



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON FINANCE AND PUBLIC
ADMINISTRATION

**Reference: Commonwealth Electoral Amendment (Democratic Plebiscites) Bill
2007**

MONDAY, 3 SEPTEMBER 2007

CAIRNS

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**SENATE STANDING COMMITTEE ON
FINANCE AND PUBLIC ADMINISTRATION**

Monday, 3 September 2007

Members: Senator Fifield (*Chair*), Senator Forshaw (*Deputy Chair*), Senators Carol Brown, Cormann, Fierravanti-Wells, Moore, Murray and Watson

Substitute members: Senators Joyce and Ian Macdonald to replace Senators Fierravanti-Wells and Watson, respectively

Participating members: Senators Barnett, Bartlett, Bernardi, Birmingham, Boswell, Boyce, Bob Brown, Carr, Chapman, Conroy, Crossin, Eggleston, Evans, Faulkner, Fielding, Fierravanti-Wells, Fisher, Heffernan, Hogg, Joyce, Kemp, Ludwig, Lundy, Marshall, Sandy Macdonald, McGauran, McLucas, Milne, Nettle, O'Brien, Parry, Payne, Ray, Ronaldson, Sherry, Siewert, Stephens, Trood, Watson, Webber and Wong

Senators in attendance: Fifield, Forshaw, Joyce, Ian Macdonald, McLucas and Moore

Terms of reference for the inquiry:

To inquire into and report on: Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007

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Committee met at 9.29 am

CHAIR (Senator Fifield)—I declare open this meeting of the Senate Finance and Public Administration Standing Committee. This hearing is for the committee's inquiry into the provisions of the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007, which the Senate referred to the committee on 16 August 2007 for report by 4 September 2007. The bill seeks to allow the Australian Electoral Commission to undertake any plebiscite on the amalgamation of any local governing body in any part of Australia. The committee has received 92 submissions for this inquiry. All submissions have been authorised for publication and will be available on the committee's website.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in providing evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. Before the committee hears from the Australian Electoral Commission and the Department of Finance and Administration the committee will be holding an open microphone session for 30 minutes during which interested members of the public gallery will be invited to give their views on the bill. There will be a strict time limit of two minutes per person.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist upon an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time. The Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

COSTAR, Professor Brian John, Private capacity**ORR, Dr Graeme, Private capacity**

Evidence was taken via teleconference—

CHAIR—I now welcome by teleconference Dr Graeme Orr, Associate Professor from the University of Queensland, and Professor Brian Costar from the Swinburne University. Dr Orr, would you like to make a short opening statement?

Dr Orr—Yes I would, thank you, Chair. I thank the committee for the chance to appear, albeit by phone rather than from beautiful Cairns. I will give a very brief summary of my submission because it was reasonably legalistic and also so that you know what my voice sounds like. I appreciate that both on the Queensland and the Commonwealth sides the legislative gambits have been driven by the rather heated political nature of the issue and that is not necessarily a good climate for sound policy or drafting sound law. My criticisms of the law should be taken in that context.

The Commonwealth bill you are considering is beyond power and in that Professor Gerard Carney and I have come to the same conclusion using the same route. The bill is not incidental to the Commonwealth electoral power that may justify the AEC taking on private electoral work. More importantly, it breaches the longstanding principle of federalism that Commonwealth law cannot override matters at the heart of the existence other states as polities. If the Senate were still a states' house, that would be an especially powerful political argument.

The bill might be partly saved by the corporations power, which is a very vexed issue as you may know. I did not address it in the written submission but I am happy to consider it orally. Where Professor Carney and I part ways is on the now probably moot question of whether the Queensland laws were unconstitutional themselves. I am far from convinced that they breached the implied freedom of political communication. Even if they did, contrary to Professor Carney's submission, I do not see how that enlivens an external affairs power. The international covenant sets a very low threshold, as you would expect; it is a treaty meant to guarantee basic democratic rights in emerging democracies.

I did not give a definitive opinion on whether the Electoral Commission is properly empowered to run non-Commonwealth polls generally. It is a difficult question of general concern to the Commonwealth and I am happy to consider that orally if you like. I included some suggestions in my submission that the Commonwealth could in any event hold a general amalgamation poll across all or part of Queensland whenever it likes simply by contracting itself with the commission. Under the current law it would be up to the commission whether to enter such contracts.

In finishing, I will make two quick policy comments. One is that I was very concerned about the possibility that these ballots might be held on federal election day. The Commonwealth Electoral Act specifically guards against mixing state and federal polls, particularly for reasons of confusing voters. It is a very wise rule that we would ignore at our peril as it would create potentially a US-style precedent. So I am quite reassured to read statements by the Local Government Association that the proposed ballot should be over and done by 20 October.

The second and deeper policy issue is that if we are to go down the path of holding plebiscites, we should do so in a less ad hoc way. Why are we having polls in Queensland shires but not, say, in Northern Territory Indigenous communities? Why are our political leaders talking about plebiscites on specific hot issues and not others? Does the electorate realise that such polls have no binding effect, and what cynicism will be generated when they realise that they are no more than expensive opinion polls, however good they are for participatory democracy? We had a debate about citizens' referenda in the late 1990s. If we want direct democracy, let us consider trialling it in a considered, comprehensive, legally sensible and meaningful way but steer clear of the current obsession of ad hoc plebiscites, which are little more than politicking on single issues. As Professor Brian Costar argues in his submission, this approach has the potential to damage the independence of the Australian Electoral Commission.

I note Antony Green has blogged similarly about the independence of the commission concerns. Just imagine if a future Liberal government decided to hold plebiscites on the siting

of nuclear power stations and, at the same time, the states wanted to hold plebiscites about nuclear power and waste using different wording. What is the electoral commission meant to do when asked by both levels of government to hold what are essentially push polls?

CHAIR—Dr Orr, have you concluded?

Dr Orr—Yes, that is the end of my spiel.

CHAIR—We just cannot see the expression on your face—thank you. Professor Costar, would you like to make a brief opening statement?

Prof. Costar—Thank you. I would like to join with my colleague Dr Orr and thank the committee for the opportunity to make what in my case was a rather brief submission. I am not going to talk about the substantive issue as to whether it is a good or a bad piece of public policy to amalgamate local government regions; that is outside my expertise. I also will not repeat the number of constitutional concerns that Dr Orr and Professor Carney have, though I note them and I think they are of substance.

I made three points I made in my submission. The first one was the one Dr Orr has just ended on—that is, concerns about reducing the independence of the Australian Electoral Commissioner by in effect requiring that person to conduct these politically charged plebiscites. My second point was that the Australian Electoral Commission is currently preparing for the federal election, which I am sure all senators know is a mammoth task. It has also been made more demanding by the requirement for the commission to run a public advertising campaign to seek to bring young people onto the roll, which is in itself a good piece of public policy.

The third point I want to expand on is the possibility—this now seems to have retreated, though we do not have any authoritative statements on it—of holding the plebiscite on the same day as the federal poll. While we can understand that this might be done for cost reasons, as Dr Orr has said, it breaches the intent of section 394 of the Commonwealth Electoral Act. I want to add an additional point here: it seems from the submissions of Dr Orr and Professor Carney that the Commonwealth would find it very difficult to compel persons to vote in these plebiscites, so we will assume that it is going to be optional voting. These plebiscites are not going to be conducted in every region of Queensland. As I understand it, it will be very selective—for example, the largest local government area will not have any evidence of these plebiscites, notably because Brisbane was to use the term ‘greaterised’ in 1924. My concern is that in certain random places of the state there will be two different messages going out to voters: one is the normal one—that it is compulsory for persons whose name is on the electoral roll to vote; and then another one stating that the voting in this plebiscite is voluntary. My concern is that it may well confuse a number of voters who think that the entire election is voluntary. You might think that is somewhat unlikely—and I hope it is.

My second point, however, is that some voters in Queensland on polling day—if the plebiscite is to be held in conjunction with the federal election—will be confronted with three different ballot papers. Along with the usual two, a Senate ballot paper and a House ballot paper, there will be a plebiscite ballot paper. As we know, on the House ballot paper they will be required to give a full set of preferences—and more and more candidates are running in

House of Representatives elections these days. They will be presented with a Senate ballot paper, and we know that 94 per cent of them will take the option of just voting '1' above the line. Then they will be presented with a plebiscite ballot paper, where presumably they will have to tick a box saying yes or no.

The last time a combination of a novelty—by 'novelty' I mean an innovation in terms of a different type of ballot paper—came together with a plebiscite was in 1984, and we know what happened: it spiked the informal vote, though ironically Queensland had the lowest spike in informal voting. I understand that was because the then local electoral commission became worried about this possibility and did extensive advertising. But I think you can see my point: given that the plebiscites are not going to be held in every jurisdiction, there is a possibility that the informal vote in certain jurisdictions will be higher than in others, and that could have an effect on the outcome of House of Representatives divisions and will certainly have an effect in the Senate. As I understand it from this distance, the contest for the sixth Senate place in Queensland is going to be particularly hot. So, for a lot of reasons, including that reason, I cannot see much benefit in this proposed legislation. That concludes my statement.

CHAIR—Thank you, Professor Costar. We will now move to questions.

Senator IAN MACDONALD—Professors, thank you very much for your advice. I wonder whether both of you have read the legislation that we are dealing with. The legislation we are dealing with says nothing about conducting plebiscites or polls. What the legislation does is override Queensland law which says it is an offence for people to have a say on an issue, including a plebiscite. You made a comment about the Australian Electoral Commission becoming politically charged and some councils not doing it. The administrative arrangements in relation to the AEC are a government administrative decision; they are nothing to do with the legislation. The Prime Minister has said that the AEC can conduct a poll if a council wants it and asks the AEC to do it, and the Australian government will pick up the bill. But that is an administrative issue; that is not mentioned in the bill. The bill simply overrides the Queensland law that says that it is an offence to conduct a plebiscite.

Professor Costar, you raised the issue of not having a plebiscite in the Northern Territory. The Commonwealth is not running a plebiscite. The Commonwealth is simply overriding a Queensland law which prevents a Queensland council from running a plebiscite. If councils in the Northern Territory want to run a plebiscite on Indigenous children or nuclear waste dumps or anything else, they are able to do it. But if a Queensland council wants to run a plebiscite on its own future and what its own people think about the future of local government then it is prohibited by Queensland law, on pain of penalty—and if you do not pay the fine I guess you would be thrown in jail. That is what the Commonwealth law is doing, simply overriding that. It is not saying that anyone has to have a plebiscite. It is not the Commonwealth running a plebiscite. It has nothing to do with that. I put those issues to you and ask for comments from you.

You also seem to be concerned that the AEC is becoming involved in a political issue. Good heavens, what is an election if it is not a political issue? The AEC runs that every three years, and more often with the states. I found myself struggling to understand the import of

both of your submissions. Having made those comments, could I get your comments on my comments?

Dr Orr—The reality is that the Commonwealth is funding these plebiscites, as I understand it. My written submission, as you may realise is, first and foremost, directed to the constitutionality of the plebiscites bill. The Commonwealth certainly has no power to override state law on this, even if I personally think the state law is heavy-handed and regrettable. In reality, elections, which come up periodically, are written into our Constitution. We are talking about ad hoc plebiscites that are being driven by one side of politics against another side, and about one side of politics trying to stop them against another side. So it seems to me that Professor Costar has a point when he talks here about not just the administrative independence of the commission but the potential for this to become a precedent for the commission to be caught up in a whole lot of US-style ballot initiatives.

Prof. Costar—I would concur with Dr Orr on that point. This is just a minor point, but it was Dr Orr who raised the Northern Territory issue, not me. The amending bill is very brief and the second reading speech did not give us much assistance, either, as to what the purport of the legislation is. But we read it in the context of the time, and I think you are taking a slightly narrow view of what the effect of the legislation will be. We need to give account to the political context of the time. I think Dr Orr has underscored the point—and I am not criticising this; I am all for partisanship in politics and that is what it is about—but I think it can reasonably be seen as part of the partisan pre-election activities that we expect. My only concern about it, as I said, is that the legislation and the minister do not use the term, ‘The Australian Electoral Commissioner will be directed.’ The legislation talks about ‘making available’ in material ‘the electoral roll’ and I presume staff and other facilities that the commission has. But, in terms of the way that the matter has been put to the public, I think there is only one conclusion that can be drawn—that is, in certain circumstances the Electoral Commission will effectively be required to carry out these plebiscites. I have two concerns about that. One is that it is beyond a routine administrative activity and, whether or not the plebiscite is held by postal ballot before polling day or by attendance voting on polling day, it diverts the Australian Electoral Commission from what I think we would all agree is its major three yearly task—that is, efficiently running the federal election which, in my opinion, it does very well.

Senator IAN MACDONALD—The act is very simple. I can tell you in four lines what it says:

A law of a State or Territory has no effect to the extent to which the law in any way prohibits a person or body from, or penalises or discriminates against a person or body for:

(a) entering into, or proposing to enter into, an arrangement under subsection (1)—

which is about plebiscites, or—

(b) taking part in or assisting with, or proposing to take part in or assist with, the conduct of an activity ...

It has nothing to do with the Commonwealth running plebiscites; it is simply about removing a law of Queensland which says you cannot have a democratic say on an issue. That is what

the act is all about. You are reading a lot more into it than you could possibly get from the bill before us.

Prof. Costar—With great respect, I have to differ on that. I think the bill has to be seen in the context that it is an amending piece of legislation to a rather ancient, complex and venerable piece of legislation. I think it beggars belief to suggest that its only purport is to override the law of a state.

Senator IAN MACDONALD—That is what the bill says. I am absolutely surprised but, anyhow, I have had my say.

Senator FORSHAW—I was certain that you had read the bill before you lodged your submission—I would not be so bold as to suggest that you had not. From reading your submission, I found it quite clear that you had read the bill and looked at the provisions of the bill and the use of the external affairs power upon which it is said to rely. I will take up the issue of the intention of the bill. I would also like to ask you: what is the current position under the Australian Electoral Act as against what the position would be under this legislation? I note in the second reading speech that it starts with the minister saying:

The bill gives effect to the Prime Minister's announcement on 7 August 2007 to allow the Australian Electoral Commission to undertake any plebiscite on the amalgamation of any local governing body in any part of Australia.

The Prime Minister has said that this would be done at the request of a local council and that the government would fund the AEC to run that plebiscite. I do not see anything in the bill that would prevent the AEC from being directed to run a plebiscite on any matter, either this one or in the future. Could you comment on the impact of the bill generally in terms of directing the AEC, as distinct from requesting the AEC.

Dr Orr—It seems to me that there was no need for this bill unless it was considered that local councils themselves had to initiate and supply, for instance, roll information. It seems to me that the current electoral act is quite clear: the Commonwealth could contract with itself, or one agency to another, to run an amalgamation ballot, and I deal with that in my written submission. There is nothing in the current Commonwealth Electoral Act or in this bill that really deals with the question of the independence of the commission. Currently it is up to the commissioner to say, 'We have the resources and we feel comfortable with contracting for these essentially private services, even though it is a public matter.'

Senator FORSHAW—It has been said on a number of occasions throughout this inquiry that it is already available to local councils or state governments, I assume—certainly local councils—to run plebiscites on this matter or any matter at all. Of course, in respect of amalgamations in Queensland the state government amended its initial legislation to prevent councils from doing that. Can you elaborate, because I want to clarify the position: what is the current position with a local council being able to utilise the services of the Australian Electoral Commission to run a plebiscite or, say, an election for local councils? Can the AEC do that without charge, utilising funds appropriated by the parliament, or do they have to charge for those services?

Prof. Costar—Could I give a response to that? I am sure Dr Orr wants to—

Senator FORSHAW—Certainly. My questions are to either of you or to both of you—whichever would like to comment.

Prof. Costar—As I understand it, the Australian Electoral Commissioner and state electoral commissions regularly conduct elections for all sorts of organisations. For example, I have watched it happen on the campus of Swinburne university in the days when we had effective student unions. They had their elections tendered out, but I think the state electoral commission conducted their elections. That is a quite common purpose. It is quite clearly there in the act, and it is there in various forms in the state acts, as I understand it. Therefore, it is quite appropriate for electoral commissions to tender for this work. As I understand it, a bit of healthy competition goes on between the Commonwealth commission and the various state commissions to gain some of these contracts.

It is quite clear, as I understand it, that those contracts are in fact contracts that the Australian Electoral Commission charges for the purpose. I presume that that is part of the contest of the tender—that each commission, if it wants to conduct the election, puts in different cost schedules. And of course, as we know, for many years the Australian Electoral Commission has conducted industrial elections. In fact, that predates the commission. I have no problem with—

Senator FORSHAW—Can I just interrupt there. That is in respect of trade unions, for instance, which are registered—

Prof. Costar—Yes, indeed.

Senator FORSHAW—under the federal legislation. There is no constitutional issue about them doing that.

Prof. Costar—No. I would make the point that those two activities—that is, industrial elections and the tendering for elections—are materially different to what we are seeing in front of us now. As Professor Orr pointed out, if we leave aside the industrial elections, the electoral commissions—I will use the plural—can choose whether they want to tender to conduct an election or not. In fact, as I understand it, we have had situations here in Victoria where private firms have conducted the elections. I think law firms have done it. It really is a matter for the council or the organisation as to how it wants to do it.

It does not seem to me that it raises any constitutional issues. It certainly does not impinge in any way on the independence of the electoral commissioners, both federal and state; whereas I think, to the contrary, I would simply have to disagree with Senator Macdonald, in that I think these ad hoc, policy driven plebiscites do compromise the authority of the commissioner. I would assume that the commissioner could simply say, ‘No, we won’t do it.’ I know that a former commissioner, for example, refused point-blank to hire additional staff to count the first ACT assembly election. He basically said, ‘No, you’ll simply have to wait for the ballot to be counted,’ because it was a very complicated issue.

Of course, a commissioner could do that, but remember the context that we are in that I was speaking to Senator Macdonald about. We are within a couple of months of a federal election. This matter is an election issue. It is putting enormous pressure, and I think undue pressure, on any federal electoral commissioner to be put in a situation, after the Prime Minister has announced his intentions and after the minister in his second reading speech,

which I have in front of me, draws attention to that—that a commissioner would say, ‘No, we’re not going to do it.’

Senator FORSHAW—Thank you. Time is running short, unfortunately.

Dr Orr—I have just one comment around that.

Senator FORSHAW—Yes, certainly.

Dr Orr—Senator Forshaw, I think your question ultimately is about whether it is constitutional to have the Electoral Commission running these essentially private or non-Commonwealth polls.

Senator FORSHAW—Not so much that, but whether or not they can do it utilising Commonwealth funds rather than as a contract for a service.

Dr Orr—As the act is currently written, they may charge a fee for service. That implies that they may provide the service at a discount or free, I suppose, but the Commonwealth I assume is going to provide extra funds. But Professor Carney has dealt with the question of the potential unconstitutionality of the Electoral Commission running these private polls. If that were true, unless the Commonwealth were relying on the trading corporations power—and that may not apply to certain small rural shires—then there are doubts about the broader issue.

Senator FORSHAW—Thank you. I might say that I recall, as a member of the electoral matters committee—and I think you certainly gave evidence to that—that one of the reasons for the change to close the rolls early was to take pressure off the Australian Electoral Commission in the lead-up to an election.

You raised the issue about who can vote and whether it is voluntary voting. One of the issues that has not been really raised or discussed as yet is just who can vote. If it is left simply to people who are on the Australian electoral roll, what happens in regard to those people who are residents of a local council area who may have an interest in the issue but are not on the roll or are not entitled to be on the roll? Secondly, what happens to other ratepayers such as businesses, which of themselves may have a right to vote in a local government election but not necessarily in a plebiscite?

Prof. Costar—I am not familiar with the Queensland local government legislation—Professor Orr could answer that, I am sure—but I know that in Victoria, for example, there is still an element of plural voting in the Victorian local government elections. It is not a terribly large element, but there is an element. But the big issue in Victoria often is that people who are not citizens are nevertheless compelled to be on the municipal electoral roll and are required to vote. Many of them get very upset when they get a fine or a request for an explanation because they have not voted in a local government poll. I think what is happening here is that we are just getting a cascade of unwanted complications that have the potential to disrupt us from the very important task of conducting this federal election.

Senator FORSHAW—Thank you, gentlemen.

Senator JOYCE—You would believe that the inception of a state is a boundary that includes a certain community of interests? Would you agree to that as a fair statement?

Prof. Costar—Sorry, Senator; could you explain that a little bit more?

Senator JOYCE—The states that make up the Federation were defined by a community of interests—that is, a state is not just an arbitrary line on the map; it was based on a premise of a certain community of interests and certain settlements that were in that area.

Prof. Costar—I think I would defer in the detail to Professor Orr on that one, but remember that early on, pre Federation almost, the colonial boundaries did move around a bit. They were often lines on maps, even though you did have, say, in Victoria, the Murray River dividing New South Wales and Victoria—it is a natural boundary, I guess. But I have seen maps from the pre-Federation period where the various states had reasonably different boundaries. But I will leave that to Professor Orr.

Senator JOYCE—Professor Orr?

Dr Orr—I am not an expert in the history of federalism. I think it is fair to say that states today are an approximation of continuing community of interests, in the sense that Queensland has different interests than Western Australia and so on, yes.

Senator JOYCE—I refer to the Federation debates and the position taken by Barton, before he was Prime Minister. He talked specifically about community of interests. He said that the primary building block is the community of interests of local groups from which the states evolve, and from the states becomes the Federation. Is that your understanding of it?

Prof. Costar—The question of community of interests, as you know, is a very complex one. You notice when we look at states—and I would agree with Professor Orr that since Federation, yes, there have been notions of states that are slightly different from each other; not as much as in the US, but there is some evidence of it—that there are also substate communities of interests. You will know, senators, that whenever we come to an electoral redistribution—I think of the one that abolished Gwydir and created Flynn—these matters are what are known as the qualitative issues to be taken into account when drawing, in this case, federal electoral boundaries. The one that is always the most contested and argued about is community of interests.

Senator JOYCE—Going back to what Professor Orr said just prior to that, Professor Orr has stated that a community of interests has developed within the state boundaries. That was your statement about two minutes ago—is that correct?

Dr Orr—I would have thought that communities of interests are constantly changing; that is why it is a difficult concept. But, to short-circuit this, if the issue is whether I agree that the amalgamation issue is a difficult one and an unhappy one, I personally—even though I taught Minister Fraser only a couple of years ago—disagree with the way that the Queensland government has gone about this.

Senator JOYCE—Would you say that what the plebiscite would do—and I concur with Senator Macdonald that there is no statement about when it would be, but I will go back to that issue—is no more than discerning a view inside the state, rather than holding the state to change a position? Really all you are doing is discerning the view. It is a plebiscite, not a referendum.

Dr Orr—It is not binding. In that sense, it is not a referendum. It is like a referendum in the sense that all you are doing is asking people to vote on essentially whether they want to keep the status quo of their boundaries. You cannot give people 10 different options for potential future boundaries.

Senator JOYCE—No, I disagree. It is intrinsically different to a referendum because a referendum is a binding principle that changes legislation or changes a process of law. This has no power to effect change. That is correct, isn't it?

Dr Orr—Absolutely, I just meant that it is like a referendum in the sense that you are being asked to vote, if you like, for the status quo. I assume these ballots will not be giving people 10 different maps and saying, 'Would you prefer to be in these slightly tweaked boundaries?'

Senator JOYCE—But that might not be the referendum. This just talks about the legality of holding a plebiscite.

Dr Orr—Yes.

Prof. Costar—I would not run your argument about community of interest—that is, that the state is a community of interest—too far because would this not then allow some people to say—

Senator JOYCE—Do you think we should look at the boundaries of states then?

Prof. Costar—No, hear me out. I was just thinking that if that view is aboard—that the state is a community of interest—could not people then argue that the structure of local government within that state is a matter of interest for the entire community and let's have a state-wide plebiscite as to the structure of local government in Queensland, or anything else?

Senator JOYCE—Alternatively you could have a plebiscite to determine whether they wanted another state.

Prof. Costar—That is provided for in the Constitution of course. But plebiscites are not involved.

Senator JOYCE—The majority of people in the majority of states, so it is stacked against it.

Prof. Costar—We have not had a—

Senator JOYCE—Going back to the issue of when plebiscites are held. There has to my knowledge been no statement at all by the coalition that has stated a position or a time for a plebiscite; however, there has been a statement by the Leader of the Opposition, Mr Rudd, as to when a referendum would be held, which was that it would be at the following election. Does that not inherently agree with your statement that there would be a confusion of state and federal issues?

Prof. Costar—Yes. I think the spirit and, more, the intent of section 394 of the Commonwealth Electoral Act should hold. I do not care what government is doing it. I think it should not happen. That is the clear intent of that section.

Senator JOYCE—So that statement by Mr Rudd contravenes section 394 of the Commonwealth Electoral Act?

Prof. Costar—I used the term ‘intent’. Section 394, which I have in front of me, does give an out. It says basically that there will not be state elections—or referendums, as it calls it—on federal polling day ‘without the authority of the Governor-General’. That is why I have been careful to say that it does not breach the law because there is the out. As far as I can remember, that out has never been used but you can see that it is there for special circumstances.

Senator JOYCE—You have made the statement that you believe the Queensland Labor government’s position is ‘heavy-handed’. Noting that they have basically got local government officials in a position where a propensity for doing their jobs will turn them into criminals, how would you deal with that issue?

Dr Orr—I made the statement ‘heavy-handed’. What I am saying is that, from a purely democratic perspective, I think they clearly should have allowed the plebiscites, and now they are backing down on that. If nothing else, it would have allowed a letting off of steam and more natural development of the debate. But they were acting constitutionally. I think the federal bill is heavy-handed, particularly in the way it is overriding what are effectively a state’s rights and interests—namely, the structure of local government within that jurisdiction.

Senator JOYCE—So you are saying that the Constitution allows you to be somewhat heavy-handed and in fact tyrannical, if you want to be.

Dr Orr—We do not have a bill of rights. If you want to join the battle and support a bill of rights, I will give you the number for Professor George Williams.

Senator JOYCE—You have clearly spelled out some issues there. Thank you.

Senator McLUCAS—I want to go to the question of the potential for confusion in the community. In your understanding, which local governments will be able to request a plebiscite and how will they do so? Also, is there any discussion about councils that are being amalgamated being asked to partake in that plebiscite?

Prof. Costar—I will have to leave you as an alarm is ringing and I have been ordered to evacuate the building. Thank you for the opportunity to speak to you.

CHAIR—Dr Orr, are you still with us?

