (Elections) Act 1999* (SA) s 80(1); *Local Government Act 1993* (Tas) s 279; *Local Government (Elections) Regulations 1997* (WA) reg 30B.

²⁴ *Local Government Act 1989* (Vic) s 81.

²⁵ *Ibid* s 77A.

²⁶ *Ibid* ss 77B, 79.

²⁷ *Ibid* ss 77A-79.

²⁸ *Ibid* s 80.

election campaign 60 days after the election.²⁹ These returns are lodged with Chief Executive Officer of the relevant councils and open to public inspection.³⁰

There are serious weaknesses with this regulatory framework. By only applying to candidates, the election campaign disclosure scheme fails to cover all electoral participants. By contrast, the NSW scheme not only covers candidates but also parties and third parties³¹ while the Queensland scheme extends to donors.³² All these participants need to be covered by the disclosure scheme in order to ensure informed voting. Moreover, neither the register of interests nor the election campaign disclosure scheme ensures informed voting because they both fail to provide information to voters *before* they cast their votes. What needs to be instituted is something similar to disclosure obligations under Western Australian law. Under the *Local Government (Elections) Regulations 1997* (WA), candidates are to disclose gifts exceeding \$200 within three days of receipt once nominations are made and three days after nomination for gifts received six months before election day.³³ Further, because the information disclosed in the register of interests and the election campaign disclosure returns are located at the offices of the relevant councils, they are not very accessible. Also, the Chief Executive Officer of the relevant council is not the appropriate authority to supervise the disclosure of such information. These officers are appointed by the councillors;³⁴ the very same people the Chief Executive Officers are supposed to police. This creates a structural conflict of interest that may impair the effectiveness of the disclosure regulation. For the interests of probity and efficacy, it is far better to have the Victorian Electoral Commission as the authority responsible for ensuring that disclosure obligations in relation to the register of interests and the election campaign disclosure scheme are complied with. Information under these schemes should be lodged with the Commission which should also be required to publish it on its website.

The rules relating to conflict of interests need to be considerably strengthened. In place of the lacklustre restrictions in section 79 of the *Local Government Act 1989*

²⁹ Ibid s 62(1).

³⁰ Ibid s 62A(3).

³¹ *Local Government Act 1993* (NSW) s 328(d)

³² *Local Government Act 1993* (Qld) Part 8.

³³ *Local Government (Elections) Regulations 1997* (WA) Part 5A.

³⁴ *Local Government Act 1989* (Vic) s 94.

(Vic), there should be a *complete* prohibition on councillors participating in meetings where there is a conflict of interest. This would, in fact, bring Victoria in line with most Australian jurisdictions.³⁵ The meaning of conflict of interest needs to be elaborated by statute to include receipt of political contributions exceeding \$200 and an expectation of such contributions. This could be done by amending section 79 to stipulate that a councillor is treated to have an in/direct pecuniary interest in a matter being considered by the council if s/he had received (or expects to receive) such contributions from a person or a company (including related companies) who has a significant interest in these matters.

In summary, *it is recommended that*:

- the election campaign disclosure scheme be extended to parties, third parties and donors;
- candidates and other electoral participants be required to make pre-election disclosure along the lines of the disclosure obligations under the *Local Government (Elections) Regulations 1997* (WA);
- information disclosed through the register of interests and the election campaign disclosure scheme be lodged with the Victorian Electoral Commission;
- the Commission should be required to publish such information on its website;
- there should be a complete prohibition on councillors participating in meetings where there is a conflict of interest; and
- a conflict of interest under the *Local Government Act 1989* (Vic) be elaborated to include situations involving receipt (or an expectation to receive) of political contributions exceeding \$200.

I hope my submission has been of assistance to the Committee. Please do not hesitate to contact me if you have any queries.

Yours sincerely,

Dr Joo-Cheong Tham

³⁵ See *Local Government Act 1993* (NSW) s 451; *Local Government 1999* (SA) ss 73-74; *Local Government Act 1993* (Tas) s 48; *Local Government Act 1995* (WA) ss 5.65-5.67

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