Dr Orr—I am. I guess I will have to answer that question. Senator McLucas, I do not know any of the factual background about which councils will be taking part in these polls. It does seem to me that there is the problem with the adhocery in all of this that you end up with something a bit like the Florida election fiasco where Senator Gore was trying to pick and choose certain areas where he wanted to have polls. It does seem to me that in any more rational, reasonable system you would have what I guess the original Queensland legislation was—which was to have a referendum proposal on the amalgamation of shires. That was the original Queensland law, and it is set out in the local government association submission.

Senator McLUCAS—My other question is to clarify the point I think you made about this particular proposal not setting a precedent—that it does not allow for community consultation for broader issues other than the current issue that we are dealing with. For example, if there was a community which was particularly opposed to a development application in its area

then this legislation would not enable a plebiscite to be held in that community about whether or not that community supported that development application.

Dr Orr—This legislation is unconstitutional, but it applies, as Senator Macdonald pointed out, to any potential situation where a state or a territory tried to stop or oppress citizens or even a state government agency or body from holding such a vote by going along to the Australian Electoral Commission and trying to contract with them to hold such a non-binding plebiscite. It does seem to me that the original Commonwealth Electoral Act was never written with this kind of ad hoc, highly politically charged plebiscite in mind. We have already had Premier Beattie threaten to hold plebiscites on issues that the Commonwealth might find uncomfortable. I really think that if we want to go down the path of direct democracy then we need to go back to the debates about binding citizens referenda rather than this kind of adhocery, which is driven in large part by warring political parties.

Senator McLUCAS—In terms of binding citizens referenda, have we have had a referendum on that question in Australia at all?

Dr Orr—Norfolk Island is the only jurisdiction where there are citizens referenda. We have not had a referendum on it, but it was actually debated in the constitutional debates in the 1890s. The Swiss model was considered attractive by some.

Senator McLUCAS—In your view, given your knowledge not only of electoral law but also of the Australian politic, what is your view in terms of what Australia thinks of binding referenda of that nature?

Dr Orr—I think we saw in the late nineties that there are some groups where there is a lot of interest in and support for it, particularly from people who might consider themselves excluded from the mainstream political debate. It really is a difficult question because you are effectively reworking a representative democracy into a direct democracy. I think we would have to go and look at the American model to see some of the issues and problems with that, particularly if you have lobby groups or political parties trying to get initiatives on the ballot really to manipulate the political process.

Senator FORSHAW—Is Professor Costar still on the line?

CHAIR—No, he has been evacuated.

Senator FORSHAW—Perhaps Dr Orr might like to comment on this then. I am seeking clarification, and I think we will probably put this on notice to Professor Costar as well. As I read it, section 394 of the Commonwealth Electoral Act as I read it is intended to prohibit the holding of a state referendum on the same day as federal polling day not to prohibit the holding of a constitutional referendum by the federal government on the same day as federal polling day. Can you comment on that, Dr Orr?

Dr Orr—It does say that no vote of the electors of part of a state shall without the authority of the Governor-General—i.e. acting on the advice of the Prime Minister—shall be held or taken under a law of the state. Clearly these plebiscites are not being held under a law of the state, but Professor Costar is right as to the intent of that provision; it was intended to avoid confusion by mixing what are local government and state issues with federal issues.

Senator FORSHAW—The reason I raise this is that Senator Joyce was putting the proposition that Kevin Rudd's proposal to hold a constitutional referendum would be—

Senator Joyce interjecting—

Senator FORSHAW—Excuse me.

Senator JOYCE—I have the right of reply now.

Senator FORSHAW—The proposition was put that Kevin Rudd's proposal to hold a constitutional referendum to amend the Australian Constitution, if held on the same day as the next federal election—not this coming one—would contravene section 394. I was seeking clarification whether that was correct.

Senator JOYCE—He just answered you. He said it goes against the intent of it.

Senator FORSHAW—Chair, Senator Joyce tries to—

Senator JOYCE—You are always having a go at me.

CHAIR—Excuse me. Senator Forshaw has asked his question.

Dr Orr—I did not comment on Senator Joyce's remarks about Mr Rudd's proposal because I do not know the detail of Mr Rudd's proposal. If all he is proposing is a local government constitutional referendum under section 128 of the Constitution, we have had such a thing before back in 1988 to entrench local government in the Constitution. Obviously that does not formally breach either the letter or the intent of section 394. If we did have parliament routinely raising referenda questions on issues that were really for the states—for example, the gay marriage one in the United States—then, I think, we would be breaching the intent of section 394.

Senator JOYCE—You have just changed your position. You just talked about this being a problem because it has an implied intent that it is a partisan state issue and now you are saying that, if you have a referenda on the whole issue, it is not contravening an implied intent. Which is your position?

Dr Orr—I do not know Mr Rudd's proposal, but if it is to amend the Australian Constitution then, of course, it is an issue that is valid and formally within the intent of section 394. But if you have proposals for individual parts of individual states to vote on local issues that are driven in the context of a state government amalgamation of local government then that does breach the intent of section 394, if it is held on polling day.

Senator JOYCE—Therefore, if the position is to deal with a partisan state issue then it is in breach of section 394 of the Electoral Act.

Dr Orr—No, if the constitutional referendum is about dealing more power, for example, to the Commonwealth over local government then that is formally within the intent and purpose of section 394 for it to be on polling day. It may not be desirable.

Senator FORSHAW—Exactly Mr Rudd's proposition.

Senator IAN MACDONALD—Perhaps on notice, could you direct me to the provision of this amending bill where the Commonwealth is saying anything about conducting a plebiscite? As I understand it, the bill simply removes a state law that says you cannot have a

plebiscite. If you are suggesting that in some way the Commonwealth is to conduct a plebiscite, could you please direct me to the provision of the amending bill which actually says that?

Dr Orr—This bill is unconstitutional for reasons you will find clearly stated in my submission and Professor Carney's. The Queensland government certainly has power to stop local governments using local government resources to contract with the AEC to run these, essentially, private polls. This bill is in the context of the Commonwealth having said it will fund these polls—the reasons for which the Commonwealth is better aware than I. This is the context in which this bill arises.

Senator IAN MACDONALD—You are a professor of law. Please refer me to the provisions of the amending bill which support what you are saying.

Dr Orr—This bill is unconstitutional, as I have explained. No-one has asked me a question about that issue. This bill is unconstitutional and the Queensland government has power to stop the councils using council resources to contract with or run these polls. This bill is obviously necessary to attempt to override the Queensland government's position and to allow councils to run those polls. In that sense, it is indubitably an act by the Commonwealth to give the councils money and to try and free them of the shackles of what I agree is a draconian Queensland law.

CHAIR—I was going to put this question to Professor Costar, but in his absence I will put it to you. It is similar to Senator Macdonald's question. Could you point to the provision in the bill that gives the government a power to direct the Australian Electoral Commission to conduct a plebiscite?

Dr Orr—I did raise that matter before. The current Electoral Act permits the Commonwealth—

CHAIR—No, a new power or an additional power over and above what they already have.

Dr Orr—As I said earlier, this does not give the Commonwealth any new powers to direct the Australian Electoral Commission; it is just a question of political or administrative expectations and pressure under which the commissioner might find himself. That, as I understand it, is Professor Costar's point.

CHAIR—Could you point to a provision in the bill that gives the government a new power to direct the Australian Electoral Commission as to the timing of a plebiscite?

Dr Orr—No, that is not covered by this bill.

Senator FORSHAW—Doesn't the bill refer to removing impediments that may currently exist constitutionally in the act and, therefore, by writing an amending bill which removes what could be an impediment to the AEC, you ensure that the provisions in the act can be applied to local government plebiscites. Isn't that what this legislation attempts to do?

Dr Orr—This bill attempts to remove the Queensland government's powers to block the plebiscites. That is the reality of it.

CHAIR—Correct, but my two questions were: does this give an additional, new power to the Commonwealth to direct the AEC as to the timing of the plebiscite and does it take away the independence of the AEC to determine such a matter?

Dr Orr—No. Ultimately it is up to the Australian Electoral Commission itself to decide not to enter into such a contract.

CHAIR—So the answer is no to both of those questions. Professor Orr, thank you very much for your time. We appreciate you appearing today.

Dr Orr—You are welcome.

[10.21 am]

BERESFORD-WYLIE, Mr Adrian, Chief Executive, Australian Local Government Association

RICH, Councillor John, Board Member, Australian Local Government Association

HOFFMAN, Mr Gregory Thomas, Director, Policy and Representation, Local Government Association of Queensland Inc

TALBOT, Ms Simone Louise, Policy Advisor, Local Government Association of Queensland Inc

CHAIR—I now welcome representatives of the Australian Local Government Association and of the Local Government Association of Queensland. Would the Local Government Association of Queensland like to make an opening statement?

Mr Hoffman—Thank you, Chair. On behalf of the Local Government Association of Queensland, I thank you for the opportunity to appear today. At the outset, let me indicate that our association supports the [Commonwealth Electoral Amendment \(Democratic Plebiscites\) Bill 2007](#). Our submission details the chronology of events which have led us to this position. I would like to briefly explain why that is the case. Our concerns are in two parts. The first is in relation to the process of the local government reform agenda, which we consider to be flawed, and, as a consequence of that, aspects in relation to the outcomes.

On 17 April the state government unilaterally, without any warning or consultation, abandoned the local government association's size, shape and sustainability initiative, a program of local government self-reform which, at the time, involved 117 councils. This program was legislatively and financially supported by the state government. In fact, the state government had committed \$25 million over five years from August 2005. The size, shape and sustainability program included a referendum process for councils considering amalgamation or major boundary changes arising out of that size, shape and sustainability program.

The state government's local government reform program announced on 17 April created a seven-person commission, giving it three months to report on the future local government boundary arrangements for all 157 councils—excepting Brisbane, which was not covered by the legislation. The commission subsequently gave one month for the receipt of suggestions, leaving it two months for the analysis of the 47,000 submissions ultimately received. Despite our request for the commission to engage in face-to-face meetings and to conduct public hearings across the state in relation to its processes, it chose to stay in Brisbane undertaking a desktop analysis behind closed doors.

The state government's reform program legislated in April removed the referendum provisions that had stood in the Local Government Act for quite some time and also removed any rights of appeal, challenge or review of the commission's or minister's actions in relation to the conduct of the reform program. It did acknowledge in doing so that this was a breach of the state's fundamental legislative principles. That, in our opinion, was not a good start to a reform process.

The state government did not remove in April the longstanding poll provisions available to councils under chapter 6 of the Local Government Act—a provision that enables councils to seek the opinion of the public on matters that it is considering. We took advice on the matter in relation to its application to the reviews at that time being undertaken by the government and were advised that polls could be used to seek public opinion on the review process. Subsequently, the reform commission's report was handed down on 27 August and legislation was introduced on 7 September to give effect to the commission's recommendations. That legislation included financial penalties and cost recovery provisions for councillors involved in the conduct of polls under that chapter 6 of the Local Government Act.

On 10 September, when the legislation was debated and ultimately passed, the state government introduced amendments prohibiting polls and seeking or engaging in other polls—for example, plebiscites of this nature—under threat of dismissal. It is not surprising then that our association, the vast majority of councils and a significant element of the Queensland community have been dismayed at the government's actions in its denial of the opportunity for the public to express an opinion on these matters which are of such fundamental importance to the future of their communities and the governance of those communities.

The state government indicated that the boundaries of local governments were in fact outdated and needed to be changed. The process it introduced, as I indicated, potentially provided for the future for the next 50 to 100 years to be resolved in a period of three months without the opportunity for communities to engage effectively with the Local Government Reform Commission as it undertook its work nor subsequently to express their opinions in any formal process in relation to matters specifically relating to changes that would affect those communities for a very long time.

In initiating its Size, Shape and Sustainability Program in 2005, the Local Government Association recognised the need for the reform of local government and proposed a very comprehensive program involving extensive community engagement and also utilised the provisions in the act at that time, supported by the state government, for a referendum to be part of that determinative process. We had expected that, with local government endorsement of the Size, Shape and Sustainability Program, that there would have been a number of outcomes that would have involved potential amalgamations of councils, boundary changes amongst councils, the introduction or adoption of collaborative arrangements between councils and shared service arrangements of all shapes and sizes. This is what was being explored under the Size, Shape and Sustainability initiative.

The state government's actions on 17 April, without any consultation, effectively put a stop to that program, denying the opportunity for that full and comprehensive review process to be undertaken—remembering that the state government had offered funding support for that program for a period of five years. In effect, the state government shut the process down after about 18 months. Our concerns are documented in our submission, and I am happy to speak to those if you wish.

CHAIR—Thank you, Mr Hoffman. Would the Australian Local Government Association like to make a brief opening statement?

Councillor Rich—Yes. Thank you for the opportunity to appear before this hearing. I represent the Australian Local Government Association, which is a federation of state and territory local government associations charged with advancing the interests of local government at the national level. I am accompanied by Adrian Beresford-Wylie, who is the Chief Executive of ALGA. You have already heard from our colleagues from the Local Government Association of Queensland about the background to the events in Queensland, and I do not intend to go over the same ground. The submission made by ALGA is a relatively short one. ALGA support the bill. We welcome its purpose in allowing the AEC to undertake plebiscites on council amalgamation. As stated in our submission, this is entirely consistent with the position advocated in the 2005-06 national agenda for the National General Assembly of Local Government that extensive public inquiry, consultation and debate must precede any proposal to restructure local government or the boundaries of local government areas. Any such proposal must be determined by referendum. Restructuring must be implemented in such a way as to avoid periods of time when communities are without duly-elected councils.

ALGA does support the need for local government reform to achieve increased efficiency. The need for local government itself to continue reform efforts was identified in the PriceWaterhouseCoopers report on national financial sustainability of local government. This was released by ALGA in December last year. We do not, however, support forced amalgamations without community consultation. The PWC report found that 10 to 30 per cent of councils faced financial sustainability challenges which would require them to make changes in their future level of expenditure or find additional revenue, or both, if they were to be sustainable. Its recommendations did not include forced amalgamations.

The events in Queensland have highlighted for ALGA the importance of pushing for constitutional recognition of local government. ALGA believes that constitutional recognition could prove the mechanism for protecting local government bodies from unfair and capricious sackings by state and territory governments on unjust or ideological grounds. Local government is the third sphere of government in this country, and its role as part of the governance of Australia was acknowledged by the Australian parliament in its parliamentary resolution on local government passed in October last year. ALGA supports this bill, which seeks to ensure that local communities are afforded their democratic rights to have a say in how they are governed at the local level. Thank you for giving me the opportunity to say that. I am happy to take questions.

CHAIR—Thank you. Mr Hoffman, we have heard from a number of councils over the past few days that the triple S review process was ticking along quite nicely. A majority of councils were freely and happily taking part in that process and they were very surprised when, as you say, after 18 months that process was brought to a halt. We have heard that the Premier threw his hands up in the air and said, ‘I had to stop this process. It had been going on for years and years and had not got anywhere. Someone had to finally make a decision’ or words to that effect. There does seem to be a pretty fundamental disconnect between the Premier’s view and the views of the council taking part in that triple S process. Could you give the committee your view as to why that action was taken? To date I am at a loss to understand what led to the abandonment of that triple S process.

Mr Hoffman—When the announcement was made on 17 April that the government would introduce its own reform program, it set in place a timetable that would see the review process completed in three months, as I indicated earlier. Decisions were made by the parliament and implementation processes were set in train. That is intended to enable the remade local governments to go to election on 15 March 2008. Councils in Queensland have a four-year electoral term—a fixed term. Normally, elections are held on the last Saturday in March of that four-year cycle. It can change when it clashes with Easter, and on this occasion Easter will pose problems in relation to that date. Basically, the government had indicated that it wanted the reviews completed in time for the local government elections on 15 March.

We accepted that the triple S program and the stages that it involves would have seen some reviews—potentially two—completed for the elections to be held in March as normal. Other reviews would have prompted the deferral of the review process through the election or, potentially, the deferral of the election. The Local Government Act in Queensland enables the local government elections to be deferred within the calendar year in which they are due, so the elections could have been deferred until November or, potentially, early December 2008. We sought, on a number of occasions, clarification as to the government's position in relation to that prospect—namely, deferring elections. In fact, we had asked that question from October–November 2006. Despite undertakings to provide us with a government position on a number of occasions—in January, February and March this year—we did not get an answer as to the government's position until it announced its decision to conduct its own reform program, on 17 April. To answer your question, regrettably rather longwindedly, it was an intention of the government to resolve these matters by March 2008 and not let it continue for longer.

CHAIR—Even though the process was only part-way through?

Mr Hoffman—Yes. When the government indicated its support for the program and, in fact, put in legislation to that effect, it was the clear understanding of all the parties that, with the funding program and the process, it would probably take two to 2½ years to conduct the reviews and, subsequently to that, with government decision-making and the implementation program, it would take another two years or thereabouts.

CHAIR—When the Queensland government announced the forced council amalgamation legislation, drafted it and introduced into the parliament, was the legislation referred to a committee of the Queensland parliament for inquiry?

Mr Hoffman—No, it was not.

CHAIR—When the Premier announced that punitive measures would be introduced, that amendments would be introduced to fine and sack councils that access plebiscites, were those amendments referred to a Queensland parliamentary committee for inquiry?

Mr Hoffman—No, they were not. The indications in the explanatory notes to the bill indicated some departmental consultation, but there was certainly no wider referral outside of departmental considerations.

CHAIR—So you would think that a parliamentary inquiry into the legislation would have been an appropriate thing to do, given the significance of the legislation?

Mr Hoffman—Certainly wider consultation with the parties likely to be affected by it would have been well and truly appropriate. In fact, within the Queensland Constitution Act there is a provision, which was introduced back in 1989, if my memory is correct, that says that, when the government introduces legislation that would have an effect on local government or any local governments, it would, as far as practicable, consult with the Local Government Association. It chose to not do that, exercising its rights under that legislation to not do so, but we would contend that, on an issue of such fundamental importance to the future of local government, that was one such occasion when that provision should have been utilised.

CHAIR—I want to put to you a statement by the Queensland Minister for Local Government, Planning and Sport, Andrew Fraser, in relation to this committee and its hearings into this legislation. He is quoted as saying:

It's been exposed for what it is—a taxpayer funded touring circus for Howard government mouthpieces to peddle false hope.

Apart from referring to some of my Labor Senatorial colleagues as Howard government mouthpieces, which I think is very unfair, do you agree with that statement? Do you think this committee hearing is not a worthwhile exercise?

Mr Hoffman—We have supported the legislation. I add that it was not of the association's initiation to seek the legislation but, given that it is now being considered, we have supported it for the simple reason that we have for some 20-plus years now had a policy position on our books, adopted at annual conference, that indicates that if there are to be amalgamations of councils that should involve a referendum process.

By its actions in April the government removed those provisions from state legislation and, subsequently, as you are aware, removed the provisions for the conduct of polls. We do not believe that any action that is intended to provide the community with an opportunity to express its opinion on these matters, in line with our policy position of some 20-plus years, is inappropriate. That is why we are here expressing our support for the legislation.

CHAIR—I observe that it is ironic that greater parliamentary public scrutiny is being given to a piece of legislation designed to restore a right than was given to a piece of legislation designed to take away rights. Mr Hoffman, is it your understanding that this legislation seeks to simply restore a right that had been taken away?

Mr Hoffman—Yes. I do not contend otherwise.

CHAIR—It does not give local government anything more than they already had. Putting to one side the fact that the government, in a separate decision and not part of this legislation, has decided to pay for the referendums does not give you anything that you did not have before.

Mr Hoffman—No, it does not. It returns the opportunities that were previously available in state legislation which were removed as part of this process.

CHAIR—Thank you, Mr Hoffman.

Senator McLUCAS—Mr Hoffman, you said earlier that it was not on representation from LGAQ that the Prime Minister has taken this action. Can you give the committee an

understanding of what discussions were held between LGAQ, and maybe even ALGA, and the Prime Minister's office in the lead-up to this legislation being flagged and then brought into the parliament.

Mr Hoffman—I personally was not involved in any such discussions, and I am not aware of any such discussions having taken place. That is the basis of my comments. Subsequent to the announcement by the Prime Minister that legislation to this effect would be introduced, there certainly was communication between our president, our executive director and officers within Minister Lloyd's office. Communication has taken place since then and, subsequently, with the Australian Electoral Commission in terms of the processes should the legislation be passed.

Councillor Rich—I am not aware of any discussions between ALGA and the Prime Minister's office; however, I would like Mr Beresford-Wylie to answer that question for me.

Mr Beresford-Wylie—Yes, if I could just touch briefly on that. In the lead-up to the federal election, the Australian Local Government Association's national president, Paul Bell, has been seeing a large number of ministers and ministerial officers—

Senator IAN MACDONALD—In chains.

Mr Beresford-Wylie—absolutely—and shadow ministers and backbenchers of all sorts. We have held discussions with ministers' officers and shadow ministers' officers, and a number of them have asked about the Queensland situation in that general context. They have been interested in the Queensland situation. It has been touched upon by a variety of different officers. We had a general discussion with someone from the Prime Minister's office about what we were looking for out of the election and what our priorities were, and the Queensland issue was touched upon.

Senator McLUCAS—I was trying to get an understanding of the discussions between the Prime Minister's office and local government prior to the announcement of the legislation that we are inquiring into today. Mr Hoffman, I think you were telling us that there were no discussions with you but that there may have been some with the LGAQ?

Mr Hoffman—I am not aware of the timing of discussions. Certainly the advice to me is that the association did not seek the legislation per se.

Mr Beresford-Wylie—As for me, I have had no discussions and I am not aware of any.

Senator McLUCAS—Councillor Rich—and Mr Hoffman, please comment as well if you would like to—you make a very clear statement in your submission about the importance of constitutional recognition of local government. I think you are saying in your submission that, if constitutional recognition of local government were in place—as we certainly supported twice in referendums some years ago—this situation would not have occurred. Is that correct?

Councillor Rich—That is my understanding of it. If local government were recognised as a sphere of government in the Constitution, I think it would be very difficult for states to take their current action. Removing democracy at the local level, as is proposed in Queensland, is a terrible blow to local government. Constitutional recognition is one of the means by which that could be protected. We would be very keen to support that going forward. I recognise that it is a whole different question, but I certainly think that would help the process of preventing

local government, local councils and communities having decisions made about them without their affairs being given due consideration.

CHAIR—Councillor Rich, have you looked at the 1988 referendum question?

Councillor Rich—Yes, I have.

CHAIR—Your view would be that it would prevent a state government from forcibly amalgamating councils. From my reading of it, it simply says that local government is recognised and shall be subject to the laws of the state.

Councillor Rich—There is a lot of work to be done on a future referendum on constitutional recognition. It is a very complex issue, and I would not put up the previous questions as being representative of what should be done. From my point of view, Australian local government has matured significantly over the last 10 or so years. You have seen the independent review of sustainability of local government in nearly all states. They have been leading from the front. They are leading a charge of reform in local government. I am very proud of what they have done in that regard. We have done so in South Australia. We were one of the first states to do it. To take it from there and then to have a state, whichever state it might be, say, ‘We’re not going to listen to you finishing your review; we’re going to impose things on you’ is hitting at the very grassroots democracy. Local government is closer to the community than any other form of government and, in most cases, is doing an incredibly good job.

CHAIR—Even if the 1988 referendum had passed, it would not have prevented this situation.

Councillor Rich—No, it would not have prevented this situation.

CHAIR—It would have been something different.

Councillor Rich—Yes.

Senator IAN MACDONALD—Just on that very point, do you know what the attitude of the state governments are to constitutional recognition for local government?

Councillor Rich—I think it varies from place to place. It is a very complex question. We discussed it in South Australia with our state government. I sense that it is lukewarm. I do not think there is a great appetite for recognising or elevating local government to any degree; although, I think we are making some progress in various states where there is some discussion about the fact that there needs to be a reform of how local government is treated. Each of the states are now entering into agreements with their local government associations. I think there is a bit of a way to go. I think they are lukewarm in some states and I think we have a bit more work to do.

Senator IAN MACDONALD—I used to say when I was local government minister, ‘Bring me that consent of every state government and a proper question and you will get it.’ But I can guarantee you that the state governments will not support the constitutional recognition of local government, for obvious reasons. I might add just as an aside that they are all Labor governments too. But that is a political point and this is not a political inquiry.

Senator McLUCAS—Going to the question of how you might achieve the appropriate question and how local government could be part of that, what is your personal view, Councillor Rich, or ALGA's view about the appropriateness of establishing a council of Australian local government, which would have coming to a view on the wording of the question about constitutional recognition pretty high on its agenda I would imagine?

Councillor Rich—I think Senator Macdonald makes a very good point. We would not want to hold a referendum on constitutional recognition tomorrow because it would not be supported, because the states would not support it. We have a fair bit of work to do with each of the individual states. I think there is a fair degree of cohesiveness in local government and I think there is some good dialogue happening at the federal level, but we have a fair bit to do. I think we have to work together to work out what those questions are. They need to be very specific questions and very carefully crafted questions with a very detailed decision about what it is we are looking for and how we do that in law. Adrian, I do not know if you want to add to that.

Mr Beresford-Wylie—I will just expand a little bit. The President of the Australian Local Government Association, Councillor Bell, has indicated that he sees constitutional recognition as something that will be discussed at the next National General Assembly of Local Government, which will be held in Darwin at the end of November. I think what might emerge from that is some understanding or consensus about what might be sought in terms of constitutional recognition. From there, it is then a process of working through the various propositions in wording terms about what might meet that requirement. Councillor Bell foreshadowed the idea of local government convening its own constitutional convention—a local government convention—to look at working towards a shared view of what the wording should be and therefore what the question should be and then approaching the government. We are aware, obviously, of the announcement last week on the Gold Coast by Senator Lundy on the Council of Australian local governments. In response, Councillor Bell welcomed that announcement and we have issued a press release saying, 'We look forward to working with the opposition in exploring and developing their proposition further.'

Senator McLUCAS—I should declare that I am a former local government councillor of the Cairns City Council. I might also refer people to my first speech in which in the second sentence I said I thought it would be appropriate for local governments to have recognition in the Constitution. Can I ask you to discuss the concern that has been put to me by people who I think have not thought through this issue properly. People say to me, 'If you constitutionally recognise local government, those boundaries will stay in concrete forever.' I do not agree with that, but I wonder if either of the two associations would like to comment on a process that might ensue. How can you look for efficiencies in local government if you are constitutionally recognised?

Councillor Rich—I think it depends very much on the form in which that constitutional recognition is framed. It does not have to be restrictive. Certainly, if I can digress a little, we have been through a voluntary process in South Australia which has seen 144 councils come down to 68 by a voluntary process. Most of those have worked pretty well. There is still some tidying up and there are still some areas that need to be worked on, and that is going through the process. So I think there will always be changes in our communities, as there will be in

electoral boundaries. There will be the need to change the boundaries between councils, and I would not want to see that locked in stone so that you could not do that.

Mr Hoffman—I will add that I certainly agree with your suggestion that constitutional recognition would not secure the boundaries of local government councils as they are now in perpetuity; nor should it. The process of change does require all spheres of government to be open to review of structures, processes and working relationships. If local government were recognised in the federal Constitution, an opportunity would be created for that process of engagement to be far more effective and holistic in terms of the structures of government applying across our nation. On that basis, despite the difficulties in achieving it rightfully identified by Senator Macdonald, it is a worthwhile goal and one long held by local government.

At the Local Government Association's annual conference, concluded at the Gold Coast last week, a motion was passed calling for a review of the roles and responsibilities across the three spheres of government. That call is in the context of this issue and the concerns about the relationships and the treatment of local government in the scheme of things as it is at the moment. I think the nation as a whole deserves a review of the roles and responsibilities across the three spheres of government. We should be open to that. It is about meeting the needs of our community. We should not have artificial barriers to the processes of that type of engagement being done in an effective and wholehearted fashion.

Senator McLUCAS—Mr Hoffman, I would like to go to the question that the previous witnesses, the two professors, raised about confusion. I want to get an understanding from you about how these plebiscites will be operated. From your understanding, who will vote? The question was raised earlier about the voluntary nature of the plebiscite but the compulsory nature of the voting. From the discussions you have had with the AEC and others, how do you see these plebiscites occurring?

Mr Hoffman—The point raised by the professors was in relation to the entitlement to vote. In the Queensland context, it is the residents of a local government area who are enrolled voters. In this case, I would not see that being any different to those current provisions. In that sense, there is not a confusion. The electors of a local government area vote for the elections in their area, and on this issue they would vote for the question put to them through the AEC plebiscite.

Senator McLUCAS—My question goes more to instances where certain local government areas have requested a ballot and others have not. How does that work out?

Mr Hoffman—The discussions to date are triggered by a request from a local government council. If the council for an area seeks to have a plebiscite conducted, if the legislation is in place and if the AEC concurs then the plebiscite would be conducted in that area of the council that requested the plebiscite.

Senator McLUCAS—Let me be a little hypothetical with you, Mr Hoffman. Let us say the Eacham Shire Council, just west of us here on the Tableland, requested a ballot and the Herberton Shire Council did not: do you agree with the professors that there would be an element of confusion given that it is proposed that those two councils, along with others, are to be amalgamated?

Mr Hoffman—Not necessarily. It is an expression of opinion on the part of the residents of Eacham that is on offer should their councils seek to conduct a plebiscite. Yes, others may or may not participate. That is their choice as perceived by their council.

Councillor Rich—Can I talk about an actual real-life case that happened in South Australia. I had been mayor of Walkerville council for seven years up until last November. I was deputy mayor at the time. Walkerville is a very small council; there are 7,000 people. We were very concerned because we were going to be amalgamated with some larger councils that wanted to take us over, because we had a very good bank balance and we had our affairs pretty well in order. We had seen this coming 10 years earlier and had outsourced and done all the sorts of things that councils can do in an intelligent way. It is voluntary voting in South Australia, I might add. We held a referendum. We got the Electoral Commission to run it for us. They changed some of the questions because they thought some of our questions were a little pointed, which was fair enough. We had an 87 per cent turnout—it is unheard of—and 95 to 96 per cent of those 87 per cent of Walkervillians said that they wanted to remain on their own. Indeed, some of the comments were that they would even pay a 10 per cent surcharge on their rates just to maintain the village feel. This is community work in action. If you had held a referendum over the two councils on either side of this, they would have actually swamped our opinion. Because we were asking our community what they wanted for their future, I thought it was very appropriate that we just ask ours. So you have to be careful how you mix and match those sorts of questions.

Senator McLUCAS—And certainly that reflects very much the situation we have here in Far North Queensland with Douglas shire and Cairns city, where, if these referenda go ahead, I think you might get a similar sort of story. That is why I used the hypothetical of more equally sized shires rather than a very small shire being amalgamated with a large local government.

Councillor Rich—On financial sustainability we have to be very careful also. There are other ways to do this. Bigger is not necessarily better. The studies that Brian Dollery from the University of New England has done have shown pretty conclusively that bigger is not necessarily better and that sharing and cooperation and cooperative measures are much better. The media has picked up the fact that local government in many instances is not sustainable. The studies do not show that. What they do show is that there are three types of councils: the councils that understand they have got a problem and have done something about it, the councils that understand it and are doing something about it, and those councils that do not yet get it. Local government is about helping to raise the bar and helping those category 3 councils to address it. If they do not do something within the next five years they may well become unsustainable, but in my view—certainly in South Australia—that is not the case currently. Except politics and the media are forever saying, ‘We have an unsustainable council out there; we have to do something about it.’ A knee-jerk reaction does not necessarily fix the problem. Sorry, that is my little hobbyhorse.

Senator McLUCAS—Our SSS program would have clearly demonstrated that in the case of Douglas shire.

Senator JOYCE—There has been a lot of discussion, especially with the last witness, with regard to a constitutional capacity to change the state boundaries, which of course requires a

majority of people in a majority of states in the Commonwealth to do it. The argument is put forward that these local government boundaries have not been reviewed over a period of time. Do you think there is a like argument, if that is the case, that the state boundaries should be reviewed?

Mr Hoffman—There is an interesting argument here, and you can draw the parallel that you are implying. The argument is that the local government boundaries in Queensland were drawn 80 to 100 or more years ago and, as such, they are obviously inappropriate, or could well be deemed inappropriate, and need to be changed because of changing circumstances. The recommendations of the reform commission adopted by the government are that we should focus local government on regions as opposed to local communities. If that is an appropriate argument in relation to local government boundaries and their relevance to serving the needs of their communities, and if we have a federal system built on a federal system and a state system in which local government are active players, the argument may well be valid to extend more broadly. It raises a major question about our federation and the processes of government generally.

Senator JOYCE—It is basically against the creation of new states but the states have a complete and utter right over the creation or destruction of councils.

Mr Hoffman—That is correct.

Senator JOYCE—You would say that there is a strong community interest where we are right now, in the north of Queensland, which would be decidedly distinct from the south of Queensland. Would that be a fair statement?

Mr Hoffman—It is, and the history of a state in the north is testament to that.

Senator JOYCE—And would it be fair to say that the latitude that is given to states to amalgamate, to change, should be the same sort of latitude that is given to people to change the states?

Mr Hoffman—An interesting question.

Councillor Rich—I think Australian local government would have a view that we are a sphere of government and we have enough problems looking after our own little patch, and we will let the other two spheres of government decide how they are going to do that. But I would just draw your attention to the fact that there are some councils that do cross state boundaries. They have learnt how to live with their neighbours pretty well and, to them, a state boundary is a bit of an irrelevance. I do not see that as a key issue for Australian local government. That is something we would like to leave for the other two spheres of government thank you.

Senator JOYCE—What legal threats have your members been put under by the passage of the Queensland Labor government legislation?

Mr Hoffman—It is not so much the threat it is the fact contained in the Local Government Reform Implementation Act that councils could be dismissed from office if they undertook to seek or participate in a poll or plebiscite process. I do acknowledge that the Queensland state government has sought to remove those provisions from that legislation and that matter is currently before the parliament.

Senator JOYCE—But it has not done that as yet?

Mr Hoffman—Not as yet.

Senator JOYCE—Mr Rudd, the Leader of the Opposition, has proposed a referendum in 3½ years time to enshrine local government in the Constitution. Would that be of any use in this current debate? Is that time frame going to be of any consequence, taking into account the current process underway by the state Labor government?

Mr Hoffman—Obviously not in the sense of decisions that have been made and action being taken to implement those decisions. The ultimate conversion of the government's proposals is 15 March, when new councils will be elected. At that point in time, the changes will be fully effective.

Senator JOYCE—The state Labor minister, Mr Fraser, has talked about this committee inquiry process being mischievous because it is 'the peddling of false hope'. What is your understanding of the word 'hope'?

Mr Hoffman—There are two aspects to the issues confronting the communities that are potentially seeking the opportunity to undertake the plebiscite. The first is the return of the democratic right to express an opinion on a matter such as this, given its fundamental importance to that community and how it perceives its future. The second is that, if there is a significant take-up of the plebiscite opportunity and strong opposition to the amalgamations currently in legislation, the opportunity potentially remains for that expression of public opinion to influence the government of the day.

Senator JOYCE—Being a minister, his views would represent the views of the Labor government. Do you believe that it is mischievous for people to exercise their democratic right to express an opinion?

Mr Hoffman—Not at all. I hasten to again add that the Local Government Association of Queensland has for over 20 years had a policy position that has been supported in state legislation that no change of this type should take place in the absence of a referendum. It is particularly in that context that the association, the vast majority of Queensland councils and the Queensland population by way of opinion polls have indicated their support for the opportunity for the expression of opinion in this fashion to be available to them.

Senator JOYCE—In your belief about the democratic principle, if 60 out of 66 believe in a certain opinion then that opinion would be the prevailing opinion of that group, wouldn't it?

Mr Hoffman—Sixty out of 66?

Senator JOYCE—If 60 people out of 66 have a certain opinion—in this case, that this legislation is justifiable and should go forward and local government should be amalgamated against their wishes—then that would be the prevailing opinion of that group of people, which in this case is members of the Queensland Labor Party.

Mr Hoffman—I am not aware of the opinions of the people you are referring to but 60 out of 66 is a significant majority.

Senator JOYCE—The group includes sixty state members and six federal members, but they are all from the same party and from the same state.

Mr Hoffman—I do not think that I can add any more to your comment.

Senator MOORE—The bill that we have in front of us as a committee is a 3½ page piece of legislation that I know that you have all read. Are you aware that that particular piece of legislation has full cross-party support?

Mr Hoffman—Yes.

Senator MOORE—When it was announced at the end of August, the government formed this committee with the support of all parties.

Senator FORSHAW—That is true—including the Democrats, who are not here today.

Senator MOORE—And the Greens? Did everyone support the formation of the committee? I am just double-checking so that I do not get it wrong.

CHAIR—I am not sure what the position of the Greens was.

Senator MOORE—It is certainly on record that the coalition government, the Labor Party and the Democrats all supported the formation of this committee and also the legislation in terms of process.

Senator JOYCE—But not the state Labor Party.

Senator MOORE—Are you finished, Senator Joyce? I am hoping to get through my question. Is that okay? So it is very clear for both the Australian association and the Local Government Association of Queensland that there is no controversy about this bill as far as it going through when we go back to Canberra.

Mr Hoffman—Yes.

Senator MOORE—Good. In terms of what happens next, I am concerned. We have cross-party support for this bill, which is about plebiscites. What we do not have is any detail about how it is going to operate. There has been some media discussion about this. All we have is the legislation, the explanatory memoranda and the first speech. We have that little package. Are you aware of any detail that has come out subsequently about how exactly any plebiscite will operate?

Mr Hoffman—That matter is ultimately in the hands of the Australian Electoral Commission, but we have been in negotiations with the commission as to how the process might work. Those discussions are to be continued in Canberra tomorrow, so none of the matters that have been indicated are yet confirmed; they are but our proposals to the AEC as to how the mechanism might work. As indicated previously, if the legislation is passed and the AEC is to conduct the plebiscite, it would be a matter for individual councils who so wish to pass a resolution to that effect: to seek a plebiscite being conducted of their residents on the question as to whether that community supports the amalgamation of that council with other councils that are involved in the recommendations and now in the legislation passed by the Queensland parliament. The AEC would, if it agreed, conduct that plebiscite and ultimately advise the council of the results of that plebiscite, which would then be made public. Now, there are more administrative matters involved.

Senator MOORE—There is so much involved, as you would well know from your own experience across the board. There is a lot between the passing of the bill and any activity.

There is so much detail to be developed. Do you know who is involved in the discussions tomorrow?

Mr Hoffman—The executive director of the Local Government Association of Queensland, Mr Greg Hallam, and our legal adviser.

Senator MOORE—With whom?

Mr Hoffman—I am not aware of the names of the individuals.

Senator MOORE—You two do not need to meet a lot.

Mr Hoffman—I am sorry. I do not know their names, just that the meeting is to take place in Canberra tomorrow.

Senator MOORE—With whom, the AEC or the department of local government?

Mr Hoffman—It is with the AEC.

Senator MOORE—Just with the AEC?

Mr Hoffman—To my knowledge, yes.

Senator MOORE—I was at the LGAQ conference for a couple of sessions, which was really interesting. Rumours were circulating everywhere about what was going to happen and what the questions were going to be. There was also some concern—certainly from my perspective, just listening—about exactly what power any plebiscite would have. It was worrying, considering it is a very sensitive topic, that people did not have a clear understanding about what the role was, what would be able to be achieved and how it would operate. Do you have any comment on that?

Mr Hoffman—We understand fully that the plebiscite is not binding or determinative on government. It is, at the least, a statement of public opinion in relation to the matter as it affects the community that has sought the plebiscite. As I said earlier, if there are a large number of plebiscites held and the results are to the effect that the communities do not support what has taken place, that expression of public opinion may well influence governments in their thinking about this matter.

Senator MOORE—I think it was over the weekend that I saw media reports that said that the probable date was 20 October. There were also discussions about a postal ballot. Do you know where those discussions have come from?

Mr Hoffman—It certainly has been our proposal to the AEC that a postal ballot on that date would be an appropriate one.

Senator MOORE—So that is the LGAQ proposal?

Mr Hoffman—Yes.

Senator MOORE—But to the best of your knowledge there has still not been any agreement on that?

Mr Hoffman—No. That is the subject of discussions tomorrow.

Senator MOORE—In terms of your own experience, Councillor Rich—which was not in the submission—when your own council had their local plebiscite, who paid for that?

Councillor Rich—We paid for that. We had to pay the Electoral Commission to do it for us.

Senator MOORE—The local council paid for that?

Councillor Rich—Yes.

Senator MOORE—And you used the AEC and went through a local process to actually get their support to do that?

Councillor Rich—We wrote to them requesting it and they agreed.

Senator MOORE—As anyone could.

Councillor Rich—Anybody could. I do not think that the government of the day were too pleased at what we did, but they did not have any say in it.

Senator MOORE—How much did it cost? I will put that on notice.

Councillor Rich—It is in keeping with the cost of an election in that sense because you are going to the same people, you are counting them and doing all of that sort of thing. It was probably somewhere in the order of \$10,000 to \$15,000.

Senator MOORE—You gave us the results internally. What happened to the decision then?

Councillor Rich—It would be a very bold council—or state government, for that matter—that ignored such a substantial vote as 96 or 97 per cent. We stayed on our own and we are still on our own.

Senator MOORE—You are still proudly independent, is that right?

Councillor Rich—Yes.

Senator MOORE—I just wanted to know. I do not know South Australia well. In that process, as an internal decision, the council decided that they would seek that election process and call on their local AEC and it all went through—

Councillor Rich—We wanted to know what our community thought. We had had meetings with various groups of people, but we thought we should get one stage removed and have somebody independent do it, on a professional basis, so that we could not be accused of asking the wrong questions.

Senator MOORE—One thing that everyone is in agreement on is the respect we have for the AEC. They have a long history of running elections successfully. Sometimes we are not too sure of the results, but we understand that the process is good. I have one more question. I have been asking some of the people who have come before us, because the legislation, when passed—and I say as confidently as one can be, as we have not got there yet, ‘when this is passed’. It does not mention, as we all know, anything to do with local governments. It talks about plebiscites and the AEC being able to use information to have it. Do any of your organisations have any ideas about whether it could be used for other issues? Senator McLucas talked in one of her questions about a planning decision. Have either of your organisations looked at other possible uses of such plebiscite legislation? If you have not, there is no problem; I just ask the question.

Mr Hoffman—Certainly not on our part.

Councillor Rich—The short answer is no, but Adrian would like to comment on that.

Mr Beresford-Wylie—The answer is no, we have not looked at that. The only little bit of research—which is not really related to this; it is just a side issue—we did was to go out and ask our state associations about the powers to conduct referenda within local governments, since this was an issue that was topical for Queensland. Other states do have the power for councils to conduct referenda, and they are contained in their local government legislation. In the South Australian legislation under, I think, section 9, there is an opportunity for a council to hold a poll whenever the council considers it necessary, expedient or appropriate for a poll to be held.

Senator MOORE—That is within legislation?

Mr Beresford-Wylie—That is right—

Senator MOORE—I like those three adjectives.

Mr Beresford-Wylie—That is the state legislation. In New South Wales, section 14 of the New South Wales act provides that a council can take a poll of electors for its information and guidance on any matter. In Tasmania, in division 2 of the act, there is the opportunity for councils to hold polls on their own motion or initiated by electors, and for those polls, which are not binding, to be considered by councils within about 60 days. So there are opportunities for councils within existing legislation to hold a series of polls—for general purposes, not specifically related to amalgamation.

Senator MOORE—Sure—which is the wider aspect when you actually have legislation on the books. It is very rarely then for just one purpose. Certainly my understanding of this legislation is that it was in reaction to the Queensland state legislation. We have been publicly advised—though it has not yet passed the Queensland parliament—that the three clauses, I think, that actually called into account the use of plebiscite in Queensland local government will be withdrawn. If and when that is withdrawn, this legislation would still be on the books, so it is actually seeing how you would use it.

Senator JOYCE—With regard to that last question, Mr Hoffman, could you tell us for the record who is actually in government in Queensland who brought about this problem? Which party?

Senator FORSHAW—Take it on notice.

Senator IAN MACDONALD—Mr Beresford-Wylie, thank you very much for that information on the state legislation. That is particularly useful, and it puts the lie to the screams that you hear from some in the Labor Party in Queensland that councils cannot hold polls on Work Choices legislation or nuclear reactors in 30 years time when someone might be thinking about them. Under that legislation councils could poll those, or Indigenous children in the Northern Territory. That is all possible under that state legislation.

Mr Beresford-Wylie—Senator Macdonald, there are three pieces of state legislation, in South Australia, Tasmania and New South Wales. I have not touched upon Queensland or the Northern Territory.

Senator IAN MACDONALD—You could not do it in Queensland at the moment, or you would be thrown into jail. Councillor Rich, you are lucky you did yours in South Australia, not Queensland, or you would not be here now; you would be in chains. This is how draconian the Queensland legislation is: if you had done that in Queensland you would be fined, you would be a criminal and you could not stand for election ever again because you would have a criminal record. Senator Moore very cleverly and rather self-servingly asked a question on whether you were aware that this legislation has cross-party support, she says.

Senator MOORE—I object to the adjective that was just used, self-servingly, Senator.

Senator IAN MACDONALD—Self-serving for the Labor Party, not for you. I am going to do another self-serving one for us and ask: are you also aware that the Labor Party in Queensland is one party, not two parties and that the Labor Party in Queensland selects its state candidates and its federal candidates from the same set of rules? That does not require an answer but it is a similarly self-serving statement to suggest that federal Labor opposes it but state Labor is in favour of it. How can you be—

Senator JOYCE—Some may suggest that is a contrived position.

Senator IAN MACDONALD—Thank you, Mr Chairman. As I say, I just wanted to counter with my own self-serving statement, a self-serving statement by Senator Moore on behalf of her party. I am interested in the transition committees that will deal with amalgamations once amalgamations are a go. Mr Hoffman, what is the arrangement to transit from, for example, on the Atherton Tableland, four shires into one? Who is on these transition committees?

Mr Hoffman—The committees consist of in this case two elected representatives from each of the four councils involved. It also involves representatives from three unions—the Australian Services Union, the Australian Workers Union and the Queensland Council of Unions—representing other unions within the workforce. The committee has the right to choose to appoint a community representative, or representatives if they see fit, and once appointed the interim CEO will become a member of the committee. The role of that committee is to prepare for the operations of the new council immediately following the completion of the elections on 15 March next year.

Senator IAN MACDONALD—Thank you for that. I assume that means that in the Cairns and Douglas instance, there will be two from Cairns and two from Douglas.

Mr Hoffman—Yes.

Senator IAN MACDONALD—That is four people—and still three unionists?

Mr Hoffman—That is correct.

Senator IAN MACDONALD—Who appoints the unionists; are they elected by anybody?

Mr Hoffman—The unions involved have been invited to identify representatives of the union to constitute those three persons on the transition committee. The ASU will identify a person. The AWU will identify a person and the Queensland Council of Unions will identify another person to sit on the committee, in this case, for Cairns and Douglas.

Senator IAN MACDONALD—In Cairns and Douglas, the people through their elected councillors will choose their four representatives and then there will be the three unionists appointed. Do they have to be from Cairns?

Mr Hoffman—Not necessarily.

Senator IAN MACDONALD—They could all be from Brisbane.

Mr Hoffman—The arrangements are that the unions can choose a union official who may not be resident in the area or a delegate from amongst the workforces in the area. It is at the discretion of the unions as to who they appoint.

Senator IAN MACDONALD—So the union bosses—for example, in the case of the AWU, Bill Ludwig will arrange for an AWU person to be appointed. Is that how—

Senator McLUCAS—That's pretty parochial.

Mr Hoffman—The guidelines enable the unions to nominate the persons that will sit on each of the local transition committees. It is within their processes as to who they determine and who they appoint.

Senator IAN MACDONALD—Senator McLucas interjects they are pretty parochial up here. If the Labor Party were parochial up here, there would not be an amalgamation of the Douglas shire.

Senator McLUCAS—Have you read my letter?

Senator IAN MACDONALD—So your parochialism—

Senator McLUCAS—Have you read my letter, Senator Macdonald?

Senator IAN MACDONALD—Senator, you are a member of a party that has done this. If you have no influence in your party that is a matter for you.

Senator McLUCAS—I am a member of the federal parliamentary Australian Labor Party.

Senator IAN MACDONALD—We just had a discussion while you were out of the room in which we worked out that the Queensland Labor Party is just one party. There is no separate thing. You are preselected by the same people.

Senator McLUCAS—We could talk about Telstra now if you want to. We could talk about Telstra.

Senator IAN MACDONALD—Senator McLucas is baiting me by interrupting, interjecting and disturbing my train of thought. It is terrible. Anyhow, in Cairns we will have a committee of seven, three of whom will be unelected unionists—they could be from Brisbane—and there will be four local councillors plus a CEO down the track. That is particularly interesting. There were some questions put to you about the AEC and resources. Have you had discussions with the AEC on whether they are properly resourced to run whatever councils might seek to have in Queensland?

Mr Hoffman—Not personally. I am not familiar with that issue in any of the discussions I have had within the association.

Senator IAN MACDONALD—In the federal ALGA have you?

Councillor Rich—No.

Senator IAN MACDONALD—Have the AEC indicated to you that they are not in a position to conduct plebiscites from a resources point of view?

Councillor Rich—No.

Senator IAN MACDONALD—There were questions which I started with Mr Beresford-Wylie about the ability to have plebiscites. There were suggestions put that nobody knows the rules. Would you agree that under this legislation that we are dealing with there are not any rules because it is not giving any new power but simply removing a law that prevents the old powers from being accessed by councils?

Mr Hoffman—Yes, I believe that to be correct. That is why the discussions have been held with the AEC as to how the mechanics of the process would work if the legislation were passed and the AEC agreed to conduct the plebiscites.

Senator IAN MACDONALD—Prior to the Labor Party introducing this draconian law preventing plebiscites, what was your understanding of the law on what Queensland councils could have had a plebiscite on? This is prior to a month ago when this law was rushed through the Queensland parliament.

Mr Hoffman—There is nothing in chapter 6 part 2 of the local government act that provides for the polls being able to be conducted by a council that in any way constrains what those polls may be about. There is no prescription as to what should or should not be the subject of a poll.

Senator IAN MACDONALD—This has been said to me in parliament by members of the federal Labor Party: ‘Why don’t we have a poll on nuclear reactors when they might be thought about in 30 years time?’ Prior to this draconian legislation would it have been possible for a council to have run that sort of poll if they wanted to?

Mr Hoffman—On the reading of the legislation, and I do so as a nonlawyer, I would believe so. But I would have to take advice as to whether there would be any restriction on that.

Senator IAN MACDONALD—All right, Mr Hoffman. On the issue of polls, you indicated that Mr Beattie had said that he was going to withdraw his legislation three weeks after he rushed it through parliament, having rejected the arguments of the opposition that it should not be there. So now he has decided he is going to do that? If that is the case, would you be happy enough if the federal government withdrew this legislation?

Mr Hoffman—The discussions that have been held to date would enable the polls to be conducted under the auspices of the AEC independently of councils, which would be the case. If they conduct the polls under chapter 6, the opportunity for independent polls, conducted by the AEC and removed from the fairly charged environment that has pervaded local government over the past four months, is certainly an opportunity that we would welcome as an appropriate way in which to enable public opinion to be garnered.

Senator IAN MACDONALD—It has been suggested to me that because Mr Beattie said that he is going to withdraw this then the federal legislation is not needed, but I have had other people say that Mr Beattie has changed his position on this so often that in another two

weeks he might reintroduce the law. That is really what I am saying. Do we need to continue with this? Does it give you a certainty that perhaps you would not otherwise have?

Mr Hoffman—We would certainly wish to see the legislation continue.

Senator JOYCE—Is it not that Mr Beattie has changed his position out of political pressure?

Mr Hoffman—I think the position stands in any circumstance. The ability for the AEC to conduct an independent poll—

Senator JOYCE—Do you believe he has repealed those onerous provisions due to political pressure or do you think he just had an epiphany of his own?

Mr Hoffman—There is certainly another matter at hand that we have initiated in the Supreme Court to challenge the provisions as amended on 10 September by virtue of their unconstitutional nature. That matter is still to be resolved in court.

Senator JOYCE—The question I am asking is: does the more political pressure that goes on him mean the more likely he is to change?

Mr Hoffman—That is a question for the Premier, not for me.

Senator FORSHAW—I have a couple of questions. Firstly, how are boundaries within local government areas determined in Queensland? I make the point that I am from New South Wales and I have a reasonable understanding of local government and its history there, including the sacking of councils by governments of all persuasions. I famously recall the Sydney City Council being sacked, administrators being appointed and the boundaries narrowed by a Liberal government without any plebiscite, and then it was changed when the Labor government got back in, so that sort of thing is not unusual. How are boundaries within council areas changed? Say you have got a local council that might have some divisions or wards. Is that an internal process for the council or is it for the state government or for the boundaries commission?

Mr Hoffman—Some will be taken by the Queensland Electoral Commission. Every four years in the electoral cycle councils are invited to submit proposals if they wish to change their arrangements. If they so do they submit proposals via the minister to the Electoral Commissioner, who undertakes the review process and ultimately determines outcomes. Those matters are heavily influenced though by the electoral requirements in relation to one vote, one value and tolerance arrangements.

Senator FORSHAW—I assumed that was the case but I wanted to get some background. We understand what the issue is here and the intention and the purpose behind this legislation—notwithstanding that it could potentially have far-reaching consequences which I do not necessarily argue with at the moment. It is important to have the full picture of how decisions about local government boundaries—their very existence—exist at the moment and how they may be affected. That would go also to the method of voting and to the nature of the representation—say, proportional as distinct from single-member, preferential, above the line, below the line and that sort of thing.

Mr Hoffman—Yes, that is legislated. If you have single-member division, it is optional preferential. If it is an undivided area it remains as first past the post voting.

Senator FORSHAW—I have another question. You are in discussions with the AEC about the future holding of plebiscites, how that will be done, who will get to vote and so on. Could you indicate what the view is about the preparation and presentation of the yes and no cases in any plebiscites?

Mr Hoffman—Ultimately it is the Australian Electoral Commission that is responsible for the wording of the actual question and the wording of the yes and no cases.

Senator FORSHAW—These plebiscites are being held at the request of the councils. I am assuming that the councils may want to have an input into the development of a yes case or a no case—and other groups might too.

Mr Hoffman—It may be discussed tomorrow.

Senator FORSHAW—Okay.

Councillor Rich—I would like to comment on that. In the South Australian case, it is true that our council put forward a series of questions that we wanted to be asked. It is also true that the AEC did not accept our questions because they were, in their opinion, biased questions. They reworded them for us and we said, ‘Yes, fine,’ and we went with that. There was certainly that degree of discussion.

Senator FORSHAW—There has been a lot of discussion—more comment than discussion—on questions about the views of state parties, federal parties, cross-parties and so on. The Local Government Reform Commission that was established and brought down this recommendation, as I understand it, for amalgamation comprised, and you can confirm this for me, some people who were former members of political parties—the Labor Party, the Liberal Party and the National Party—including the former Leader of the Liberal Party in Queensland and former ministers of both the National Party and the Labor Party. Is that correct?

Mr Hoffman—That is correct.

Senator FORSHAW—Thank you. Those are all the questions I have.

CHAIR—I thank the Queensland Local Government Association and the Australian Local Government Association. We appreciate your time here today after last week, which must have been a busy week for you.

Proceedings suspended from 11.42 am to 11.53 am

ROGERS, Councillor Glen Frederick, Mayor, Stanthorpe Shire Council

Evidence was taken by teleconference—

CHAIR—Welcome. Would you like to make a brief opening statement?

Councillor Rogers—Yes, certainly. Just to give you some outline of where Stanthorpe is—though I imagine most people know—we are about 2½ hours south-west of Brisbane running along the border near the Herries Range and very much at the headwaters of the Border Rivers catchment area. As such, we were part of the SSS group, known as the Southern Downs group, comprising ourselves, Warwick Shire, Inglewood Shire, Waggamba and Goondiwindi town. We worked through that process on a very willing basis because I believed it was our responsibility to look at any ways and means that we could efficiently and effectively improve our service delivery—not that we believed there was anything wrong with what we were doing but you should always look at all options.

We went through that process and were probably one of the very first groups to get up and running. We were certainly achieving things by going through that process. We had finished what they termed ‘phase 1’ and were ready to go into phase 2 and were waiting on the state minister for local government to sign off on that and approve the funding for that process. We were ready to go into that stage when the 17 April announcement came that that process would be stopped and we were to cease any proceedings on the SSS process.

With that, of course, we had to await the results of the local government reform commission’s findings, in which they decided that we should be amalgamated with Warwick to form the new Southern Downs regional council, a process we find very difficult to understand. As far as our council goes, we are a very sound council financially and we certainly provide service delivery and all the various services that our community expects. We have a very competent and experienced staff here for the size of our council and are able to provide good governance and, as I said, service delivery.

Because of that we find it difficult to understand why we should be amalgamated with a shire adjoining us that is so very different in many ways. I guess the only thing you can see that is a positive for it is that it makes a bigger council. Whether bigger is better time will tell, I guess, but certainly there are differences between our two communities—differences between the two councils and certainly differences within the topography, the catchments and the whole range of things that were supposed to have been looked at by the reform commission.

I guess that is about where we are at. We certainly have a process here that our community is extremely disappointed about. We are a very unique shire and a very proud and parochial shire, I guess, if I can call it that, and I believe we could continue to survive and do all the things expected of a regional council very soundly if we were left to continue as we are. I guess that is about all I can add at this point.

CHAIR—Thank you very much indeed, Mayor Rogers. At the time that the Queensland government announced their intention to introduce the punitive measures—the fines and the

council sackings—for those local government organisations that sought to access a plebiscite, had your council made any decision in relation to seeking to have a plebiscite?

Councillor Rogers—We certainly had prior to that event. We made the decision that we would not hold a plebiscite, mainly due to the costs and the time involved, because we would have had to do it by postal ballot and by the time the postal ballot was completed we believe that the legislation would have gone through state parliament. With the difficulties involved, which included the cost—it was going to cost us in the order of about \$30,000 to conduct one—council made the decision that, to test the feeling of the community, we would get a professionally-run phone poll and do a sample that way. We did that prior to the state government announcing that they would take punitive action against any councils that conducted any referendum or polls or anything of that nature.

CHAIR—So you got in with your phone poll. I do not know whether that would have been illegal under the legislation that was introduced. Is it your intention now to conduct a plebiscite?

Councillor Rogers—It certainly is. Our community believe they want to hold a plebiscite, and that is fine. I believe it is important that they be given that opportunity. Unfortunately, I am not sure what will happen with the result of that plebiscite and what will be achieved at the end of it. So I guess to hold a plebiscite for the fun of it is not necessarily the best thing to do, but if it is going to achieve something at the end then, certainly, I believe the community should have the opportunity to have their say.

CHAIR—What was the result of the phone poll that the council conducted?

Councillor Rogers—Just under 89 per cent were against forced amalgamations, and I think just over 90 per cent wanted a referendum on the issue.

CHAIR—But as a council you would like to have a properly conducted plebiscite to have confidence in the results?

Councillor Rogers—I believe so, if nothing else it will give the community the chance to feel they have had their say on the issue. As I have said, if we have the referendum or the plebiscite my concern is where it goes from there and that something should actually happen at the end of it.

Senator MOORE—Thank you, Mayor. It is good to hear from Stanthorpe again. You have been well represented on this committee so far.

Councillor Rogers—We certainly have.

Senator MOORE—I do not think we are in any doubt about the fact that Stanthorpe is not in favour of amalgamation; I think that is clear. Just to get it really clear, the legislation we are looking at as a committee is the three-and-a-bit-page piece of legislation that looks at plebiscites. I am concerned, after being at the LGAQ conference last week, that there may well still be some confusion that this committee is looking at the issue of local government amalgamations.

Councillor Rogers—I am clear in my mind. Unfortunately, I think that some people in the community are not, but I certainly am.

Senator MOORE—Are you also aware that this piece of legislation has cross-party support? That is not a self-serving statement; it is a statement of fact. The piece of legislation before us has government, Labor Party, Democrat and, in my understanding, Australian Greens support. Is that well known?

Councillor Rogers—I believe that it is by most people in our part of the world.

Senator MOORE—I think there are attempts to play with that as well. The other thing is that when this legislation is passed, when we go back to Canberra next week, it will then be on the books for future reference. One of the things I am asking about is whether any councils have considered using this form of local plebiscite for any other purpose. Certainly, as yet, there are no guidelines around about how these plebiscites will operate, and there will be further discussion between various players about that. But one of the core differences is that the Prime Minister has announced that he will be funding any plebiscites that local governments want to put in place. Has Stanthorpe considered having a plebiscite and asking for AEC support for anything in the past?

Councillor Rogers—We certainly have considered having a referendum. We were calling it a referendum, but call it whatever name. We considered, as I pointed out a little bit earlier, having one prior to the legislation going to state parliament, but time did not permit us to do it and we did not believe the cost was appropriate at the time.

Senator MOORE—Did you have any consideration of how much such an exercise would cost you in Stanthorpe?

Councillor Rogers—We were basing it mostly on what a normal council election would cost us here. The budget figure we have in place for the elections next year is \$30,000.

Senator MOORE—Would that be a stand-up ballot?

Councillor Rogers—That would be a postal ballot.

Senator MOORE—Are your normal council elections postal because of your geography?

Councillor Rogers—They have been for the last two elections, I think. Prior to that we had polling booths.

Senator MOORE—So, if you were in the future looking at something that was of such major import to the community that you would want to stimulate an AEC supported election, as this particular piece of legislation would continue to allow you to do, you would be looking to see if there were not outside budget something like \$30,000 locally.

Councillor Rogers—That certainly would be the case in the Stanthorpe shire as it exists today.

Senator MOORE—But the one that is being proposed, which is you and Warwick Southern Downs—

Councillor Rogers—Yes.

Senator MOORE—The other submission we had talked about the alternative possible amalgamation with another shire there.

Councillor Rogers—There were a number of alternatives under the SSS process. There was Stanthorpe and Inglewood; there was Stanthorpe, Warwick and Inglewood; and I think one proposal was Stanthorpe, Warwick, Inglewood, Waggamba and Goondiwindi.

Senator MOORE—That is a big one.

Councillor Rogers—Yes, that goes a long way. Nevertheless, they were all just possible options and we were asked to look at every possible option under the SSS process.

Senator MOORE—I do note your previous submission and the one from other interested people from the Stanthorpe area that looked at the considerable work that has already been done in your part of the world in cooperation and so on. That is all on record.

Councillor Rogers—That is correct. I think it is probably worth noting that, whilst we are very close to the New South Wales border, we have quite a lot of cooperation with the Tenterfield Shire Council.

Senator MOORE—We had evidence this morning from the Australian Local Government Association, which did say that in some parts of the world there are cross-border shires. As yet, we do not have Stanthorpe-Tenterfield.

Councillor Rogers—No.

Senator IAN MACDONALD—I am Ian Macdonald, a Queensland senator based in the north, although I started my schooling in Marsh Street in Stanthorpe. I went to the Stanthorpe state school.

Councillor Rogers—You had a good grounding.

Senator IAN MACDONALD—Yes, indeed. Stanthorpe is a great placed—lovely wine too.

Councillor Rogers—Yes.

Senator IAN MACDONALD—Senator Moore has just asked you if it was clear that this bill had cross-party support. Can I just ask you whether it is clear, as well, that the Labor Party in Queensland is just one party and that federal members and state members of the Labor Party are one and the same people or from one and the same party? Is that clear, do you think?

Councillor Rogers—I assume it would be. I certainly understand it to be that way and I assume that most other people do.

Senator IAN MACDONALD—I wonder whether it is also clear to the public that, if the Labor Party federally was so opposed, why they could not convince their colleagues in Queensland that it was a draconian piece of legislation. I wonder whether that is also clearly thought about.

Councillor Rogers—I think a lot of people are a little confused as to why it cannot happen.

Senator IAN MACDONALD—If the amalgamation goes ahead—and it seems that it might, unless your poll is so overwhelming that not even Mr Beattie could ignore it—what are

the arrangements for transition? I understand that there is some sort of a committee that will be put in place to do the transition. Can you tell me what the committee consists of?

Councillor Rogers—Yes, certainly. The committee consists of two elected members from each council and some union reps who come out of either the workforce or the state head office of the union. In effect, our local transition committee will comprise four council reps, three union members representing the various unions and an interim CEO. That appointee will probably be either the Stanthorpe CEO or the Warwick CEO.

Senator IAN MACDONALD—You say the union members do not necessarily have to come from Stanthorpe or Warwick; they could come from Brisbane?

Councillor Rogers—They certainly could come from Brisbane, and at this stage I think we have a couple of people from Brisbane or Toowoomba. I am not sure where these people come from, but certainly not out of the Stanthorpe or the Warwick council workforce.

Senator IAN MACDONALD—Are you aware of what contribution these three unionists might be able to make to the transition from two councils to one council?

Councillor Rogers—I am not. I am certainly not aware of what contribution they can or cannot make, but my understanding is that they are there to protect the interests of the employees during the transition process. I think we would be irresponsible as council reps to ignore that fact anyway in this whole exercise. It is difficult to understand at this point because I am certainly still not clear in my mind about just how much detail we have to get involved with in the transition between the two councils. Some of this may well be beyond union rep people because of their lack of knowledge of what is happening.

Senator IAN MACDONALD—I understand that it is either in the Queensland legislation or Mr Beattie has given an undertaking—which perhaps would not mean much—that no council staff will lose their jobs. Is that your understanding?

Councillor Rogers—It is certainly my understanding that staff are guaranteed their jobs basically for three years, with the exception, I think, of CEOs. Why they have been singled out I am not quite sure, but certainly my understanding of the legislation is that staff have to be employed for three years—or, I guess, if we cannot employ them, they have to be paid out.

Senator IAN MACDONALD—I have heard it said that, under the new amalgamated council system, councils will not actually employ staff; they will be employed by some statutory authority. Are you conscious of that?

Councillor Rogers—I have heard claims that that may well happen, but certainly I have seen nothing in black and white to say that that is going to happen. It has certainly been suggested that that could happen.

Senator IAN MACDONALD—In Stanthorpe and Warwick are your employees under an award, under AWAs, or is there a mixture of both?

Councillor Rogers—I am not sure about the Warwick situation—I believe they are the same—but we are certainly all under AWAs up here.

Senator IAN MACDONALD—If there were a statutory authority that was employing the workers in the future, do you have any idea of whether they would be under AWAs?

Councillor Rogers—I would not like to predict what might happen in that situation. I think it is beyond me to make any comment on that one.

Senator IAN MACDONALD—You have got your people on AWAs, obviously—I guess this is a self-evident statement—but you have gone to AWAs because that suits the council better; it gives you more flexibility, does it?

Councillor Rogers—It certainly does. I think it improves productivity as well as reimbursement or payment to our staff. It has certainly been a suitable agreement over the number of years that we have gone down that path.

Senator IAN MACDONALD—Thank you very much. Congratulations, you have a great little shire—well, you had a great little shire there. Who knows what the future might bring? Well done on what you have done in the past.

Councillor Rogers—Thank you.

Senator FORSHAW—I am from New South Wales. You have just been asked some questions in regard to the views of political parties, state and federal, and members of the same political parties across the country and also about Work Choices. I just want to take those two issues up. Firstly, let us go to Work Choices—and you indicated that your council is on AWAs. Do you recall in the lead-up to the passage of the Work Choices legislation that the Queensland Nationals had a different view to their federal counterparts and to their coalition colleagues in Canberra?

Councillor Rogers—Not really. I would be only very vaguely—

Senator FORSHAW—I can inform you—I am sure Senator Joyce might inform you even more later—

Senator JOYCE—Can you repeat that?

Senator FORSHAW—Can I be allowed to ask a series of questions without being interrupted?

CHAIR—Senator Forshaw has the call.

Senator FORSHAW—Thank you. At the outset, the view of the Queensland Nationals was that they had great concerns about Mr Howard's federal legislation on Work Choices because it was going to interfere with the operation of state jurisdictions such as the Queensland Industrial Relations Commission. They might have come around in the end. They may have been heaved or browbeaten into it—I do not know—but that is a matter of public record. In any democracy there are always healthy and strongly felt differences of opinion within political parties, state and federal. Could I also ask you: are you aware that the Prime Minister has on many occasions indicated that, in his view, it would be a terrible thing if the Labor Party and Mr Rudd won the federal election, because then you would have wall-to-wall state and federal Labor governments and they would all apparently agree on everything and there would not be any opportunity for difference of opinion and views between state and federal governments. Have you heard Mr Howard put those sorts of views?

Councillor Rogers—Yes, I believe I have.

Senator FORSHAW—So one could assume that it would be healthy and in accordance with Mr Howard's views to have some differences of opinion, even within a political party at the state level and the federal level, on a very important issue like council amalgamations.

Councillor Rogers—Yes, that is possibly so.

Senator FORSHAW—I would assume that your council appreciates the support that the federal opposition is giving to this legislation in the federal parliament. I would at least assume that it makes you feel more comfortable that the legislation will go through the parliament without any opposition.

Councillor Rogers—Certainly so. Without question, I guess we would expect that all parties in the federal field would support this, because there are two areas where there is a lot of angst over this—that of forced amalgamations, and then perhaps not so much that as the process that has been undertaken to bring them in as well as some of the goings-on within state parliament and some of the legislation that has been introduced.

Senator FORSHAW—You have mentioned the telephone poll that your council had. I compliment you on that. I have long experience of watching local government in New South Wales and I think that it is important that councils take the opportunity to obtain the views of their community, which is one reason why I support this legislation. Can you tell me—and you may want to provide this information to the committee on notice, in writing, if you need to—what questions were asked and what number of people were polled? I do not in any way question the result; I ask just to get an idea of the nature of the poll that you conducted.

Councillor Rogers—I may need to send you that in writing, but certainly off the top of my head from memory the questions were kept very simple. I think they were along the lines of: 'Are you in favour of forced amalgamation of the Stanthorpe shire?' and 'Do you believe there should be a referendum held with regard to council amalgamations?' That was basically the gist of the two questions asked. We tried to keep them very simple so that we would get a simple yes or no answer. As to the number of people polled, off the top of my head, I believe it was 500.

Senator FORSHAW—Which I would assume, given the number of potential voters within your shire, is a reasonable proportion?

Councillor Rogers—I am not sure what the number of potential voters currently is, but at the last election it was in the order of about 6,500 out of 10,000. So, yes, it is only a small percentage, but it is a sample.

Senator FORSHAW—I would concede that, in a polling exercise, 500 is not an insignificant number at all.

Senator JOYCE—You are probably aware that in the Labor Party, if you cross the floor, you are immediately expelled, such as Senator George Georges, who was the last one who did it in 1987. I suppose Harry Quick was the latest one and he has also been booted out.

Senator FORSHAW—Chair, I rise on a point of order. I understand the standing orders and about debating et cetera, but I think it is incorrect to put to a witness at an inquiry a question based upon a totally false premise. Harry Quick was not expelled for crossing the

floor, and it is not the case that a member of the Labor Party who crosses the floor is automatically expelled under the rules of the party.

Senator JOYCE—Who was the last person in the Labor Party to cross the floor in the Senate, Senator Forshaw?

Senator FORSHAW—Senator Devereux, for a start.

CHAIR—That is enough exchange across the table. The chair has shown quite a degree of latitude to all senators, but let us come back to the legislation.

Senator FORSHAW—Chair, I take a point of order. I am happy for—

Senator JOYCE—You are very touchy about this.

Senator FORSHAW—No, I am not touchy at all.

CHAIR—Order! Senator Forshaw.

Senator FORSHAW—I am never touchy about your raising—

CHAIR—Senator Forshaw, do you have a point of order?

Senator FORSHAW—Yes. I would ask you to ask Senator Joyce to direct his questions more to the legislation rather than to the internal rules of the Labor Party. I will have that debate any time, but we are wasting the witness's time.

CHAIR—Senator Forshaw, I just did so.

Senator JOYCE—They are very touchy about the contrived position of the Labor Party in Queensland. Councillor Rogers, the Labor Party, as you well know, have a very disciplined organisation so, when they have a position where all their federal members are doing one thing and all their state members are doing another thing, do you think some people could see that as a politically expedient position in the light of a forthcoming federal election?

Councillor Rogers—Possibly not; nevertheless, I am not quite sure what this has to do with the Senate inquiry.

Senator JOYCE—The point is that, if you want to put political pressure on changing this issue, what window or what forthcoming event would you foresee where you would get the maximum amount of political pressure to change this event?

CHAIR—Councillor Rogers, Senator Joyce is, I think, essentially making a rhetorical point.

Senator Forshaw interjecting—

Senator JOYCE—Senator Forshaw is very touchy about the contrived position of the Labor Party.

CHAIR—Senator Joyce has the call. Senator Joyce, your question.

Senator Forshaw interjecting—

Senator JOYCE—I can understand by your volume that you have an issue with it.

CHAIR—Your question, Senator Joyce.

Senator JOYCE—You have mentioned Tenterfield as an area. There would be a lot of similarities between Stanthorpe and Tenterfield, wouldn't there?

Councillor Rogers—There certainly are. If you look at the nature of the Stanthorpe area, you will see that we really are an extension of the New England district of New South Wales—something that you just do not get anywhere else in Queensland.

Senator JOYCE—Yes, I would suggest that, coming from the southern New England area originally myself. In the SSS process, did they ever say that you could look outside your state boundaries and look at having a community of interest that includes what would be the northern part of New England?

Councillor Rogers—Not officially, but we certainly indicated that that is what we were doing. We have done some plant sharing of equipment and personnel on a temporary casual basis and we have done some waste management with Tenterfield shire.

Senator JOYCE—But, once you go south of Wallangarra, nothing dramatic really changes, does it? It is basically the same country, same type of people, same community interests and same industries.

Councillor Rogers—That is correct. Believe it or not, a lot of Tenterfield people in the Liston-Amosfield area utilise Stanthorpe facilities probably more so than they do their own.

Senator JOYCE—So, if people were talking about bringing boundaries up to date, it would make sense to seriously look at bringing state boundaries up to date.

Councillor Rogers—In this particular area, that would be quite pertinent, yes.

Senator JOYCE—In fact, it is sort of having a bet each way, saying, 'These local government boundaries are out of date, but thou shalt not ever touch or look at state boundaries.'

Councillor Rogers—Yes, that is true. If I can just diverge a little, if you look at that area of New South Wales where these people are feeding into the Stanthorpe shire from, you will see that there is a natural barrier, what you might call an escarpment, some kilometres east of there. That is a natural barrier for those people going east in New South Wales, so they come to the easiest places such as Warwick and Stanthorpe.

Senator JOYCE—Where is this proposed shire going to start—about 150 kilometres west of Goondiwindi?

Councillor Rogers—No. It will basically start at the top of Cunningham's Gap and run through to—for those who know the area—a few kilometres south-west of Glenlyon Dam and then obviously through to Wallangarra on the border. The border will be a southern boundary to it.

Senator JOYCE—Are you aware that there are other areas in Queensland that have strong community interest that would possibly suggest that they might want another look at the state boundaries, such as North Queensland?

Councillor Rogers—There could well be, yes. I think you made the point that the boundaries have been there for a long time and, if local government boundaries are outdated, maybe state government boundaries are too.

Senator JOYCE—That is interesting. Have you been introduced to the union representatives who are going to be part of the transition committee?

Councillor Rogers—One of them is one of our staff. Another one I have had dealings with in our enterprise bargaining arrangements and the other gentleman I have not met.

Senator JOYCE—Will the other gentleman come from the district?

Councillor Rogers—I believe he comes from Toowoomba. I am not sure whether he is from Toowoomba or Brisbane, but it is one of those two areas.

Senator JOYCE—Is Toowoomba or Brisbane going to be part of your council, your new local government area?

Councillor Rogers—No.

Senator JOYCE—It seems a bit peculiar having someone from outside the local government area determining the future of that local government area, don't you think?

Councillor Rogers—It certainly does. I would prefer to see local people there rather than people from head office in unions, yes.

Senator FORSHAW—I have one follow-up question on that. I understand that, for the employees and the unions in that transition committee, there are key issues dealing with their working conditions, their future employment and so on. Is that the case?

Councillor Rogers—That is my understanding of what those people are there for. I certainly understand the role that they need to play, because a council does not get its work done by the councillors sitting at the chamber table; it is done by the staff. If you do not have loyal and committed staff who are looked after then you are not going to get the results in the end.

Senator FORSHAW—Does your council seek advice and get advice from the Queensland local government association and the ALGA on these issues?

Councillor Rogers—Certainly, on many issues, yes.

Senator FORSHAW—Just as employees look to their organisations—yet they are in unions—to provide them with expertise and knowledge of things such as industrial law and the application of state and federal laws to their working conditions.

Councillor Rogers—Yes. I can understand where you are coming from.

Senator JOYCE—It has a lot to do with the legislation!

Senator FORSHAW—It may have a lot to do with their redundancy arrangements, which are governed by federal and state—

Senator JOYCE—Your Labor government has brought about those redundancy arrangements.

CHAIR—Senator Forshaw has the call. Senator Forshaw, is that it?

Senator FORSHAW—That is it.

CHAIR—Thank you very much for your time this afternoon; we appreciate it very much.

[12.26 pm]

RAMSLAND, Mr Don, Chief Executive Officer, Inglewood Shire Council

WHITE, Councillor Joan, Mayor, Inglewood Shire Council

Evidence was taken via teleconference—

CHAIR—Welcome. Would you like to make an opening statement, Councillor White?

Councillor White—Yes. I will pass over to my CEO, Don Ramsland, who will give you a precis of the shire as it exists at the moment. We can come in then with your questions.

Mr Ramsland—Good afternoon, committee members. I will give a brief outline of the Inglewood shire for those who are not familiar with it. Inglewood shire is situated some 300 kilometres west of Brisbane. It has a population of approximately 3,000 people. We have two major towns, Inglewood and Texas, which each has a population of around 1,100. The remainder of the population is spread across the rural area. The area of the shire is about 6,000 square kilometres. Our annual expenditure is around \$17 million.

Inglewood shire's towns of Texas and Inglewood are situated around 100 kilometres from their nearest neighbours—Goondiwindi to the west, Stanthorpe to the east and Millmerran to the north. We are the most southern shire in Queensland. We are on the Queensland-New South Wales border. We have a number of cross-border community issues. It would be fair to say that we do not dispute the need for local government reform in Queensland. What we are concerned about is the fact that our local residents have not been in the position of having a say through a democratic process in the proposed changes.

Some local businesses at both Inglewood and Texas were concerned enough at the fact that the community were not being given the opportunity to express their opinion that they organised their own phone poll of approximately 500 residents. The outcome of that phone poll was that around 86 per cent of the residents contacted wanted to have a say in the local government reform process through either a referendum or a plebiscite arrangement. I think we are in a similar position to many other councils in far western Queensland in that we are caught up because of our location. Because of the distance from our nearest neighbouring towns, we are isolated but we are in no way remote. I believe that gives the committee a brief overview of the Inglewood Shire Council area.

Senator McLUCAS—Mr Ramsland or Councillor White, I do not have a copy of your submission. Did you give us a submission?

Mr Ramsland—Yes. We prepared one—

Senator McLUCAS—Thank you. I might defer, Chair, to another senator while that is being provided.

Senator MOORE—I am putting on record the same questions that I have been asking throughout these three days, which relate to the piece of legislation that is in front of our committee. It is of 3½ pages. Have you had a chance to read it?

Mr Ramsland—Only briefly.

Senator MOORE—It is only brief. It just reinforces the point that our committee does not have the ability to be involved in the issue of local government amalgamations. We are looking specifically at the plebiscite process and in particular the use of the AEC. I just want to get the feel that the people who are submitting understand that.

Mr Ramsland—Yes, we do. We realise it is more the issue of being able to follow democratic process than the local government issue per se.

Senator MOORE—Which was the stimulant at the state government level. You understand that this piece of legislation will be passed when we return to Canberra because it has full cross-party support—that is, government, Labor, Democrat and Greens?

Councillor White—That is very good.

Senator MOORE—You understood that?

Councillor White—Yes.

Senator MOORE—There is one other point. Councillor White, you were at the Local Government Association meeting, weren't you?

Councillor White—That is correct.

Senator MOORE—And you were there when we had the discussion about future policy and the issue of constitutional acknowledgement of local government?

Councillor White—That is right.

Senator MOORE—Do either of you have a comment on whether you think that, in the longer term, that is a good idea?

Councillor White—My point of view is that, yes, I think we should be recognised in the Constitution. I think it is something that has been lacking for a long time and it is something that local government have been pushing for many years. This is the type of occasion when I think it needs to be understood and that we have support when boundaries have been stretched beyond what is really there in a constitution and in looking after the democracy in this country.

Senator MOORE—Once again, it is clearly understood—and there was no confusion at all at the Local Government Association conference—that any referendum on the future acknowledgement of local government in the Constitution is some time in the future and not immediately linked to the current issue of local government amalgamations in Queensland. I did not sense any confusion at all amongst the councillors there, Councillor White.

Councillor White—No, that is correct. Everybody is very aware that this is something that does not happen overnight. It is something that has been on the drawing board for a long time.

Senator MOORE—Mr Ramsland, did the phone poll that you put in place in your area cost much?

Mr Ramsland—It was done by the business community, and I understand that the cost was about \$2,500. It was carried out by a professional firm of pollsters who were located on the Queensland Gold Coast.

Senator MOORE—People who are very professional in the carrying out of polls.

Mr Ramsland—Yes. It was a professionally run poll and it was run over a period of two days—I think a Thursday and a Friday.

Senator MOORE—In terms of either of your councils, have you ever used the AEC to do any polling locally in your histories?

Councillor White—No, we have not to date. We have never used the AEC.

Senator IAN MACDONALD—Councillor White, Mr Ramsland, I am Ian Macdonald, a North Queensland based senator. Good afternoon. Senator Moore asked a question she asks of everyone about this having cross-party support. I always ask this: is it well known in your areas that the Labor Party in Queensland is the one party and that there is not a separate Queensland state Labor Party and a Queensland federal Labor Party? Do you think it is clearly understood that they are one and the same group?

Councillor White—I am sure it is understood as ‘the Labor Party’, yes.

Senator IAN MACDONALD—Would it be too much to put to you that there is a feeling of amazement that one group of Labor politicians facing an election in the next couple of months does not agree with this and another group of Labor politicians do agree with not only forced amalgamations but the removal of the democratic right to have a say? Do you think that is well understood in your area?

Councillor White—I am quite sure that is well understood. It was predominant throughout our whole conference last week.

Senator IAN MACDONALD—Thanks for that. I understand that if these amalgamations do go ahead there will be a transition committee to plan for the future of the amalgamated shire. Is that correct?

Councillor White—That is correct. We had our first transition meeting on Friday when we came back from a local government conference.

Senator IAN MACDONALD—Who is on your committee—not by name, particularly, but by description? What are they?

Mr Ramsland—There are two councillors from each of the three shires involved—Goondiwindi Town, Waggamba Shire and Inglewood Shire—and there are three representatives from the trade union movement.

Senator IAN MACDONALD—Are those three trade union movement representatives locals?

Mr Ramsland—They are a mixture. One delegate is a Brisbane based delegate and two delegates are locally based. There are proxies for each of those union delegates, and we will be having proxies for each of the council delegates should they be unable to attend a meeting of that local transition committee.

Senator IAN MACDONALD—How were the two delegates from each of the three councils appointed?

Mr Ramsland—They were appointed at each of the council meetings. Each council chose the most appropriate people to put forward. They were nominated and it was passed by a council resolution, as I understand.

Senator IAN MACDONALD—They are elected councillors elected to this committee by the other elected councillors in each of those shires?

Mr Ramsland—Yes.

Senator IAN MACDONALD—Do you know who elected the union delegates?

Mr Ramsland—No, I am afraid not. I know the union people did have various meetings across the area, but I am not aware whether there was a voting process or whether those union people were just nominated by the local union organisers or by their head office or whatever.

Senator IAN MACDONALD—I have read somewhere that, if these amalgamations go ahead, the councils will no longer employ their workforce—that there will be some statutory authority set up to employ the workforce. Are you aware of that? Have you been given any detail on that at all?

Councillor White—I would like to make comment here. There is a lot being thrown around. The legislation at the moment with this reform process is that for three years all employees will retain their positions the way they are. For 12 months they cannot be moved to another location. So they still have to work out of the council. This is what they have legislated that we have to do. I have some concern. Perhaps I might be speaking out of turn here. If I am, please tell me. Our concern at our local transition meeting was that we were not given a trade union delegate from each council. It ended up that around our table the three union delegates were all from the one council. This is why I would question how these delegates were chosen from the union.

Senator IAN MACDONALD—I am not sure if I heard you, Councillor White. You are saying that the three union delegates are all from the one council, although one of them is from Brisbane?

Councillor White—Yes. The one from Brisbane did not come. He sent a proxy. At the table at our first meeting all the voting delegates came from the one council.

Senator IAN MACDONALD—Which council was that?

Councillor White—Waggamba.

Senator IAN MACDONALD—That is interesting. How do you employ people in your shire? Are your workers on an award or are they on AWAs?

Mr Ramsland—They are on an enterprise bargaining agreement.

Senator IAN MACDONALD—Do you know about the other two councils?

Mr Ramsland—I think they are in a similar position.

Senator IAN MACDONALD—Do you have any idea what will happen under the amalgamated council?

Mr Ramsland—As part of the legislation there is a need for the local transition committee and the incoming council to appoint an employment subcommittee. That employment subcommittee comprises representatives from various communities plus management delegates. The number of management delegates and the number of union representatives on that employment subcommittee have not been determined at this point in time.

Senator IAN MACDONALD—Are the six councillors on the transition committee going to have any say in what arrangements apply to the workforces after the amalgamation?

Councillor White—That is what councils are all about. Local government and those people elected by the people are the ones that make those policy decisions. That is the way it is and the way it should be. I am a little bit concerned even though they do have union representatives on the subcommittee to advise us on employment and staffing issues. The responsibility rests on councils to make budgetary decisions as to the finance and the availability of funding to operate and maintain the delivery of services to the community.

Senator IAN MACDONALD—Yes, that is a very good point. But, as I understood Mr Ramsland, you are saying that for the amalgamated council a group of unionists and some of your officials will work this out. As I understood him, the six elected councillors will not really have a say in that. Is that as you understand it?

Mr Ramsland—We have yet to clarify what the legislation means by ‘management representatives’. If ‘management representatives’ means the senior staff from the three constituent councils then I believe that your inference that there will not be councillors directly on that employment subcommittee would be correct.

Senator IAN MACDONALD—Thanks for that. I will pass on to another senator, but we are concerned about the non-democratic nature of not being able to have a say on the amalgamations. It seems that perhaps we should also be looking at the non-democratic arrangement of these amalgamated councils’ workforces in the future, but that is a question for another day.

Senator JOYCE—I am going to ask a simple question: do you want this council amalgamation to go forward?

Councillor White—Our community do not want this amalgamation to go forward, no.

Senator JOYCE—How do you think you are going to be able to stop it?

Councillor White—I think the only option we have now is the federal government having the plebiscites so that we can record what the people want and what the people do not want. If the federal government do that through the Electoral Commission, the AEC, then I suppose it is up to them, once those results are out, to do something about it if possible.

Senator JOYCE—So you believe that, if there was enough pressure federally to stop it, it would stop?

Councillor White—I would like to think so, yes. That would be wonderful.

Senator JOYCE—Where do you think is the greatest pressure point to put federal pressure on? What event? I will help you out. Do you think a federal election would do that?

Councillor White—A federal election. And having the plebiscite and the federal election at the same time would be very good. It is on people’s minds and that would help. It is the result I think we are all after.

Senator JOYCE—All the way through, Labor Party colleagues keep talking about cross-party support, but what they are really talking about is the position where all the federal Labor Party people have one position and all the state Labor Party people have another position.

That works very well if you want to try and avoid the issue in the federal election and keep away the pressure. But you are saying that if you basically take it home in a federal election there will be enough pressure there to change the amalgamation issue.

Councillor White—I think that is the only option we have.

Senator McLUCAS—You said that the federal government has the power to fix this. We have an election at the end of the year. Let's put the position that the coalition wins that election, as they have done in the past. How are they going to fix it?

Councillor White—My understanding of the constitution is that in a democratic process, if there is something that can be proven to be completely undemocratic, the federal government can overturn something on state government issues—not with local government, because we are not part of the Constitution. But my understanding of the Constitution as it stands is that the federal government has the power to overturn it.

Senator McLUCAS—Have you had legal advice to that effect?

Councillor White—I know the Local Government Association has looked at it from different areas, especially when we were being threatened to be sacked if we had gone out and had a plebiscite or showed a polling form. This was something that the Local Government Association had legal advice on. I am not really sure where that is. You are probably more in tune with it than I am.

Senator McLUCAS—Thank you, Councillor White. I am unaware of it. We will ask the Local Government Association to see if they can shine some light on that question.

CHAIR—Councillor White and Mr Ramsland, thank you very much for your attendance today. We appreciate it.

Councillor White—Thank you for giving us the opportunity.

Proceedings suspended from 12.47 pm to 1.35 pm

BERWICK, Councillor Michael Peter, Mayor, Douglas Shire Council

LEU, Ms Julia Fay, Acting Chief Executive Officer, Douglas Shire Council

CHAIR—Welcome. Would you like to make a brief opening statement?

Councillor Berwick—Yes, thank you. First of all, thank you for having us here. As you know, Douglas Shire Council feel pretty devastated by the decision to amalgamate, and the great majority of our community is strongly opposed. Just by way of background: we did an independent, statistically sound community survey during the consultation process on this amalgamation, and we can happily make that available to you if it is relevant.

CHAIR—Thank you.

Councillor Berwick—Do you want me to give some background? I can go on a little bit more, if you would like me to, about where we are coming from.

CHAIR—Yes, if you would like to make a brief statement of your council's position, that would be helpful.

Councillor Berwick—Because the time period to put in a submission was fairly short, we put in a very brief one. We have had a little bit of time to think about it since then but not to put a more detailed submission in writing, but we could happily follow up today with a more detailed submission. I guess we needed to understand ourselves what the scope of this was. It appeared fairly narrow.

In that sense, we certainly support the idea of some kind of legislation which would stop this kind of thing happening again should a premier or someone decide to ban a community from having a plebiscite. In that sense, we would support very strongly the LGAQ position, in that if this amended legislation did no more than that then we would certainly support that. However, we would like to explore the opportunities of going a little bit further. I do not know how far you can go, but all over Australia there are small communities such as ours which have lost their representative democracy and would like to have some participative democracy, at least, to try and replace that.

In the case of Douglas, you may be aware that the Premier has said that he is going to introduce some iconic legislation to look after places like Douglas and Noosa. We do not quite know what that is going to look like. We have been asked to give it some thought, and we will. But we see the foundations of that iconic legislation—we do not particularly like the word, but that is the word that has been used—as really re-empowering those communities to have some control over their own future through some kind of participatory democratic structure, such as triggers for any major change in land use.

In our case, the things that we see as making us special would be a limit on the heights of buildings, the fixed urban footprint, the Daintree and those sorts of things. We certainly are very nervous that, when we become part of a large council, that kind of ownership that our community has over its own future is going to be lost. So, if any legislation comes in, we would like to make sure that those sorts of things cannot happen without some kind of process that our community goes through either to have input or to prevent sudden changes to planning schemes on a whim of some councillor.

Getting back to the proposed changes to the Commonwealth Electoral Act: if you can put anything in place which would allow for smaller communities, which are not necessarily a whole council, to hold a plebiscite on key issues then we would welcome that. We would understand that you cannot have referendums on every little thing; that would be ridiculous. But, for example, if a few years down the track a council like ours or a community like ours says that this process is not working, and it is demonstrably not working, we would like a plebiscite to at least give a community opinion on where we are going. I guess we would ask you to keep your minds open to that. I do not know if it is possible. I am not a lawyer; I do not know what you can and cannot do with your act, but I am sure that what I am saying is something that a lot of small communities would like to have available to them.

The question would be what sort of trigger you would use—whether it is a council trigger or a ministerial trigger or a state government trigger. But there must be some kind of process whereby we can say: ‘We have got a case, we are a local community and we want our voice heard in some kind of formal way.’ I think my community would very much like that opportunity. If there is any feedback you can give us now so that we know what scope you people have got, we would be very happy to take that on board and give you a more detailed submission once we understand a little better where we can go to. So if we could get a little bit of feedback from you on where you may or may not be able to go with this, that would be very welcome to us.

CHAIR—Thank you, Councillor Berwick. The scope of this inquiry is merely to look at the legislation which has been introduced into the federal parliament which has the intention of overriding the Queensland state government’s punitive measures to either sack or fine a council which sought to access a plebiscite conducted by the Australian Electoral Commission. That is the scope of this legislation and the intention is to restore a right which had been taken away. That really is the scope of the legislation—to restore something which you previously were entitled to but which was taken away. I have no doubt that a number of my colleagues will want to explore some of the issues you have raised and other ways that a local council might seek to be supported and protected, but the scope of our inquiry is very much limited to the piece of legislation which is actually before us at the moment.

I might kick off the questions on behalf of the committee. You mentioned the icon legislation which the Queensland government have flagged that they intend to introduce for places such as Noosa and Port Douglas. You said you are not too sure what icon legislation would actually mean or do. Do you have any idea what the Queensland government have in mind?

Councillor Berwick—No, and I do not think they do. We see it as a pretty second-rate option but one that, nevertheless, we should take advantage of if it is going to bring any benefits or restore essentially our control over our own future. When the Premier met with Bob Abbot and I, he said, ‘We want to do it but we don’t know how.’ And Bob and I said: ‘That’s great. Give us a month and we’ll come back to you with some ideas.’ We are about halfway through that one-month period now.

I guess where Bob and I immediately come from is that what made these communities the way they are is the local community. How do you legislate to put that back when it has just been taken away from you? That is the challenge that we have got. Hence, rather than

thinking about iconic things that need a bit of legislation to protect them, such as the heights of buildings, the main thing that we want to entrench is some kind of process by which you could not change the heights of buildings without knowing that the community supports that and without good reason for it. In other words, put the power back in the hands of the local community, but under a process that cannot be easily corrupted by poor government performance or poor council performance, such as a bunch of councillors having their ears chewed by some lobbyists coming into council meetings and saying, 'Sorry about the planning scheme but we're going to go ahead and approve McDonald's,' or approve a four-storey building, or whatever. Of course, these things do happen in local government because local government sometimes does those things. By the way, I am a person that supports the need for reform of local government, but I do not think this process is reform at all. It is something else; it is a forced process.

So we would see this icon legislation as putting in place a system that gives some participatory democracy back to our communities. How would it work? We would see things like height, urban footprint, Daintree and so on as being fixed by some kind of process. But, of course, you never fix things forever because governments change, legislation changes; no-one can bind a future government in legislation. So it is more about putting in place what are the triggers to effect those sorts of changes. I would say for those big-picture issues, such as the heights of buildings and the urban footprint: lock them in in the planning scheme so that you cannot even accept an application that falls outside it, but put the power back into the hands of the local community to change it if they want to. So for those big issues you would need, I would suggest, a plebiscite or a referendum to say, 'Yes, we want to go from three storeys to six.' Let the community decide that, but in a way that is fairly watertight in terms of knowing that that is what your community wants.

CHAIR—But it would be fair to say that in your view the best way to preserve the iconic status of the Port Douglas area would be for the Port Douglas council to remain an independent entity separate to Cairns.

Councillor Berwick—Absolutely, and things like iconic legislation are a second-rate option that we are using because it is all we have got left. We will do our best to make that work and in fact, regardless of amalgamation, we would see that that kind of legislation would have some benefits. So regardless of whether this happened, we would see that it might be useful to give better management to special areas.

CHAIR—Before I hand over to my colleagues, I have a final question: at the time the Queensland government introduced the punitive measures—the threatened fines and the threatened sacking of councils—for accessing plebiscites, had the Port Douglas council made a decision to have a plebiscite or undertaken anything in that direction?

Councillor Berwick—No. But when we first heard about the reform process and got given three weeks to put in a submission, we brought our community together in a fairly structured way to give them information. We brought all the sector groups in. We briefed them. We dropped everything else we were doing and went into this. We said to the community: 'Do you want us to make a fuss or not?' We tried to be very open about it and unanimously they said, 'Yes, we do. We're upset.' So that is what drove our community into going this way, and one of the things we did was run an independent survey. It found that 76 per cent saw no

benefit in a boundary change—we have the results of those surveys here and we can table them for you.

CHAIR—If you could, the committee would appreciate that.

Councillor Berwick—It was an independent, statistically sound survey that we were told was 95 per cent accurate; it was good enough for our purposes. So in a way we already know what the results of a referendum are going to be: they are going to be close to that number. But our community wants it because they want the right to be heard and, when that right was taken away from them, they got even more upset and wanted even more for that right to be heard and to get their views down in a very clear way that only a referendum could provide.

CHAIR—Should this legislation pass, it would be your intention to—

Councillor Berwick—We have already resolved—sorry; I might have misunderstood your question—subsequent to the process that we want a referendum, and that was unanimous by my count.

CHAIR—And this legislation will give you the protection to do that so you are very keen to see this pass.

Councillor Berwick—Absolutely, and we very much appreciate it.

Senator McLUCAS—Councillor Berwick, the chair said ‘should the legislation pass’. I think I need to put on the record that the legislation will pass. It is very clear that the Labor Party will support this legislation. We have said so from May of this year when our leader put on record that we opposed forced amalgamations for all of the reasons you have just described. So I do not think you should be fearful that there will be a situation that this legislation will not pass.

CHAIR—On a point of clarification: I was merely saying ‘should it pass’, given experiences in the past where you cannot necessarily count on legislation actually being passed until it has gone through both houses. Circumstances do sometimes change, but it was not meant to be a reflection on any party’s stated position.

Senator McLUCAS—Thank you. Councillor Berwick, you talked about the potential for this legislation being broader than what I think the scope of it is—that is simply to remove any impediment for local authorities to hold plebiscites. Given the Queensland government is going to repeal that legislation, you could talk about how much we need it but that is not the point of my question. You are looking for an opportunity to expand this so that if, let us say, a major development issue was confronted by a local authority that this might be triggered to allow a plebiscite to be held on that issue. Can you give us an understanding of what the trigger would need to be to start that process off?

Councillor Berwick—I do not think you would want to have as a trigger a single application to a planning scheme. I think that would be a bit over the top. But, when it comes to changing a planning scheme or major components of it, that probably would not be. At the moment we have a fixed urban footprint. That has been in place for some time and is very popular with both the tourism sector and the agricultural sector because it looks after the shire. I would say that changing the planning scheme to allow further urban expansion beyond the footprint would be the sort of thing that would be a big issue. It would be big for our

council—it might not be big for others—just like heights would be. I think there should be some sort of process that would trigger them for big events. I do not claim to know enough about the right way to do that—whether it should be if it is an Australian electoral act by the Australian minister or whether a request to the Electoral Commission by a council, a state minister or even a local community should be sufficient. I do not know how far that should go.

The reason I am saying that is that I recognise the danger of having what the League of Rights used to call a citizen initiated referendum. I would not go along with that. I think that is fraught with danger, and both political parties would probably agree with that. But there is something in between that is appropriate for communities to be able to do that.

One of the sad things that have come out of this is that generally the states have handled local government reform very badly. It has been ad hoc, it has only looked at local government and it has never looked at the role of state and federal governments and regions and so on. So little communities in particular have become the victim of this process. It is little communities that are crying out and saying: 'We've lost our character. We've lost control over our own destiny.' If this process can put some control back in there I think it would be welcomed by little communities all around. But I am stopping short of saying what that trigger is because I simply do not claim to know enough about processes and the implications to be able to make an intelligent statement on that subject.

Senator McLUCAS—Is that something that you think the proposed council of Australian local government might be able to look at? You would be aware that last week Senator Kate Lundy announced a policy to establish a council of Australian local government. Is that one way that that discussion and debate could be pursued?

Councillor Berwick—That could well be. You would be aware that Douglas Shire put in a resolution to the local government conference last week that went a little bit further than that. Our resolution was that it was time for there to be a comprehensive review of the roles and responsibilities of all three levels of government—something long overdue, in our view, given the dysfunction that all parties find between federal, state and local governments, which have been the victims of a state-centric Constitution that has been set up. We understand all of that. Our resolution was going a bit further than that and saying whoever is empowered should thoroughly review the roles and responsibilities of all three levels of government, with a view to having referendums to change the Constitution if necessary. It was intended to be a far-reaching resolution that did allow this to happen. We think that is long overdue. With the old system and the way the Constitution is set up, Australia has become thoroughly dysfunctional with the cost shifting, the blame shifting, the overlap, the waste of resources, the over government of Australia and now the disempowerment of local communities, to add insult to injury. We think that simply looking at local governments in isolation is pretty silly. You really need to look at the big picture to get things right, and we hope that that resolution will get some traction in Canberra. If it was part of your process, that would be great. If it was part of some other process, that would be good too. We really thought it was time to look at the big picture thoroughly, and, if this thing could fit into that, that would be fine.

Senator McLUCAS—Is it possible—and I understand the vagaries that we have around what the so-called 'icon legislation' might look like—for that process to also include a trigger

if there is a major change, a major proposal, that is perhaps not in conflict with the current town plan but in conflict with the perception of a town plan? For example, you have an industrial area at Craiglie. If a nuclear power plant at Craiglie were proposed, it would not necessarily be in conflict with the town plan. In my view, it would be very much in conflict with the intent of the Douglas shire planning scheme and the wishes of the people of the Douglas shire. I do not see how this legislation facilitates such a plebiscite to be held on that issue. I do not know if you have a view about whether that would occur.

Councillor Berwick—I have only been very brief about this icon legislation because I do not know how much it concerns this committee. One of the troubles with the Queensland Planning Act, which I do not like very much at all, is that it really has no prohibitions. It is a performance based planning system, so in theory you could put a nuclear power at Craiglie provided it created no smell, noise, pollution or traffic problems, was not an eyesore and stayed within three storeys. That is the principle on which Queensland planning legislation works. The problem with it is that it leads to a great vagueness whereby you get challenged in the courts. The big developers come in and spend a lot of money in court, and little councils like mine do not have the resources to defend themselves against Woolworths, McDonald's and people that are far bigger organisations than we are. I would hope that the icon legislation can do a few things like say that there are some things you cannot have—for example, you cannot go above three storeys unless there is some very clear process, such as the plebiscite, that shows community endorsement to go there. If that is what the community wants, that is fine. If not, that is it. Unfortunately, the Queensland planning scheme is pretty poor at some of those sorts of processes, particularly the no-prohibition stuff. Performance based planning schemes sound good in principle but in practice they lead to a lot of grey areas that end up being in dispute. We are thinking of the icon legislation now more as a process of amending the Queensland Planning Act than some specific thing that says: Douglas is special, Noosa is special. It is more about aspirational things and community empowerment.

I think it is time for Australia to take a look at participatory democracy, and I will explain my understanding of that. Representative democracy is where you get a board elected and they make decisions on behalf of the community. That is what we are all used to. Participatory democracy is a process, such as a planning scheme where the process says, 'You must consult with the community before you can do this.' Maybe we need a bit more participatory democracy where you get a skills based board and processes that you have to go through to do things. This may well give the community a better outcome than the downside of representative democracy, which has its own problems, such as poor standards of skills on local councils, which you see all over the place. People get elected but do not really understand their roles and responsibilities, which have become very complex. They are expected to deal with everything under the sun and they lob onto a local council without the sorts of skills that you would need in order to deal with really complex issues. It is not a criticism; it is just a reality.

If you have participatory democracy you say that before you can change this planning scheme you must go through a process of community engagement which puts the issues on the table, you must make sure you build some understanding in the community about the pros and cons and then you either survey by a statistical survey or you have plebiscites or whatever

to gauge community opinions. So what you are doing there is empowering the community, not through a representational democracy but through a participatory democracy.

I think other countries do this better than Australia, but it is a good way to go to give small communities such as ours some control over our own future so that we are not swallowed up by big agendas, big societies, big developers or big whatever. Part of Australia's heritage is regional and rural communities. Let's look after them. Let's keep them empowered. They have their own character; they are all different. Once you start joining us all together into big governments we start to lose our identity—and we are upset about it. Every state has done this badly. It is about 'big is better', but big is not necessarily better. You want to keep character and diversity. They are not all the same as Douglas's; they might be completely different in different places. It does not matter. It is diverse. If there is any way this process can help keep that diversity in place in Australia I think it is good for all of us. And I think that diversity is about empowering local communities.

Senator McLUCAS—This legislation does not enable that outcome.

Councillor Berwick—No. I understand that.

Senator McLUCAS—This legislation is very limited, but your point is: is there an opportunity to make this legislation something far more meaningful in the long term?

Councillor Berwick—And this committee might have something to say about that and suggest another process, another time or something else—I do not know. There are many of us in my position who are not very happy about where we find ourselves, who understand the limit and scope of this and who are trying to look for some other opportunities.

Senator IAN MACDONALD—You were led to the nuclear reactor furphy.

Councillor Berwick—I understand the politics of that.

Senator IAN MACDONALD—It is a furphy. Just on that, what you are talking about is what the Prime Minister has announced in relation to any prospect of nuclear reactors in 30 years time when they might become relevant to Australia. Are you aware that he said that there would be a local poll and it would be a binding poll, so unless the local community agreed—

Councillor Berwick—Okay.

Senator IAN MACDONALD—That is the sort of thing that you are talking about. That is in relation to one particular issue, but that is the sort of thing that you are looking for.

Councillor Berwick—Yes. Maybe the nuclear example was a political choice. I understand what you are saying.

Senator IAN MACDONALD—You were led into that.

Councillor Berwick—It is an example of the sort of thing that you would want to give communities control over.

Senator IAN MACDONALD—That is what the Prime Minister has announced, so there should be no worries for the people of Port Douglas. Unless they particularly—

Councillor Berwick—I am sure that they would have a view on it.

Senator IAN MACDONALD—They will not have one. Nor will anyone else, for that matter.

Senator FORSHAW—They can have the one that I have.

Councillor Berwick—Have you got Lucas Heights?

Senator FORSHAW—Yes.

Councillor Berwick—I have listened to many debates over Lucas Heights at local government conferences.

Senator FORSHAW—I am sure that you have.

Senator IAN MACDONALD—You should not have let the Labor government put it in there, Mike.

Senator FORSHAW—It was the Menzies government and the Howard government who built them. Why do you tell lies?

Senator IAN MACDONALD—Under the Local Government Act before it was changed a couple of weeks ago, you could have a plebiscite on anything that you chose to. Is that correct?

Councillor Berwick—I am not really sure about that, and that is why I am sort of saying that people who know better than me would understand what the triggers are. There probably is a local process for a referendum that could be had, and we had never dreamt that anyone would put the brakes on that. In those cases, it would be the local community owning and paying for it. I am not saying that the Australian Electoral Commission should pay for all referendums. But there certainly should be a process by which they can be held. The best people to run them would be the Electoral Commission, with the knowledge and understanding of how to do this that they have.

Senator IAN MACDONALD—It was pointed out to us this morning that in three states, and I think it is the case in Queensland, a local authority can have a poll on anything that it likes—except in Queensland at the moment, where you cannot have a poll on your future. Just changing track very slightly, have you selected your representatives for the transition committee that is going to determine what the Cairns and Port Douglas council is going to look like in the future?

Councillor Berwick—Yes, we have. We have selected me and councillor Melinda Cox, who is here in the audience.

Senator IAN MACDONALD—There will be two from the Cairns City Council and three unionists, we have heard. Do you know who they are?

Councillor Berwick—I know one of them, the AWU representative. I am not sure who the other two are.

Ms Leu—Steve Rodgers from the ASU.

Councillor Berwick—David Grossler from the AWU. I do not know who the third is.

Senator IAN MACDONALD—Are they locals? Steve Rodgers comes from Ayr, doesn't he?

Councillor Berwick—I do not know. I do not know Steve.

Senator IAN MACDONALD—He used to be the Labor member for Burdekin, didn't he? Is that the same Steve Rodgers?

Ms Leu—Steve, like all of us, has a large patch that he to look after. David Grossler is from Cairns.

Senator IAN MACDONALD—So you do not know who the third is? One of them, clearly, is from my neck of the woods. What is their purpose, do you know?

Councillor Berwick—We have had a talk with them this morning. What their original purpose was, I am not quite sure. At the moment, they have said that their purpose will be purely to look after the interests of workers, and they do not want to become involved in any of the politics, such as who the interim chief executive officer will be or who the chair of the local transition committee will be. The interesting thing, though, is that in the event of a deadlock where you get an even number of councils such as we have the unions would have the casting vote. That was one of the problems that I had. We saw the merger with Cairns as a merger, not a takeover. Many of the large cities are seeing this is a takeover and not a merger. I do not think that they have really thought through the process of what happens in the event of deadlocks. By default, the union representatives will effectively have the casting vote, but they have said that they do not want to know about those sorts of things.

Senator IAN MACDONALD—Is one of them from your shire?

Councillor Berwick—None of the union reps are from our shire, no.

Ms Leu—I think the third one is from Cairns. I think so, but I am not sure. They were appointed from Brisbane.

Senator IAN MACDONALD—So they were not elected by anyone?

Councillor Berwick—I do not now how they get there. I really do not know. I think the whole process has been appalling. One of the problems we did see the rules of this thing until last Wednesday. So we have been pressed by the Cairns City Council to have a transition committee meeting, but we have said that we do not think there is any point in having one until we see the rules. In fact we still have a workshop to go tomorrow which is still being designed which will tell us the rules. So we are learning on the run, and many of the goalposts have shifted several times through the process—such as whether or not the unions have a vote. Initially we understood that they would have no vote. Now they do. So those sorts of things are very confusing. Merging these two businesses between now and March is a big job. We are still a bit in the dark about some of those processes.

Senator IAN MACDONALD—How do you employ your workforce? Are they are on an award, an enterprise bargain agreement or an AWA?

Councillor Berwick—It is an enterprise bargain agreement. Julia would be better able to talk about that. We employ the CEO and the CEO employs the rest of the staff. That is quite clear in the act. You can have some influence as a council on senior management.

Senator IAN MACDONALD—But do you have AWAs or individual contracts?

Ms Leu—There are approximately five staff members who are on a contract out of 156 staff—two general managers and three other staff. That is my understanding. The vast majority of courses are under the awards—ASU, AWU et cetera.

Senator IAN MACDONALD—Do you know what Cairns' position is with its workforce? Are they on AWAs?

Ms Leu—I could not answer that with any level of confidence.

Senator IAN MACDONALD—I have read in the paper that the amalgamated council will not actually employ its workforce in the future but rather some sort of statutory authority will be employing the workers. Have you heard anything about that?

Councillor Berwick—I have heard rumours about that now for a few weeks. I am deeply alarmed at the possibility of that happening. I cannot see how it would work if you have a council employing a CEO and then he has to essentially buy services from a centralised bureaucracy. To me it looks like a completely crazy system. It has been raised. I have asked the question in the media to please confirm or deny whether or not that agenda is true. It was raised at the local government conference. It is not clear from that. We have had some people say that it is not true and other people say that it is. I am sure that all councils, whether they support amalgamations or not, would like to know the answer to that question very quickly.

Senator FORSHAW—Just so we have the record as up to date as possible, because we are due to report on this inquiry technically tomorrow although it will probably be by the end of this week, has your council been advised by the director-general of local government in Queensland as to what the current state of play is with the penalty provisions that were put into the legislation by the Queensland government and which are to be withdrawn?

Councillor Berwick—Have we been advised? I presume we have heard in the media. I am just wondering whether we have had any formal correspondence.

Ms Leu—I am not aware if we have had any formal correspondence. Party that is due to the fact that I was at the local government annual conference last week and so I actually do not know at this stage. I have not been advised that we have received a letter. But, as I say, because I was not present in the council building last week, we may have.

Senator FORSHAW—So you are not aware whether or not the council received an email last Friday informing you that regulations had been gazetted to remove the effect of the penalty provisions and that the legislative amendments will be finalised through the state parliament to do that with respect to the legislation as distinct from the provisions.

Senator IAN MACDONALD—Why didn't you give evidence yourself or get your advisers to give the evidence? These people have said they do not know.

CHAIR—Order! Senator Forshaw has the call.

Senator FORSHAW—I am seeking to clarify whether or not the council has received that advice.

Senator IAN MACDONALD—They did not know.

Ms Leu—Senator, I have not been able to access my emails because of today's commitments, so there are some outstanding emails, and maybe that is one of them.

Senator FORSHAW—Thank you. You have read the legislation, obviously.

Councillor Berwick—I am aware of what is in it, anyway.

Senator FORSHAW—It does not take you long, but it is worth reading a number of times. Everybody acknowledges that the background to this legislation arises out of the proposed forced amalgamations of Queensland councils. It also picks up and deals with the amendment that was moved to the state legislation, which was giving effect to forced amalgamations, to also make it an offence, with penalties, for councillors and councils that participated in the proposed plebiscite process that the Prime Minister had previously announced. That is clear. We all accepted that. But one of the things this legislation also does, which is why I, at least, can read it—and I think most people would—

Senator Moore interjecting—

Senator FORSHAW—Yes, there is. Because there is no reference to local government plebiscites but a reference to any activity such as a plebiscite, it can have far-reaching consequences beyond just the holding of plebiscites in Queensland. Are you aware of that?

Councillor Berwick—No, I am not aware of that level of detail in the legislation. The only thing that we saw was, first of all, the ban on plebiscites and then the retraction of that ban. So that is about the depth of my knowledge on the matter.

Senator FORSHAW—Have you been provided with any advice as to whether the legislation is constitutional or not?

Councillor Berwick—No, but we are aware that the Local Government Association has sought advice on that and has advice on that and, had that clause remained, would have gone ahead and challenged it. I guess the view that we—

Senator FORSHAW—Sorry, you are talking about the state legislation?

Councillor Berwick—Yes.

Senator FORSHAW—No, I am asking about the federal legislation.

Senator IAN MACDONALD—But you can continue your answer on that one. That was quite interesting.

Senator FORSHAW—Councillor, I am happy for you to say whatever you like to this committee, but my question was directed to federal legislation. If you would like to go on and talk about the state legislation, please do.

Councillor Berwick—I am sorry; I certainly was not having a go at you over that. I just did not realise—

Senator FORSHAW—I know you were not having a go. But there was a suggestion that I was not interested in hearing it. My question was clearly about this legislation, because that is what I am talking about and that is what we are inquiring into. Are you aware that, right across Australia, there is the problem of local government—and I think you have alluded to it—that you are ultimately the creatures of state governments? It does not matter whether they are Labor, Liberal, National or whatever; that has historically been the case. At the end of the day, state governments have substantial powers. They can sack councils without notice. They do not have to give you reasons, do they?

Councillor Berwick—No.

Senator FORSHAW—They can change the boundaries pretty much without notice, which is what they are trying to do here. So whilst this is clearly a significant issue for the people of Queensland—and I understand and I support the view that you should have a say—there are a whole range of issues that you do not get to have a say in, planning being one of them. You have raised the issue. For instance, to go back to the questions you were asked about nuclear power plants or waste dumps or whatever, at the end of the day state and federal governments can impose those decisions and—

Senator IAN MACDONALD—Was there a question in this?

Senator FORSHAW—There is a question. Do you understand the federal government can impose—

Councillor Berwick—I see where you are coming from now and I understand your point. I understand—

Senator FORSHAW—We have seen it with the Commonwealth—

Councillor Berwick—I understand very clearly that, in terms of what has happened in Queensland with the amalgamations, there is no legislative power of the federal government to intervene in any way.

Senator FORSHAW—I am not so sure that that is correct, but you would agree that—

Councillor Berwick—My understanding is based on the fact I have seen forced amalgamations go through in other states and I have seen all this same sort of angst and anger, and I have not yet seen anyone challenge it successfully. I drew the assumption from that that the amalgamation part of it is not really challengeable. Not being a solicitor, I would not really know, but I certainly came to that conclusion. The issue I raised before of whether components like banning someone from having a plebiscite may well be challengeable. I have not spent a lot of time going into that because I see the QCs arguing about it. I am not one of them, so how am I going to understand it.

Senator FORSHAW—This legislation is founded on the use of external affairs power, and there are debates going on at the moment, as you know, about the use of the corporations power and its impact on local government. If this legislation goes through, which it will, and when the issue of the amalgamations in Queensland is dealt with, a whole new area of potential federal power in local government may open up. It may help you—I do not know. Have you thought about that? Has your council considered that?

Councillor Berwick—I am not quite sure if I understand where you are coming from. The understanding that the Commonwealth cannot override state legislation in terms of local government and amalgamations is the part that seems to be fairly clear, though I might be wrong. We understand very clearly that holding a plebiscite like this is purely an indication; it is not going to have any binding power or necessarily lead to anything at all. If the Queensland government decides to completely ignore it and tells us to all go and jump, we will understand that. Is that the sort of thing you are getting it?

Senator FORSHAW—Yes.

Councillor Berwick—I think we understand those sorts of things. Regardless of whether that is a political process or stunt, or whatever, my community wants the right to have its say and have it recorded, and we will defend that right and support that happening.

Senator JOYCE—Did your council want to amalgamate?

Councillor Berwick—No, it did not.

Senator JOYCE—Was the decision to amalgamate a political decision rather than a decision based on floods, fire or finance?

Councillor Berwick—It certainly did not appear to make any sense at all. I can remember the terms of reference quite clearly. There were four or five points about financial sustainability, communities of interest and natural resource boundaries, and one or two other things. We appeared to fit that beautifully.

Senator JOYCE—So it was a political decision?

Councillor Berwick—Well, it certainly was not a rational one, in our view. Whether it was political or whatever, I guess you could come to that conclusion and that is fair enough.

Senator JOYCE—So were the politics of the people who made this decision that of a Labor government?

Councillor Berwick—They were.

Senator JOYCE—Would it makes sense to put the maximum amount of pressure on a Labor government to change that decision?

Councillor Berwick—I am not quite sure where you are coming from there. Certainly my community is looking to apply pressure wherever it can and if it thought it could exert some leverage by taking it out on Rudd, it will at the next election. I think the other point to be made is that some communities have become so angry—particularly ours and Noosa's—that they are running their own agenda as a community in terms of applying pressure wherever they can and when they can.

Senator JOYCE—So you would agree that the maximum pressure point currently envisaged is the coming federal election?

Councillor Berwick—I have mixed feelings about that, to be honest. I support the need for the referendum. I have certainly added my pressure to the ALP to try and get them to work on Beattie. My understanding is that they have tried. Of course, it is difficult to know how much they have tried. We certainly saw an opportunity to say: 'We think this stinks. Federal Labor, please put some pressure on Beattie and get him to change his mind.'

Senator JOYCE—Are you aware that Mr Rudd has staff members here today watching everything that is going on?

Councillor Berwick—Yes, I am aware. I met one of them just before the hearing.

Senator JOYCE—Do you find it peculiar that members of the Queensland Labor Party at a state level have a different view to those at the federal level?

Councillor Berwick—I do not get involved in party politics. The machinations of internal party politics never cease to amaze me, and I stay out of them deliberately because I treasure

my independence. I never pay much attention to things like Labor Party factions. I do not understand them and do not know what they mean.

Senator JOYCE—These are not actually factions.

Councillor Berwick—Sure. The extent to which federal ALP is connected to state ALP policy, in all honesty, I would not really know. You would expect a state Labor Party to support a federal Labor Party. We were very surprised when Peter Beattie pulled a stunt that would seem to affect the chances of the federal Labor Party. To us, it seemed an amazing thing to do. You would expect that the federal ALP might well be very upset with the state ALP. How they interact, what their policies are and what their internal arrangements are, in all honesty, I do not have a clue.

Senator JOYCE—Do you understand that if this goes through there will be a form of generic development? I do not know what form this iconic legislation will take, but there will be a form of generic development between Port Douglas and Cairns, I suppose.

Councillor Berwick—Do you mean if the amalgamation goes through?

Senator JOYCE—Yes.

Councillor Berwick—My community is totally horrified that we will come under a regime of a community that is very different to ours.

Senator JOYCE—How does a 20-storey building in Port Douglas tickle your fancy?

Councillor Berwick—Exactly. Already, developers are saying, ‘This is great. We are going to be able to get developments in the Douglas shires refused.’ For example, one thing that has deeply alarmed our community is the future of our waterfront. We have embarked on a process of community engagement on the future of our waterfront. The state came in and they had buildings and developments higher and denser than anything our planning scheme provided for. People are terribly nervous about a state agenda here. Whilst we have been happy to let Cairns city do its thing while we do ours, we certainly do not want to be part of their mentality. I have never criticised what Cairns city does, even though I might have different views.

We are worried about the little things if we are joined up with Cairns’s planning. It gets down to little things; it is not just the big things like high-rises. Will the signage policy be the same? Will we suddenly see billboards along our highways which are allowed in Cairns and not in ours? There are two different signage policies. When the two councils come together, we will end up with a single signage policy. Is Cairns going to come back to ours and say, ‘No billboards,’ or are we going to go to Cairns and say, ‘You will have billboards’? Those are the sorts of death by a thousand cuts that really disturb us as we get homogenised. We want to keep our point of difference. That is our economic strength, and it is why tourists come. Those things are issues like high-rises, urban footprint and so on. We do not think we will keep our point of difference in the long term. Sure, in the short term they will not trash our planning scheme and put up a six-storey next week, but what about in 10 or 20 years?

Senator JOYCE—There will be an immense amount of financial and lobbying pressure from development interests who operate in Cairns who will say, ‘We want to get into Port Douglas now.’

Councillor Berwick—Absolutely, that is happening already. We are all mystified about what the drivers are for this thing. I have spent a lot of time trying to understand why they have done this. One of the big drivers that we see is the large development interests saying, ‘We want to get those little pesky councils out of the way, so we have fewer councils to deal with and easier processes.’ Fewer developer contributions seem to be one of those sorts of things. Yes, my community is very concerned that part of this agenda is about large-scale developments and removing impediments, and allowing them to be fast tracked with the support of the state government.

Senator JOYCE—In the belief of iconic legislation, probably the most significant thing that would protect the integrity of Port Douglas and, might I also say, Noosa would be for you to be left alone.

Councillor Berwick—Absolutely. We have made that point very clearly. We made that point to the Premier, that it was a second-rate option and we would really like this to go back. Maybe one day it will.

Senator JOYCE—Are you highly sceptical about someone who talks about iconic legislation yet wants you to amalgamate with Cairns?

Councillor Berwick—Yes. We think it is purely a political patch-up job. We understand what has motivated it. But I guess we also think that, regardless of amalgamations, some sort of recognition of special areas would be a useful thing anyway, particularly because of our dislike of the Integrated Planning Act and the way it works, which I described before. Things that made it difficult to change iconic aspects through a whim of the local government are useful, regardless of amalgamation or otherwise.

Senator JOYCE—Thank you very much for your evidence.

CHAIR—Mayor and Chief Executive, thank you very much for your time this afternoon. We do appreciate it.

Councillor Berwick—Thank you for giving us a good hearing.

Senator McLUCAS—Could I correct the record. Senator Joyce was talking about how it was a ‘political decision to amalgamate Cairns and Douglas shires’. It was a recommendation from the Local Government Reform Commission, which I disagree with. In terms of the record being accurate, I think we should make that right. I agreed with Cairns and Mulgrave, but I did not agree with Cairns—

CHAIR—Thank you, Senator McLucas. We have two views on the record as to what happened. Again, thank you to Douglas Shire Council.

[2.26 pm]

DAVIS, Mr Rod, Private capacity

CHAIR—Good afternoon, Mr Davis. Time is a bit against us so we might have to limit this session to about 15 minutes. If you would like to make a brief opening statement, after that we will move to questions.

Mr Davis—It was very helpful that Mike kicked off. I am appearing in a private capacity but I am also a councillor from Port Douglas. So I am part of Mike's council, and I support everything that he has said. I would like to go a bit deeper and a bit further into the participatory democracy thing. I would like to find a bit of unity here and pull a few things together in the big flow of the river known as politics. Given that your report is due in two days, I do not think I will be able to influence so much the legislation; but I might be able to seed some ideas around the legislation that might make some improvements to it given the space and time and given the agenda at federal and state levels.

What you have seen and what you have heard from Mike is how small communities have been very upset by this amalgamation legislation. In fact, if you had seen the main street in Port Douglas during the protests then you would understand. It was chock-a-block from one end to the other. It was very colourful and very angry. The people up there are losing their local identity. Our little shire has just won the state planning award. It has won one of the top international green awards. It is financially strong. So there is a lot at stake. What if someone were to come along and say to us, 'Would you like to have a poll about this issue?' I put it to you that if you were to go to the Bali Nine and to say to them, 'Look, guys, if you think you've been unfairly done by how about we have a show of hands here?' They would say, 'Certainly, we don't want to be executed and we don't want to be put in jail for the rest of our lives.' But they are still going to get the bullet and they are probably still going to spend most of their time in jail. You have to excuse us here, but in the Douglas Shire we are not too far removed from that fatalistic view, because it does appear that Premier Beattie and Andrew Fraser have dug themselves in well and truly.

So we have this agenda that is ripping half the councillors out of Queensland—taking them off the playing field. What you are essentially doing is removing representational democracy. What I would like to promote is the view that both parties, from either side of the House, could look at a different view. Instead of just providing us with funds for Roads to Recovery, you might give us a bit of funding for 'roads to democracy'. This participatory democracy that we are talking about here does not fall off the back of a truck; it requires a bit of effort. It is a bit of a novel concept, but it actually means that the leaders of the community go to the community and ask them, 'What do you say?' I am a small town elected official. You have been elected for a long time. You have seen community consultation. We are doing it now. People hold their partisan views. We get piles of letters this high on views for and against issues for our local government. At the end of the day people tend to take their partisan position and the community consultation process does not have any teeth—in other words, all the cries from the people on their various views are really not given any legislative bite.

As I said before, politics is more of a river than a mountain; it is a flowing thing. I dare say that there is an awful lot of debate coming ahead at the constitutional level. It may involve discussions about removing powers from the states, such as the hospital debate that is going on at the moment at the lower level here to do with loss of identity. Let us go right to the very bottom level, the local government level, and have a chat about this participatory democracy. What is involved in participatory democracy for us is deciding whether somebody is going to go and build a block of flats across the street. It is not a very difficult thing. It is not like deciding whether you are going to bomb Baghdad or not. It is just about whether you get a block of flats at the end of your street. It is a very local sort of thing. It is almost an ideal model where you can see this participatory democracy.

This basically means going to the people and asking them questions. We want to be polled. We do not need more politicians. We have already had half our politicians ripped out at a state level. What can be done to replace them? We could follow a Swiss model, varying its referenda. We could have a number of academics weighing in and saying, 'They don't work. You could always rig the questions. Look at the last one on the question of the monarchy and how skewed that turned out.' But you could take a more practical approach. When you walk out of this room tonight you will pick up a newspaper and it will be asking you questions on this. When you go home tonight and turn on the TV, somebody might ring you up from ACNielsen and ask your view—that is phone polling. If you like, you can get out your phone and SMS a response to a number of questions that you will find floating around in the media everywhere. You could fill in a survey form. At a local council level, you might find yourself at a local meeting.

My suggestion to you is that, in this proposal that has been put to you to look at plebiscites, you go a bit deeper. Plebiscites are pretty clunky institutions. Certainly a referendum is a clunky institution. Everybody has to turn up on a Saturday and put their piece of paper in the box. It is a lot easier just to respond through the new world that we have with the web by sending an email or responding via your phone with SMS. My suggestion to you is that, if the pollsters say that a three per cent sample is generally within a couple of per cent of a 100 per cent vote, if you were to extend the penetration of the plebiscites to the community to take a sample of somewhere between three per cent and up to, say, seven per cent or whatever you deem fit and composite together a range of polling methods that would include, as I mentioned before, simple surveys—whether they come by way of a letter in the mail box, a tear-out sheet in the newspaper, a phone poll or SMS—these are the ways we can extract views from the people. What I am asking for in our case is not just information to go to Cairns City Council for their discretion. I am saying, 'Give it teeth.' If you get a response from the people that says, 'No, we do not want a block of flats at the end of our street', make the council then have to come back with new legislation. Essentially what I am asking you to do—and this is probably a bit of a tall ask, sitting in front of so many wise senators—is to allow the veto power of the Senate at a local level to be given to the people.

CHAIR—In the interests of time, I might ask colleagues if they could limit themselves to one or two questions.

Senator JOYCE—What do you see as unique about Port Douglas that would mean it should not just go with the flow and be part of the other councils? Why should it be allowed to stand out?

Mr Davis—There is a vast, homogenising world out there and what is precious to someone in Port Douglas may not be precious to somebody else. I think the fact that we have been given iconic status is a reflection of the two-page ad that Peter Wade put in the *Courier Mail* at the height of this issue. What is precious to us could be the fact that we only have three-storey buildings, that we do not put blocks of flats along the beach and that we go out of our way to stop further development in the Daintree. There are a number of things, but those sorts of things apply to communities all the way across Australia. This iconic legislation that Mike has been outlining here is quite likely, from what we gather from all the ‘me too, me too, me too’ mayors from Aramac, Winton and Redcliffe, to be put in place for them too. And why not? Whether it be a gumboot at Tully or something special in Redcliffe that is appropriate to them, it is their characteristic. It is what is precious to them; it is their little tribal thing. If we keep homogenising the planet, none of these things will remain any more. We need, as we get big government, to figure out ways in which we can empower democracy at a grassroots level. I say that it is through this three to seven per cent penetration into the community. Give it teeth so that if the people say ‘No, we don’t want a power station’ or ‘Yes, we do want a power station’, we go their way. Give it the power of veto—your power.

Senator JOYCE—My final question is: do you think Bill Clinton will turn up when Port Douglas looks like Miami?

Mr Davis—The current President is turning up in Sydney at the moment. He has got 12 millimetres of armour plating around him. He has got windscreens that can withstand an attack from a grenade thrower. He has got 250 minders all around him. When Bill Clinton turned up in Port Douglas, he just jumped out of his chopper and came up and shook everyone’s hand. My friend over here, Michael Gabour, was welcomed onto the plane. When I was a boy in Sydney, LBJ came down the main street of Sydney in an open top Cadillac. Now the guy is surrounded by guards. On the whole APEC thing that you are seeing there I just say, ‘Have we got representational democracy a bit wrong when everybody hates the leader so much that they have got to be guarded like that?’ My view in response is: let the people have more say—don’t fence them out behind five kilometres of steel fencing.

Senator McLUCAS—I do not want to get into long discussions about these issues but, for the record, you talked a lot about polling and the different ways that you can assess community views on things. Could you talk briefly about the importance of that polling being preceded by community engagement and information sharing so that those poll results are informed results? I know you feel strongly about that.

Mr Davis—Three phases—three asterisks to them. One side might say, ‘We want to put a block of flats at the end of the street,’ so the officers—unelected—need to put a facts sheet out about that to the community. Then, with the information that goes out—whether it be electronically, in the newspaper or through whatever means—you have one side advocating and saying, ‘It is a great idea; we need to re-densify the community,’ and the other side saying, ‘No way; we want it as it is.’ So you have advocacy, as you have got on both sides of the table here—you have got advocacy. Let the leaders lead, but let the people decide.

Senator McLUCAS—That is what I wanted to be very clear about. Thank you.

Senator FORSHAW—I appreciate your views. How does your system work when you are dealing with contentious issues where society or the area needs a service or a facility but the community is never going to vote for it? Let me give you a couple of examples. Where there is a proposal to put in a desalination plant that the government argues is important for the future water supply of that city, if the local community has a say on the proposed location they are clearly going to oppose it. What about a women's refuge or a public housing estate? The local community may not want the character of their area changed to accommodate those sorts of developments but a broader need for such a facility can clearly be demonstrated. How does your model deal with those sorts of situations?

Mr Davis—Bear in mind that I am not asking for the Douglas Shire to give them the right of veto on whether they are going to bomb Baghdad.

Senator FORSHAW—That is not what I asked you about. I am talking about the general picture.

Mr Davis—In a general sense, I get back to the earlier point that I made about leadership and the role of leadership in the community. To me, the leaders should still lead. The difference with the model that I am suggesting is that the final say on this goes to the people at a minor level on an issue-by-issue basis—not once every three or four years when we get to put a name on a piece of paper but on an issue-by-issue basis. Allow the people to have a view about that desalination plant or that women's refuge.

Senator FORSHAW—But should their view then be adopted? I can tell you about one that I am aware of in the local area where the council wants to put in a skateboard rink for the kids and the locals in the area are dead set against it. You have got this conflict because it is said that there is a social need for these children to have this facility but all the people who live around there say, 'No way, stick it somewhere else.'

Mr Davis—I cannot come up with a solution to the 'not in my backyard' mentality.

Senator FORSHAW—That is where this issue leads to.

Mr Davis—It is a tricky one. It is a real issue. But nonetheless I do not think that the solution is to not let people have a local say on these issues.

Senator FORSHAW—I am not suggesting that this throws your idea out. I am just trying to apply it to some situations where you really do not get impasses, if you like, at the community decision-making level.

Mr Davis—In the same way, you get impasses in our federal parliament. In the Senate, you can say, 'No way,' and it has to go back to the House of Representatives. I am not saying that the people here want to overtake the power of the House of Representatives. I am just saying, 'How about allowing the people the power of veto to knock it back again?' The ideas still come from our leaders but, instead of having to get up there and manipulate the politics, they have to get in front of the cameras and get a good argument out there. You might say, 'I believe in a women's refuge for this area here,' and somebody else will say the opposite. The people should be allowed the final veto on it. It does not require a full-blown, clunky

referendum; it just requires some penetration, such as a three to five per cent penetration of the population on a mixture of polling methods.

Senator IAN MACDONALD—You have made your views very clear. Thank you for sharing them with the committee.

CHAIR—Thank you very much for your time. We appreciate it. Apologies that we were a little truncated there.

[2.41 pm]

SUTHERLAND, Councillor Allan, Mayor, Redcliffe City Council

CHAIR—I welcome Mayor Sutherland of the Redcliffe City Council. I invite you to make a brief opening statement and then we will proceed to questions.

Councillor Sutherland—Just to open and answer that last gentleman's question about the skateboard park, at least they have the ability to kick the council out if they do not like it. We will not have that same ability after an amalgamation in Redcliffe, and that is the very core of the issue.

CHAIR—Touche.

Councillor Sutherland—I would like to start by expressing my gratitude to the members of this inquiry for allowing me to convey the feelings of the Redcliffe community in relation to the issue of forced amalgamations. Let me first say that I am not anti-amalgamation. I have gone on record many times during the state government's local government reform process stating that in certain circumstances there are some communities that will benefit as a result of amalgamations. However, if a label must be used, I am pro democracy. I make no apologies for believing that people should be given the chance to have their say on issues that directly affect their way of life. This is one such issue. According to the feedback that we have received from local residents during the past few months, they want to be heard. In fact, a recent survey conducted on Channel 7 that was released last Friday night showed that 85 per cent of survey respondents from Redcliffe did not want their city to be amalgamated.

Let me clarify that: this is not Allan Sutherland wanting to be heard; it is not other Redcliffe city councillors wanting to be heard; it is the mums, dads, grandparents, community workers and business people who have a view and who want to be heard. These are the people who live in Redcliffe. They shape Redcliffe; they define Redcliffe. The state government's decision to implement new local government boundaries is not just a change to the council that serves them; it is a change to their community. Through petitions and letters to the state government representatives, Redcliffe City Council has tried to give the community a chance to register its positions and views.

Senator FORSHAW—In your opening comment, you referred to the question that I was asking the previous witness. You said that the people would get a chance to vote the council out. I remind you that the people of the state ultimately get their chance to vote the state government in or out on the basis of decisions that they have made. I might also draw your attention to the history of councillor and state member Clover Moore in New South Wales, who strongly campaigned on the issues of local government and the rights of the local people to have a say and has ultimately ended up as a state member of the New South Wales parliament and the Mayor of Sydney. At the end of the day, all levels of government are answerable to the people at elections.

Councillor Sutherland—I also respectfully remind you that that chance for the people of Redcliffe is two years away. What I am saying to you is that Redcliffe is a city in its own right, with 55,000 people. It has one of the top five budgets in Queensland. I have been on the

council for 13 years, during which time I have seen two whitewashes of councils where only one or two survived. Those that have been put out of office have not met up to the expectations of the community. The city of Redcliffe, in this amalgamation, has two voices out of 13. Presumably, 10 or 11 people can make decisions which can affect the community of Redcliffe. The residents of the city of Redcliffe do not even have the ability to vote those people out, because they have only two wards out of 12—in other words, someone living in Woodford or Sanford Valley can decide the state of building regulations at Woody Point or Margate Beach but the city of Redcliffe does not have any recourse through the polls. The residents cannot vote those people out. The two people that represent this city can be voted out of office, and that still stands, but we have lost our democratic right as a city to have our own representation in place so that people can actually have their democratic right to elect the council of their choice.

Senator FORSHAW—Thank you for that. Is there a proposal from anyone from the state opposition here in Queensland that the boundaries might be restored or that these decisions would be reversed in whole or in part in the future? I know that could be very difficult because of the effluxion of time, but I am wondering whether that is a policy position of any political party that you are aware of.

Councillor Sutherland—There was one such question at the local government conference last week. As you are aware, that was on, and was the reason why I could not attend by phone hook-up last week. I think there were some other issues and problems on the day. I asked a professor, who I think was from Armidale, who has written many papers on this. He said that if he were marking the decision and the paper written about amalgamation in Queensland on town planning principles, it would not have been given a pass. He suggested that amalgamations can be reversed and do get reversed in many places around the world. He mentioned places such as Canada, United States and England. They have realised it has got too big and unwieldy and there has not been proper representation. The costs have escalated dramatically and there have been no savings. He said that in many instances the decision can be reversed, and he gave the examples of places where they have been. I forget who the gentleman was—obviously a speaker from the opposition—who told the councillors: ‘My advice to you people is that you don’t sell your council chambers off if you are anti-amalgamation. You may well have the ability to start your council back up again.’

Senator FORSHAW—I am aware that it has happened in the city of Sydney on a couple of occasions. Boundaries have been expanded and contracted and councils have been abolished and then reinstated on a number of occasions.

Councillor Sutherland—He went on to say that an optimum council is 20,000 to 100,000. Our council sits right in the middle of that. That is why I would respectfully suggest that the reason we have one of the best five economies in the state is that we are an optimum sized council as we sit now.

Senator IAN MACDONALD—I am distressed that a long line of very distinguished mayors, including you, that have represented my birth place over the last several decades will disappear into oblivion. What community of interest do you have with either Pine Rivers or Caboolture?

Councillor Sutherland—I noticed a bit of laughter from the people in the council gallery when they heard that. There is virtually no community of interest between Caboolture, Pine Rivers and Redcliffe, although the areas do enjoy some common interests. A lot of people from Pine Rivers and Caboolture use Redcliffe to recreate. We do business very differently and have different forms of recreation from people in Pine Rivers. They have not got a seaside area. They have very little in common with the people of Samford Valley and Margate Beach, for instance. The people from Samford Valley would come home from work and take the horse for a ride down the street or the dog out into the paddock or whatnot. We have no rural residential living lifestyle in Redcliffe. A local like me, given the time when I got home, might go fishing with the kids down at Margate Beach—if, indeed, we are allowed to do that into the future. North Lakes and Deception Bay are common to Redcliffe, but, apart from that, there is no community of interest whatsoever.

Senator IAN MACDONALD—As I understand it, in the past, neither your council nor those of Caboolture and Pine Rivers have had any political teams running in the elections. Is that right?

Councillor Sutherland—From memory, occasionally political teams have ran. None of them have had a lot of success, but I think it is fair to say that in each council there may be a couple—I cannot speak with total knowledge of the other councils—card-carrying members of various political parties spread across them. There has certainly been no domination—

Senator IAN MACDONALD—Would you expect the new council, which will have almost 200,000 residents—

Councillor Sutherland—No. This is where everybody has got it wrong. This is a council of 350,000 people—the third biggest in Australia. The state government have roped together three areas with no community of interest whatsoever, in some instances. They have put a loop around the lot to create a supercouncil of 350,000 people. I would suspect that political parties would have an enormous influence in elections over the next five, 10, 15, 20 years and so on into the future. This is going to make it very hard for individual councillors to run.

Senator IAN MACDONALD—We have heard evidence from other councils here that there is a transition committee in existence which comprises two elected councillors from each council, plus three unionists. Do you know who your three unionists are, not by name but by title?

Councillor Sutherland—Yes, I do. I think they are the ASU, AWU and the Queensland Council of Unions.

Senator IAN MACDONALD—Are any of those unionists from Redcliffe?

Councillor Sutherland—One was until very recently born and bred in Redcliffe.

Senator IAN MACDONALD—What about the other two?

Councillor Sutherland—I think they are representatives from the other areas.

Senator MOORE—For the sake of this committee, I am just reinforcing that its inquiry is not about local government; it is about the plebiscite legislation. I want to clarify that that is your understanding as well.

Councillor Sutherland—That is my understanding as well. We are between a rock and a hard place with this, as a lot of councils are. I have to bear some of the responsibility for this in that I was the guy who the wheelbarrow in with 22,046 signatures, petitions and letters from the residents of Redcliffe and those from the surrounding areas just to the back of us—Deception Bay and North Lakes—saying that we were completely anti-amalgamation. I, along with other councillors, took this through to them in a wheelbarrow from Redcliffe. We knew that it was not going to change things. The community knows that it is not going to change things, but it is very important that the community have a say—and that is what they are all telling us and the councillors.

Quite honestly, the community are wondering why the government are insisting on going down a path of forced amalgamations when it is quite obvious: you cannot go to places and not hear the anti. The unfortunate thing is it is dividing our community and it is so sad. There are a lot of people out there who have not got an aggressive bone in their bodies and they are completely upset over this issue. It is a generational thing because Redcliffe has always been the first settlement city of Queensland. Historically, it stood on its own two feet and it has always stood alone. What is upsetting people is that we have not got the right to govern in our own right as far as local issues go, and people know that the plebiscite will not change that. They are hoping—it is living in a prayer—that, by being able to show the government that 80, 85, 90 per cent of people are against this means, maybe there is a chance the government will say, ‘We’re here to govern for the people, not against them, and we’re here to listen to the wishes of the community.’ I do not mean in a stitched up sort of a way where we race out and have things at shopping centres and get 22,000 signatures but something that is put together by the Electoral Commission that can withstand scrutiny and is above board. If the state government and the Premier saw that, they could turn around and say, ‘This is correct: the community are 85 per cent opposed to this. Maybe we should look at that.’ That is what the people are telling all the councillors, and all the councillors are nodding in agreement. The people are saying: ‘Can’t we have a petition? Can’t we have a poll so we can show the government that this is really the wish of the people? We do not want to be amalgamated.’

Senator MOORE—Councillor Sutherland, the legislation we have got in front of us will be passed because it has cross-party support. From the start it has had cross-party support. Whatever process is put in place will be put in place whatever the rules are, and they have not been determined yet.

Councillor Sutherland—I welcome that and add that Caboolture also did their own poll before it became illegal. I said before that I might be responsible for the fact that we were banned from having our own poll. When I pushed that wheelbarrow, I was asked a question on the steps of Parliament House: ‘Will you support the people of Redcliffe holding a poll? There is a \$1,100 fine if you do.’ I said, ‘I’ll write out the cheque this afternoon.’ I woke up the next morning to find that the legislation had been changed from a \$1,100 fine to being kicked out of office. So we are on shifting sand, and that is why we all welcome the opportunity. We know there will be no penalty now, which is onerous. If we did have such a penalty, of course we would not be represented on the transitional committee. How can we be, because the council would be sacked?

Recently, the Caboolture Council got the results back from their poll. They held a poll before the information was relayed to us that we would be sacked, fined, jailed or whatever. The result was 70.5 per cent. Twenty thousand people-plus sent back their postal petition, and it was 70.5 per cent against. So it was clear across the board, not in just Redcliffe but Caboolture and Pine Rivers. We think it is heartening that the government and the opposition, both sides of federal parliament, see that there is a need for this. All we are trying to do is relay the fact that the state government must have missed something; they have missed the boat. Surely, a caring and compassionate government would not bring down something so onerous on a community when they know that 75, 80 or 85 per cent of people are against such a thing. It is almost draconian; in fact, you cannot believe that it is happening in Australia—and that is what people are saying to me all the time. They are saying, 'If this were in Ireland, there would be a war. If this were in some European country, they would be running around the countryside with pitchforks and bombs.'

Senator JOYCE—Every time this cross-party support issue is brought up, I have to refute it and clearly get on the record. This amalgamation issue was brought about by which political party?

Councillor Sutherland—It was brought about by the Queensland government.

Senator JOYCE—And which political party are they a member of at the moment?

Councillor Sutherland—The Labor Party, of course.

Senator JOYCE—So, if they will not listen to 22,000 signatures from you and they will not listen to us, then where do you apply political pressure to try and get them to change their minds?

Councillor Sutherland—I believe that what has been happening is that that any petitions that have been going out have been ridiculed as being inaccurate and not representing the true feelings of the community. In fact, we have often heard them say, 'We've done our own poll and our own poll says 50 per cent.' What I am saying is that we have polls arguing against polls. If the government bring out a poll, they say, 'Our poll is correct. It shows 60 per cent are for it,' and we say, 'We've done a poll down here and it shows 80 per cent against.' So the only way to find out the true feelings of the community—and this is the way we do this in a democratic society—is to have something run by the Australian Electoral Commission in Queensland, like an election. It is run by a body that is above repute; it is not councillors standing at a supermarket collecting petitions or guys walking down to the local pub saying, 'Sign this,' and it is not somebody stitching up a pollster and saying, 'I'll write out the cheque for five grand as long as it is 60 per cent against' or whatever. When it is run by the Australian Electoral Commission or whoever, it is beyond repute. By running a referendum across the state, in many ways it substantiates what I am attempting to say. The people will have a say.

Senator JOYCE—The Labor government in Queensland put out a poll: do you want stronger local governance? Of course, the answer to that by anyone, I imagine, would be yes.

Councillor Sutherland—I have attempted to debate many people on this issue. Nothing anywhere has been put on the table at this stage to suggest that these amalgamations are going to bring about stronger local governance. That is just plainly not true. We have already had a call here, in this yet-to-be-amalgamated place, for a new administration centre valued at \$60

million to \$70 million. We have already had estimates from people in IT saying that we will be spending somewhere between \$15 million and \$20 million. In our IT, from planning departments to payroll and rate sections, none of them talk to each other; they are all different programs. We have to start from scratch. We could be \$100 million-plus down the line over the next two years before we have saved a razoo. You have to ask yourself: the interest on that investment will pay council for the next how many hundred years? There are no savings there in the first instance. The presumption is that there will be savings in the future for those affected councils.

I have to tell you—and this is one of the frustrating issues—from the government's own figures and our figures that we have put together in our very comprehensive submission, we are one of the top five in Queensland. We were 'strong and neutral' in the government's own reading from QTC and, under the new commission's handout that came out, we went from 'strong and neutral' to 'strong and developing'—I think those were the words—which is a lesser rating than 'neutral'. So, by the government's own admission, we will not be all right—and of course we will not be all right. One of the reasons we will not be better off is that we currently pay \$400 to \$500 less in rates than our neighbours. The reason for that is simple: we are a robust, compact, small council, over 50 square kilometres. Do the maths yourself. You guys are sitting there; pull out a pen. Twelve hundred square kilometres, in round figures, for Caboolture; 700 square kilometres, in round figures, for Pine Rivers; 40 square kilometres—we are a peninsula; chop us off and we will drift out into the bay. Add up our budgets: in round figures, \$50 million, \$150 million and \$250 million. Our money, which is raised here in the form of rates and charges et cetera is spent on 40 square kilometres. In fact, the rates could now be spent on concrete culverts 100 kilometres away in the back of Woodford or somewhere like that. We get a diluted effect.

Also, we have a very high standard of maintenance. In fact, if any of you guys from down in the capital city can remember, Redcliffe won the Tidiest Town award in 2005 because the community have a say in the direction of their city and successive councils have maintained an extremely high standard. In a big, amalgamated city, a shire of 350,000 people, is that same standard going to be applied to the rest of the shire or are we going to fall to the same standard as the others? I am not saying that disparagingly about our neighbours, because our neighbours maintain their places at as high a standard as they can possibly afford. The fact is they cannot afford to maintain standards to the level we do. That is something that we have tested on our community through extensive community surveys. Our community demand that.

We might dip out on other things that the other shires might have, but one of the hallmarks of this peninsula is that people expect a very high standard of maintenance. Will this still prevail? We have benchmarked Redcliffe City Council against Ipswich and Gold Coast through our study by an independent consultant. We have examples of councils and we have beaten them on everything. We compared ourselves to our neighbours Pine Rivers and Caboolture, who are not amalgamated, and Ipswich, Morton, Gold Coast and Logan, who are. We have done official, statistically correct benchmarks and in almost all instances we come out ahead of both the non-amalgamated and the amalgamated. That is obviously reflected because we have got—

Senator JOYCE—What we hear there is what we hear so often—that is, the inherent unfairness and the arbitrary nastiness of this decision. You have brought up an issue about small business, and I think that is very important because it is an issue we have not talked about. Can you elaborate on protection of small businesses and how they become more vulnerable after council amalgamations?

Councillor Sutherland—Yes, of course. You guys are Australian before you go away anywhere. Before you go back to Canberra from Brisbane have a look at the ads on TV. We are unique here in south-east Queensland and we have talked so much about small business in Redcliffe that we have got a committee together. We call it a vision advisory committee. We extract large amounts of money from small businesses in Redcliffe and we partner those amounts on a dollar for dollar basis with the ratepayers of Redcliffe. We have run a very successful promotional campaign throughout south-east Queensland. It has really helped small business. You have got to ask: is it fair to go to this big new supershire some six or seven times the size of ours? Is it fair that the people of, let us say, Woodford would be paying for and promoting businesses in Margate Beach? Quite obviously the councillors in the amalgamated areas will answer that for us. They will say no, and so the promotion for small business that we have given down here to the people of Redcliffe will be lost because those other councils do not partake in campaigns like that.

The other thing that will be eroded greatly besides better business interests is the social capital. Members of the Queensland parliament have commented in different places in the state that Redcliffe has one of the biggest social consciences of any council in Queensland, and they said that because of a place we have that we call the Youth Space. Once again, I would defy any place in Queensland to have less graffiti than Redcliffe, and that is because we have had a huge program to catch the kids in Youth Space before they fall through the cracks. We sponsored and paid for this space. We built the building and we pay a large proportion of the wages of the people who are there. We have got results. Where re-employment and training programs have state averages around 60 per cent, the last lot that went through our training programs through Youth Space over the last year averaged 92 per cent. This has had a huge effect on the youth here and, once again, we have had the ability to spend the money that we raise as a city how we see fit. The social capital will also be eroded greatly in that we will not have any choice about whether there will or will not be a Youth Space here in Redcliffe.

CHAIR—I think Senator Joyce has one more quick question before we have to move on.

Senator JOYCE—It was interesting to note that probably one of the most fervent disagreements with council amalgamations came from Redcliffe. Most people would have believed it would be in the more remote shires, but it has come from the heart of the south-east. Obviously there is a political belief that over time you will just get over it and life will go on and you will get to live it. How do you intend to maintain your fight so that, in representing your people of Redcliffe, you can maintain your council? How long do you intend to keep fighting and how are you going to fight?

Councillor Sutherland—I reckon it will be self-perpetuating, I guess, in a way. I do not think it is ever going to go away, and I will tell you why I do not think it is going to go away. As the years goes by, as this issue moves on, every time something adverse is thrown onto the

people of Redcliffe from the other areas—be it financially, socially or whatever—there is going to be a kickback. I do not know if I reiterated this before, but with rates we are \$400 to \$500 cheaper—our independent arbitrator established that—than our neighbours. Immediately, the fence goes up. What happens to rates for the people of Redcliffe? Is anybody going to give a guarantee that the people on Struggle St and the pensioners of this city will not be subject to the same rating exposure as our neighbours? We have a cap so that pensioners—

CHAIR—We are against the clock. If you could wrap up, that would be great.

Councillor Sutherland—I am just answering the question.

CHAIR—I appreciate that. Could you bring your answer to a conclusion soonish, thank you.

Councillor Sutherland—I do not think it is going to disappear. In fact, I think it will be generational, because even the schoolkids—it is not the adults of the place; it is not the pensioners; it is not the people on Struggle St; it is not the businesspeople—are saying how ridiculous it is. If schoolkids can realise how silly this issue of amalgamating us is, are they going to forget it? The answer is: no, they are not going to forget it. And they will be reminded about it in years to come with decisions that will prevail and affect us.

Senator JOYCE—I appreciate that. Thanks for that.

Councillor Sutherland—The bottom line is that Redcliffe and all Queenslanders have a right to be heard, and at this stage any time we have been heard we have been told—and everybody has been told—we got it wrong and that there was a greater survey that says we will be all right. We have also been told that this will be for the good of Queensland, but there has not been one figure put on the table saying that it will.

CHAIR—Thank you very much to you and your fellow councillors who are with you. We appreciate your time this afternoon.

Councillor Sutherland—Thanks a lot for your time.

[3.14 pm]

ELU, Mr Joseph Benjamin, Chairman, Seisia Island Council

FLAVEL, Mr Malcolm, Private capacity

GABOUR, Mr Michael J, Spokesperson, Friends of Douglas Shire

KRIS, Mr John Toshie, Chairman, St Pauls Island Council

McKILLOP, Ms Charlie Leith, Private capacity and Liberal candidate for Leichhardt

PRIEBE, Mr Peter, Private capacity

CHAIR—I welcome Mr Toshie Kris to the table.

Mr Kris—Thank you for giving us the opportunity to say a few things here. I am the Chairperson for St Pauls Island Council in the Torres Strait. I am also the Chair of the Torres Strait Regional Authority, which is a Commonwealth board that represents the individual councils in our region. I will start off with a bit of history of where we come from. Back in 1937 we had the first conference of island leaders in our region. It was on York Island on 23 August. From that particular meeting, after the great maritime strike of islanders who were looking for a way forward and a central point for governing their own affairs, the island coordinating councils were established in 1984. Each individual island—17 island communities—would elect their own local councils, which would be the central point for each community.

In 1994 the Torres Strait Regional Authority came to fruition. That was established under the ATSIC Act and it brought in the funding that was needed for the region. Since 1 August last year, when the consultation for the green paper was put throughout our region, there has been no mention of amalgamation to the 17 island councils. The purpose of the consultation was to look at the Community Services Act, which specifies that the other Indigenous communities of the Torres Strait Islands have a separate act from the Aborigines, the Indigenous people of Australia, who were under the Community Services (Aborigines) Act 1984.

When the announcement of the amalgamation was made, after the consultation process, it was a big backflip on all the island councils. As of today, everyone is totally against amalgamation, and we welcome the establishment of the plebiscite not only throughout Queensland but also in the Torres Strait. When you look at the process that has been delivered throughout our region, the consultation process was not what it was perceived to be. There was no proper consultation throughout our region. It really distresses me. We are talking about a region that looks after more services than any other shire in the region, because we also deal with an international treaty right throughout our region. I would love to see how the Mayor of Cook Shire or the Mayor of Douglas Shire would deal with 10 canoes sitting on the beach with people with diseases ranging from TB and dengue to HIV. These are real issues that are happening throughout our region. It has been stated that our region is the eyes and ears of Australia. With the amalgamation process, the only thing left is the bare skull. There is a passage through that skull to Australia that no-one has really given any answers to.

CHAIR—Thank you, Mr Kris. I now call to the table Mr Joseph Elu.

Mr Elu—Thank you. I would like to reinforce what Mr Kris has been saying. We are a different race of people to any other in this world. There are only 30,000 of us on this planet. This amalgamation will throw us together in a sense that we do not want to be. It will throw us, on the tip of Cape York, together with Aboriginal people. We feel we will lose our identity. There has been a petition refusing amalgamation sent to Premier Beattie from the Torres Strait, but yesterday or the day before we received emails or faxes in our councils stating that, if people do not turn up to the local transition committees to be held here later this week, the Queensland government will actually force the creation of community boards. The biggest problem that they put to us is that they will choose people to carry out DOGITs, the form of land tenure we have up there. That has made all councils come down to participate in those committees. That, I think, is pulling on the heartstrings of my people. This has been very much forced on us, as I said. We are very emotionally attached to our land, as you well know. People will turn up, and I bet you that when we turn up they will say that we are now partaking in that process and are now part of it. That is what they have been doing to us for the last two or three months.

We turned up here in Cairns and said to the minister that we did not want this. When we turned up in Brisbane he said, 'But you came to Cairns. You agreed to this.' So we are really being led by the nose here. We ask this committee to have a close look not only at this legislation but also at the future of my people. If you think that we are going to lie down over this, you have got another thing coming. As I said, we are a proud people. We believe that God gave us part of the country that we are sitting in. I plead with this committee to come up with some answers for us. Otherwise, we will be lost to everything in this world. Thank you.

Senator IAN MACDONALD—Joseph, could you make available a copy of the email that you have just referred to? Would you be able to make that available to us?

Mr Elu—Yes.

Senator IAN MACDONALD—Thanks very much.

Mr Flavel—I am not a Torres Strait Islander, but I do work there. Fortunately for me, I have about half a dozen kids and seven or eight grandkids that make me almost an islander. I want to support what both island gentlemen have said. I need you to know that there is a population of Europeans living in the Torres Strait. We support the islanders to the hilt. They have our support all the way. We are confused. I am the CEO of a council there but I speak for myself today, not for my council. We are confused as to what the government has been feeding us in relation to everything that has been going on. We were not informed of this meeting today until Friday of last week, and it was only by accident that we found out.

We ask questions all the time and seem to be getting different answers. We get a feeling that funding has been held up by the Queensland government in the last six, eight or 12 months to force our councils into a position of probably not being able to operate properly. I am fortunate that the council I work for has enough cash to see us through until they do finally pay us. They come up with the most pitiful of excuses. Personally, I have worked right throughout Western Australia, South Australia, the Northern Territory and Queensland with Indigenous people. I see this step of amalgamation as a backward step into the old days of the

DAA and being controlled from one central point with people not having their say. I think we would prefer to deal straight with the federal funding agencies that we deal a lot with now. We do not get a terrible amount from the states. We get probably more in federal funding. The 'size, shape and sustainability' that has been referred to has never been offered to us. We had a green paper which we were working our way through, and then we finally got to a point where we came to a meeting down here to get onto the white paper only to be told by the Queensland government, when we got here, that it had all been chucked out the door and 'you are here today to find out you are going to get amalgamated'. Ladies and gentlemen, thank you for your time.

Mr Priebe—I am a resident of Port Douglas. As such I support the current situation and want it to stay as it is. However, I have one concern. I am worried about this. My feeling is this. It is about how the federal government stepped into the process here. I feel that it is a big worry for me personally and for other people that I talk to as well. It seems to be that the federal government are trying to use that issue now to run their own agenda. We already have had two issues that have emerged here today, the nuclear issue and the state boundary issue. I think they can emerge at a later stage under any federal government and present more worries for people. So I think we should also consider that aspect of that process here. In my opinion the federal government should not have stepped in in the way that they did. Thank you.

Mr Gabour—I am a spokesperson for the Friends of Douglas Shire, a working committee that represents a very large cross-section of the Douglas shire—various industries, all the geographic areas and community and service groups. I am here today to state very clearly and unequivocally that the Friends of Douglas Shire are adamantly opposed to the forced amalgamation of the Douglas shire into the larger regional council and to the process that brought about that amalgamation. We believe that in our democracy the people have a sacred right to self-determination, that decisions that affect the very life of a community can only occur with the consent of the governed. In the case of forced amalgamation, the state government clearly acted without the consent of the governed and in fact in contravention of the will of the people. Accordingly, the Friends of Douglas Shire petition the federal government to amend the Commonwealth Electoral Act to include provisions that will guarantee communities the right to participatory democracy through plebiscites. Thank you for the opportunity to speak to you this afternoon.

Ms McKillop—In the same way that I stood with residents at the Douglas shire chamber when they voted unanimously to oppose the forced amalgamation of their shire the day after it was announced by Mr Beattie, and in same way that I marched alongside 2,000 residents down the main street of Port Douglas in protest against this decision, I stand today in support of the community representatives who have, through this inquiry, been given the opportunity to have their voices heard. Regardless of what people think of forced amalgamation—and I understand that that is a matter that is beyond the scope of this inquiry today—the single biggest affront to local residents, whether they live in Mossman, Kuranda, Bamaga or Boigu Island, is the draconian way in which this policy is being imposed and the complete failure of the Beattie government to consult with communities.

I acknowledge the comments of Senator McLucas at this hearing today. I have been listening and watching this issue very closely in our local media and I had not been aware of

any statement by any Labor representative, state or federal, opposing this decision. So I welcome those comments. The only comment that I had read was a quote by my Labor opponent on the front page of the *Australian* newspaper recently, lamenting that the policy might impact on his vote at the next federal election. I would have thought that it was the impact on our local communities—the loss of jobs, the loss of representation and the loss of autonomy—that we should be focused on at this time.

I think it is an indictment of this Labor government that we have to be here at all today. I think it is an indictment of the process that we should require federal legislation at all—firstly, to provide a vehicle for local residents to have their voices heard and, secondly, to protect the right of local communities to use that vehicle as a means of expressing their deep-seated opposition without fear of retribution in this state of Queensland. That is why this legislation is absolutely necessary and welcomed by my constituents of Leichhardt.

CHAIR—Thank you to those members of the gallery who took part in the open forum. It is much appreciated.

[3.29 pm]

BRIGHT, Ms Anne, State Manager/Australian Electoral Officer Queensland, Australian Electoral Commission

DACEY, Mr Paul, Deputy Electoral Commissioner, Australian Electoral Commission

MOWBRAY-d'ARBELA, Mr Marc, Assistant Secretary, Legislative Review Branch, Department of Finance and Administration

CHAIR—Welcome. Mr Dacey, do you wish to make an opening statement on behalf of the Australian Electoral Commission?

Mr Dacey—I have a couple of clarification issues. Firstly, obviously being from the AEC I am not here to talk on the politics and the policies of the issues.

CHAIR—And we shall not ask you to, either.

Mr Dacey—I am here to talk about how plebiscites, if they do operate, might operate. On our first hook-up this morning, Professors Costar and Orr both remarked that they thought that this legislation, if it becomes an act, may be the thin end of the wedge in terms of the government directing the AEC to undertake plebiscites or such similar polls. I would like to point out that, under the existing section 7(A) of the Commonwealth Electoral Act, the commission may make arrangements for any such polls, so there are no direction powers there at all.

Secondly, there has been some discussion—and the Local Government Association of Queensland mentioned as well—about a possible date for plebiscites of 20 October. The AEC has not advised on a possible date as yet and, just to make it clear, we are meeting with LGAQ tomorrow to talk about those issues. Assuming, at best, if the bill receives royal assent next week—and it would probably be the week after—and given the logistics associated with an all-of-state plebiscite, 20 October is out of the question for us given our current priority with our main game of running the federal election, which we certainly do not want to put at risk in any way.

CHAIR—Thank you, Mr Dacey. Mr Mowbray-d'Arbela, would you like to make an opening statement?

Mr Mowbray-d'Arbela—No, Senator.

Senator McLUCAS—Mr Dacey, I was interested in your comment about 20 October being out of the question for the date of the plebiscite because of the other work that I expect you are doing. Can you advise the committee what date would be the first available date that you could undertake the plebiscites as the government has requested.

Mr Dacey—It very much depends on whether it is a big-bang approach, to have plebiscites for all those councils that may request them at the one time. It very much depends on whether it is an attendance or a postal ballot. We are working on the basis that it would probably be a postal ballot. But also it very much depends on the date of the federal election. So it is really difficult. If we were looking at, for example, a postal ballot, and mailing to rural and remote Queensland, we would be looking at five to six weeks from someone accepting a quote for a

ballot from us to the close of polling, because we need to give people, particularly in rural and remote areas—and we have had some preliminary discussions with Australia Post—some time to get ballots out, people to consider their choice and then mail it back. So it is really difficult to put a time on it.

Senator McLUCAS—I am trying to get a notion of the potential time frame. If the legislation is passed next week—and I do not see that it will not be—and gets royal assent, what is the next step for you, Mr Dacey?

Mr Dacey—The next step is that we need to have some requests for ballots. But in saying that I need to point out again that, because of the uncertainty of the date of the federal election, we would be very reluctant to tie up considerable AEC resources in the next few weeks given that it is quite possible that the Prime Minister may call the election after APEC. We would then be into election mode. So it is just very difficult in terms of timing to be any more definitive than that.

Senator JOYCE—He will definitely call it after APEC; we just do not know when.

Mr Dacey—Sorry. How long after APEC?

Senator McLUCAS—You made the point that it will most likely be a postal ballot rather than stand-up ballot.

Mr Dacey—That is to be discussed with LGAQ and also with councils, but our preference, and the most economical way, is for a postal ballot rather than an attendance ballot. At this stage we are not even considering the possibility of having an attendance ballot in conjunction with the federal poll, other than the issue of section 394 of the Commonwealth Electoral Act. There are all sorts of other issues of confusion—boundary differences, voting differences, different ballot papers, higher informality possibilities—that we are not even contemplating that as an option at this stage.

Senator McLUCAS—I am sure others will ask other process questions. Thank you.

Senator MOORE—Thank you for the clarification, because one of the things we have been raising with witnesses in the last couple of days is the mechanics of the process. It is easy enough to have a 2½ page piece of legislation talking about the AEC being involved, but we all know that is only the first step. Mr Dacey, one of the things I am concerned about—and I apologise for the feedback—is the expectation in the community, which is already talking about dates and processes. You would be aware of the media that has been out there since last week with the Local Government Association conference and the interest in this issue. So the environment in which you are operating is highly emotional. Is that something that the AEC is familiar with? And do you have internal processes for looking at how you balance that kind of community questioning and feedback?

Mr Dacey—We do, and we certainly are very aware. Obviously we do not have legislation yet, but I think it is becoming clear from the views of the committee today that we will have legislation.

Senator MOORE—Cross-party. I will put that on record before we get down the other end.

Mr Dacey—Funding is another issue, and the logistics. Figures quoted by LGAQ talk about as many as possibly 800,000 voters, which, if we have a postal ballot, means 2½ million envelopes that we do not have and that have to be printed, because there are three envelopes in a set of ballot material—an outer, a returner and declaration envelope. So there are all those sorts of issues. We are not being bloody-minded. We are not digging our heels in. But—and I speak on behalf of the commissioner as well—we have our focus on the federal poll at the moment and the timing of the election out there is a little unfortunate in that we are obviously not sure of the date of the election other than probably before Christmas.

Senator MOORE—I think the Prime Minister has made that clear, that it will be before Christmas. So in terms of the process, generally, in the community, timing is something outside everybody's control. We had people earlier from the LGAQ and the AGQ saying that there will be meetings in Canberra tomorrow.

Mr Dacey—We are meeting with the LGAQ tomorrow in Canberra.

Senator MOORE—Who is involved in those meetings, Mr Dacey?

Mr Dacey—I am not sure of who is coming from the LGAQ, but certainly it will be the electoral commissioner, me, my colleague Anne Bright, the state manager for Queensland, what we call our national fee for service project director from the organisation as well, and our senior legal officer.

Senator MOORE—Senator Forshaw is much more experienced than I because he is involved with electoral matters.

Senator FORSHAW—I was. I am not now but I was.

Senator MOORE—They talk about these things all the time. But because this is looking at Queensland, is it an expectation in your structure that it would be handled by the Queensland state branch?

Mr Dacey—It would probably be a cooperative approach depending on where we can free up resources, but certainly Ms Bright's staff will be involved here in Queensland. There will probably also be resources from Sydney because of the capacity to print and mail from Sydney. There are more mailing houses and print firms. That is if we are looking at a huge big-bang approach. One of the other options is to do elections piece by piece or as councils request an election, so we may not be doing them all on the one day. They could be done in a more ad hoc way, I guess.

Senator MOORE—Do you have a previous experience of this type? Is there a previous plebiscite or process that meets the kind of criteria that we are talking about which we can compare to, for example, 1963; that kind of thing?

Mr Dacey—We have. We run, as you know, industrial elections. Some of those industrial elections are quite large. We also run commercial elections—fee for service elections—and we ran an NRMA election in New South Wales some years ago where there were probably over two million ballot papers. So we are used to big elections. It is just that there are difficult logistics involved with big postal ballots, but we are aware of the traps there and we have processes in place. I reiterate that the timing is a little difficult and unfortunate for us at the moment.

Senator MOORE—You mentioned that you had your fee-for-service area involved in the discussion for that. Is there a kind of checklist of costs? We have been asking, ‘When you did your own surveys, how much did they cost?’ We want to get a kind of model, because we have the draft legislation, the explanatory memorandum, the first speech and some media statements from the Prime Minister, who said that he will fund it, and that is fine but we are trying to get a handle on how much that is going to cost. That is still unknown. Once there is a bit of an idea about how it will operate—by post or however—then there will be a bit of a financial guide—a checklist to say that this is how much—

Mr Dacey—We have a costing framework in place. We use our standard practice for all our fee-for-service elections.

CHAIR—Since the government announced its intention to put this legislation into the parliament, has the Department of Finance and Administration been monitoring the Queensland government’s legislative activities in this area and has the Department of Finance and Administration been liaising with the Queensland government?

Mr Mowbray-d’Arbela—We have not been directly in communication with the Queensland government. We have mainly relied on observing what the state of the law is and some comments about it. There was correspondence to the Special Minister of State on 24 August from Queensland’s Minister for Local Government, Planning, Sport and Recreation, the Hon. Andrew Fraser, MP. That correspondence put in writing that the Queensland government has publicly stated that the provisions prohibiting the conduct of polls by local governments will not be utilised and that the Queensland government has introduced legislation into parliament to repeal the relevant section of the Local Government Act 1993.

CHAIR—Is that letter available for tabling?

Mr Mowbray-d’Arbela—Yes, I can table it. There has been a further development—

CHAIR—Are you able to add anything to Senator Forshaw’s questions to earlier witnesses indicating that the Queensland government had perhaps gazetted some regulations which would undo the effects of the Queensland legislation?

Mr Mowbray-d’Arbela—I am not in a position to formally confirm that the Commonwealth understands that the laws have been repealed. I have been awaiting a call to get that confirmation, but as we understand it there was a regulation made by the Governor in Council on Thursday 30 August and that was said to commence upon its gazettal. We understand that gazettal occurred on Friday, 31 August. That had the effect of repealing provisions that would have enabled offences against councillors and the dissolution of councils involved in engaging the AEC in plebiscites. That has just been picked up from material that is off the record. We just want to make sure that this is operative. It is not always the case that a regulation can amend a primary act. Presumably Queensland knows what it is doing, but I am not in a position to confirm that it has had that effect. It seems that that is what is intended. We are also unsure what the effect of the bill would be that is referred to in Mr Fraser’s letter—whether Queensland intends to or needs to continue working on that bill.

CHAIR—Looking through Mr Fraser’s letter, I think this legislation still needs to be progressed, given his comments here about the purpose of this committee. He writes:

This inquiry has been exposed for what it, in reality, always was: a sham, taxpayer-funded touring circus for Howard Government mouthpieces to peddle unconstitutional false hope.

That is similar to his comments in the paper. He goes on to say:

But the inquiry, like the bill itself, is just a cruel hoax.

I will not ask you to comment on that as a public servant. I just note that there probably is still need to introduce other measures. This has just been tabled, Senator Forshaw.

Senator FORSHAW—So it has been formally tabled.

Senator JOYCE—It has been.

CHAIR—Mr Dacey, could we get your view on this, because it has come up during the course of our evidence that some have stated that this legislation gives the AEC some additional power, some additional prerogatives, which they do not already have. Others have put the view that this merely overrides the Queensland government's punitive measures. What is your view as an officer of the AEC?

Mr Dacey—My view is that the power under which we would conduct these plebiscites is already available to us in section 7A of the act before these proposed amendments are made. We have had the power now for some years to make arrangements for the supply of goods or services to any person or body and, in making those arrangements, to charge a fee for those goods and services under 7B.

CHAIR—You stated at the outset, I think, that this legislation does not give the government or the Special Minister of State any powers of direction over you.

Mr Dacey—That is correct. I just repeat: the commission may make arrangements. It is quite clear that there is a discretion for the AEC for the commissioner or the commission to decide whether or not to perform these functions.

Senator FORSHAW—I just want to pick up that last point—I do not have 7A and 7B in front of me, but I am familiar with them—so that we can try to clear this issue up. It is an interesting constitutional debate and I can envisage that we could, post this legislation, think about where we might head further. Is the ability or the right of the AEC to conduct elections et cetera under 7A confined to a fee-for-service basis, or can you do it without cost?

Mr Dacey—Under 7B, we may charge for goods or services supplied.

Senator FORSHAW—You do not have to.

Mr Dacey—We do not have to charge.

Senator FORSHAW—So if a council requested you to conduct a plebiscite on any issue—let us put aside for the moment what is happening now—it would be up to the commissioner to decide whether or not the AEC would run that ballot, election or plebiscite and decide whether or not you would charge for it?

Mr Dacey—Certainly he would decide whether or not we would charge, but we would, of course, need someone to pay for it for us.

Senator FORSHAW—How would you generate payment for it?

Mr Dacey—My understanding with this legislation is that DOTARS will be providing funding.

Senator FORSHAW—That is this legislation. I am trying to ascertain what the position is about the right of the AEC to conduct plebiscites at no charge or no cost to an outside body, prior to the implementation of this act.

Mr Dacey—It would be an unusual circumstance where we did not charge a fee for our service.

Senator FORSHAW—We are not going to worry about it at the moment, but there are issues about the proper use of appropriated funds for the operations of the Australian Electoral Commission, which I think you are very familiar with. We could spend all day on that. But I think you understand why I raised that. But does this legislation actually deal with that point? Does it remove any impediment, if you like? In the explanatory memorandum, it is unclear what the funding arrangements are and what it will cost, but the Prime Minister has said that he will pay for it. But we have not been told how this is going to actually be paid for. Is it out of the AEC's current appropriation or is it out of some special appropriation? I do not know. I am not sure if you do.

Mr Mowbray-d'Arbela—The Prime Minister's statement and one of his answers at a press conference referred to the funding as being an executive decision and, to pick up on what Mr Dacey has just mentioned, it may well be that funding for the activity will come through the local government area of the Department of Transport and Regional Services.

Senator FORSHAW—That is what I have been contemplating would be the case; rather than it coming from AEC's own funding.

CHAIR—Not an AEC appropriation.

Senator FORSHAW—Yes. Senator Fifield and I are aware of the long debates this committee has had about the proper use of appropriated funds. Why did the department not make a submission to this inquiry? I appreciate the AEC's different position in that respect.

Mr Mowbray-d'Arbela—I think it was effectively on the basis that the bill, the explanatory memorandum and the second reading speech, and the context to which that all referred, gave sufficient information.

Senator FORSHAW—Was there any request or direction from the minister about whether you would make a submission?

Mr Mowbray-d'Arbela—I think I operated on the basis that we would not typically make a submission in this situation and I discussed that with the relevant people.

Senator FORSHAW—When was the department first requested to prepare this legislation? If you need to take these on notice, please do, but bear in mind we have a very tight timetable.

Mr Mowbray-d'Arbela—It was not so much that there was a request; I think it was the consequence of the Queensland legislation—

Senator FORSHAW—I am trying to ascertain when the drafting instructions were given to the department.

Mr Mowbray-d'Arbela—It was the Thursday before introduction. I am sorry; I just do not have a calendar in front of me. The Prime Minister's announcement, I think, was on—**Senator FORSHAW**—7 August.

Mr Mowbray-d'Arbela—Yes, on the Tuesday, and I think by the following Thursday, 9 August, we became aware of the Queensland parliament having a bill to penalise councillors, and that would very much subvert the affect of what the Prime Minister had announced as the Commonwealth's policy intention. That is when we urgently had to consider whether the Commonwealth would need to react.

Senator FORSHAW—You are here representing the Department of Finance and Administration.

Mr Mowbray-d'Arbela—Yes.

Senator FORSHAW—Did the Department of the Prime Minister and Cabinet play a role in the preparation of this legislation? I know the announcement was made by the Prime Minister, but did the department do anything beyond that?

Mr Mowbray-d'Arbela—The Department of the Prime Minister and Cabinet is particularly significant when considering potential legislation.

Senator FORSHAW—And certainly with respect to the AEC.

Mr Mowbray-d'Arbela—Indeed. I think one of the first discussions we had was with the Department of the Prime Minister and Cabinet to suggest that we might need to urgently talk to the Office of Parliamentary Counsel to consider reacting to this, and that occurred with their concurrence.

Senator FORSHAW—Was the minister for local government involved?

Mr Mowbray-d'Arbela—No, I do not recall them being involved at that stage.

Senator FORSHAW—Were local government bodies or state governments consulted prior to the presentation of the bill on 16 August? Were they consulted at any time?

Mr Mowbray-d'Arbela—Not through my department; not that I am aware of.

Senator FORSHAW—This legislation is said to be based upon the International Covenant on Civil and Political Rights in terms of the issue of overriding the state legislation, as distinct from the issue of the right of the AEC to conduct ballots et cetera. Was legal advice sought by the department on that?

Mr Mowbray-d'Arbela—I believe it is not normally the case that public servants discuss the extent to which legal advice was obtained.

Senator FORSHAW—I am not asking you to tell me what the legal advice was. I put to you that it is appropriate for me to ask you whether or not legal advice was obtained and who it was from. I could then ask you a further question, which you would probably decline to answer. But was legal advice obtained and from whom?

Mr Mowbray-d'Arbela—It is on the public record from the Prime Minister in his statement on 16 August when he said—

Senator FORSHAW—Please remind me.

Mr Mowbray-d'Arbela—The Prime Minister said that the Commonwealth was 'going to act to prevent that'—being the Queensland laws—'occurring'. Then he said:

And we have legal advice that we can do so and the bill will provide accordingly.

Senator FORSHAW—Do you know where the legal advice came from?

Mr Mowbray-d'Arbela—Constitutional advice was obtained from the Australian Government Solicitor as a matter of course.

Senator FORSHAW—From the Australian Government Solicitor's office.

Mr Mowbray-d'Arbela—Yes.

Senator FORSHAW—Can I ask you formally: would you provide a copy of that advice? Take it on notice and let me know.

Mr Mowbray-d'Arbela—I will take that on notice.

Senator FORSHAW—Do you have any comment about the opinions that have been expressed by Professor Costar, Professor Carney and Dr Orr about the constitutional validity of this legislation? I think they put an arguable case that it may be in part unconstitutional. Do you have a response to that?

Mr Mowbray-d'Arbela—Only to say that the government gave very careful consideration to the legal and constitutional issues when considering its response to the Queensland law. We note that a number of submissions raise legal and constitutional issues. We also note that not all of those opinions are uniform. Those positions do not affect the government's position. As I have said, the government gave very careful consideration to the legal and constitutional issues.

Senator FORSHAW—Your response to their opinion would be the Commonwealth government's legal advice. Your response to that question would presumably be the legal advice that you obtained or the government obtained.

Mr Mowbray-d'Arbela—The government gave consideration—

Senator FORSHAW—That is why I have asked you. If we had that, we could then put that against what has been put to us by the eminent professors.

Senator JOYCE—I will keep this brief. The first thing may be a point of order, but just while I still have Senator Forshaw here—the other two Labor senators had to catch a plane—in this letter from the Hon. Andrew Fraser it says:

Given this position, there is absolutely no public benefit in the course of inquiry being undertaken by the committee. It represents an abuse of the majority the Howard Government holds in the Senate ...

Was this inquiry supported by all parties?

Senator IAN MACDONALD—We have been told all day that it was.

CHAIR—Excuse me, we have witnesses here.

Senator JOYCE—I am just asking. It was a point of order.

Senator FORSHAW—I do not think it is a point of order. Ask the witnesses questions.

Senator JOYCE—If you do not want to answer it, that is fine.

Senator FORSHAW—I will take a point of order. I would ask you, chair, to formally rule that it is out of order for another senator to question senators at the table. We can follow these political stunts all day—

CHAIR—I have directed Senator Joyce to put his questions to the table, Senator Forshaw.

Senator IAN MACDONALD—Political stunts like you saying that you support it to every witness and here one of your own lot is saying that you have not supported it.

Senator FORSHAW—I do support it.

Senator IAN MACDONALD—Well, your Labor Party Queensland colleagues said you do not.

Senator FORSHAW—Well, so what?

CHAIR—Senator Joyce, your question?

Senator FORSHAW—The Labor Party is a big and vibrant organisation that can tolerate differences.

CHAIR—Order! Senator Joyce, your question?

Senator FORSHAW—And we do not have people coming up to—

CHAIR—Senator Forshaw! Senator Joyce, you have the call.

Senator Forshaw interjecting—

CHAIR—Senator Forshaw, you will remain silent. Senator Joyce, your question?

Senator JOYCE—It is a shame his mates have gone off. I thought Senator McLucas lived in Cairns. If I was to couch a question as, ‘Do you want a stronger local government?’ is that a fair question to put in the plebiscite?

Mr Dacey—I cannot comment on that.

Senator JOYCE—Can you explain to me the difference between a plebiscite and a referendum and what you do with the results of plebiscites and referenda?

Mr Dacey—My understanding is that in the Australian context a referendum is a binding vote to amend the Constitution. A plebiscite is basically where the people express a view on a particular issue.

Senator JOYCE—So it reflects the views of the people. How do you summarise those? Let’s say we have a plebiscite and the majority do not want amalgamations. What statement do you come out and make?

Mr Dacey—That there were X number of voters and that, of those voters that voted formally, whatever percentage voted for and against the issue in question. That would be the end of our role in conducting a plebiscite.

Senator JOYCE—It represents the views those people have, so it is fair to say that, at the end of it, if the vast majority vote against amalgamations, the view in that area is that they are against council amalgamations.

Mr Dacey—The views of whatever percentage of people from that area chose to vote, yes.

Senator JOYCE—If it is a referendum then the referendum is held that there should be no amalgamation—if it is possible to have a referendum.

Mr Dacey—The referendum is binding in terms of the result.

Senator JOYCE—If you had a referendum and there were 66 votes, and 60 of them said that they wanted amalgamations and six said they did not want amalgamations, presumably with that referendum the view would be passed that they wanted amalgamations.

Mr Dacey—It is difficult because in the context of referendums that we are talking about in Australia it is a double majority. If it was just a single majority referendum, yes, it would be more than 50 per cent plus one of the voters expressing their view.

Senator JOYCE—I was just curious because 66 people in the Queensland Labor Party have—

Senator IAN MACDONALD—Mr Dacey, the amending bill only involves you in that you are given the power to use personal information for the purposes of conducting a plebiscite. That is the only—

Mr Dacey—Basically we are given the power to use the electoral roll to conduct a plebiscite.

Senator IAN MACDONALD—That is in the amending bill. The actual ability to conduct the poll, as I think you have clearly stated, is already in the act, and that has not changed.

Mr Dacey—Had we been approached by an organisation that had their own roll of electors, not the Commonwealth electoral roll, we would not have had to change legislation to conduct such a ballot.

Senator IAN MACDONALD—Mr Mowbray-d'Arbela, you have tabled the letter that is addressed to Mr Nairn because Mr Nairn was a minister in your department. Is that right?

Mr Mowbray-d'Arbela—It was given permission to be tabled through his office.

Senator IAN MACDONALD—And obviously this is dealt with by your department when it goes through the minister's office. You are aware from evidence you have heard today that the Labor Party supports this bill, supposedly. Were you surprised, then, to see a member of the Queensland Labor Party suggesting that this committee was there because the Howard government used its majority in the Senate to push it through? Were you surprised to read that?

Mr Mowbray-d'Arbela—I do not think I can comment on my personal view on that.

Senator IAN MACDONALD—That is fine. I thought you might have been surprised because I was surprised after hearing all day that the Labor Party supported it to hear a member of the Queensland Labor Party saying that it was pushed through by the Howard majority. Finally, Mr Dacey, it was suggested by our first two witnesses—and I think you were in the hearing when that happened—that you would be embarrassed dealing with an issue that involved a sensitive political issue.

Mr Dacey—Senator, I think you may have responded that every three years we conduct a federal poll, and we are about to conduct one, which deals with politically sensitive issues.

Senator IAN MACDONALD—I just wanted to get from your lips that you do not feel any embarrassment at having to conduct these plebiscites should any council ask you to do so.

Mr Dacey—That is correct.

CHAIR—I thank the officers of the Electoral Commission and the Department of Finance and Administration.

Senator FORSHAW—I have one final question. Do you envisage that there will be yes and no cases made available in the plebiscite?

Mr Dacey—That very much depends on discussions with LGAQ tomorrow, but it is fairly normal practice for yes and no cases to be developed. We will need to negotiate and discuss who might develop those particular cases.

Senator FORSHAW—Do you see a need for you to discuss the arrangements with the state government or the relevant department?

Mr Dacey—We would probably need to discuss that with the department.

CHAIR—Thank you very much. We appreciate your coming this way. That concludes the public hearing today in Cairns. I thank the staff of the committee secretariat and officers of the Department of Parliamentary Services for their efforts here.

Committee adjourned at 4.05 pm