



DISCUSSION PAPER LOCAL GOVERNMENT ELECTORAL PROCESS

02 February 2006

Dear Sir/Madam,

Thank you for the opportunity to comment on the local government electoral process discussion paper.

There would appear to be little need for change in what is already a rigorous and open regime to recognise corruption at a local government level, particularly in relation to non political party endorsed candidates.

Whilst there have been no findings in the Gold Coast City Council (GCCC) investigations, the fact that the current process is underway would indicate that there are sufficient checks and balances in place to highlight actions perceived to be less than desirable.

The GCCC situation appears to involve a sophisticated web of actions presumably designed to mislead the public.

It must be recognised that the vast majority of Councillors have neither the capacity nor desire to enter into these arrangements.

Any tightening of legislation makes the process so much harder for that majority who simply want to do what is best for their community, by nominating to stand as a councillor. It could well discourage good quality candidates from standing.

It is ironic that some of the current provisions do not apply to political parties because of the onerous task this could create to those entities, and yet there are indications that even tighter restrictions may be applied to candidates who stand without the support and electoral knowledge of political parties.

I will comment on each of the issues as detailed in this discussion paper.

Unique Disclosure Provisions for Local Government

I would dispute the comment that "the nature of local government is such that a donor can achieve more influence with less money at a local level than at a state level".

"NQ Tidy Town Winner 2005/06"

Perhaps in the narrow field of development applications, that may be a perception, but the agenda at a state level is so broad that donors could wield far wider influence.

This insinuates that any donation automatically means the donor will have influence over Councillors decision making.

This is an absurd assumption.

I have found in the past that most donors provide funding to a Councillor or a team because of a belief in the vision that they (Councillors) have for the Council area, and because the donors wish to see the local government area progress in a particular overall manner. This may well be a direction that can supply returns to developers, but it also adds to job opportunities, and a boost to the economy. My council has a pro development attitude, but it must be development that contributes to the social and environmental bottom line, as well as the economic bottom line. Regular resident surveys and election results reinforce that vision.

I know very few, if any councils who don't want their area to progress, but who have a "development at any cost" attitude.

Your comment "because Local Governments make planning decisions, the interest groups that have the most to gain or lose from such decisions are those involved in developing property" is not valid. Why else would the development fraternity currently be looking at ways to remove elected councillors from the decision making process.

It is the residents of the local government area that have the most to gain or lose from planning decisions, and my long experience indicates Councillors make decisions based on that premise.

Councillors are well and truly accountable for their decisions and if not accepted by the community will be voted out at the next election. It is easier to confront a single donor about a decision not in their favour, than an angry community. There may be a risk of not receiving a donation at the next election but this is less important than a poor perception from voters. Councillors who do not reflect the general views of their community face short lived tenure.

The openness of the planning system and the availability for anyone to question administrative decisions by Council is the best method to ensure that proper decisions are made in accordance with the planning scheme, strategic plans and corporate plans. There is a high level of accountability under this process. And Councillors have to supply valid reasons for opposing a town planner's recommendation. It is my understanding that in the vast majority of cases, council supports their town planner's recommendations. After all, there are extensive legal costs involved in defending a decision in the planning and environment court.

The current laws for disclosure of electoral donations by candidates are sufficient except that they are less open for Councillors who receive donations via political parties.

Candidates do not need to be endorsed political party candidates to receive political party campaign funds. I have seen evidence of this happening in the past. There is no case for local government disclosure to be different to what exists at state level.

False or Misleading Statements of Candidates

I believe the current section 394(2) of the Local Government Act is sufficient, and that it does cover false statements candidates may make about themselves. If it is arguable that it doesn't then perhaps it can be amended to provide clarity.

Electoral Bribery

The current laws may be difficult to enforce, however I don't know if there are any changes I could propose to make it easier to detect instances of electoral bribery, except to make it more difficult to enforce. Successful candidates do have to make disclosure, unsuccessful candidates don't.

Harsher laws sometimes simply serve to encourage dishonest people to find more elaborate ways of breaking the laws. It also creates opportunities for candidates with little or no understanding of legislative jargon to unwittingly commit an offence.

Period in which election gifts have to be disclosed

If it is deemed important to have disclosure of donations to local government candidates, then surely that disclosure regime should apply state and federal jurisdictions, including political parties. After all, candidates in the state and federal arena also receive public funding.

I would have no problems with Councillors having to declare election donations received at any time, however with the number of people standing for council elections, the mechanisms required to have donations declared by all candidates would be extreme. Whilst this may appear harsher for elected Councillors, it is after all, only those elected who will have the opportunity to be caught up in a conflict of interest situation.

This would alleviate any manipulation of a set time frame for disclosure.

Disclosure prior to being sworn in as a Councillor is sometimes difficult time wise, but seems reasonable.

Fundraising

I believe the proceeds of raffles, dinners, and other similar fundraising activities conducted by a candidate or a candidate's campaign committee should be declared.

The NSW limits of more than \$1000 at a group candidate fundraising function or more than \$200 at a single candidates fund raising may be a little on the low side.

The lodgement dates for Returns

I see no reason to change current legislation in relation to when disclosure needs to be made. Councillors have to ensure the return is completed or they can't be sworn in as a Councillor.

To set a date for disclosure prior to the election is open to manipulation, eg. Arrangements could be made to receive donations within, say, the five day period after declaration.

Disclosure, say 5 days before an election will have little effect on the election given the increased apathy of voters. Even if an event of mammoth proportions is aired publicly that close to an election the truth is it would not alter the vote to any great extent. The fact

that disclosure has to be made, and is available for public scrutiny is a sufficient requirement.

I am not aware of any request for details of the donations register at this council, which would lead me to believe that voters don't have a great interest in the source of donations.

Pre election disclosure could also serve to damage the reputation of candidates receiving funding simply because the donor believes they want to support a good quality candidate for the good government of the local government area. Again it is pre-supposing that a donation automatically comes with strings attached.

As previously stated candidates / Councillors could be obliged to declare any gifts received during any time of the electoral cycle.

Group of Candidates

It would probably be difficult to prohibit anyone who is not a member of the candidate's campaign committee from soliciting funding. What would stop them being added to the committee once they advise they have raised some funds? It would be very difficult to administer and I'm not sure the issue is problematic enough to warrant major resources being applied. Someone innocently helping a candidate could be caught up in an unintentional breach of the law.

There should be no problem requiring candidates in a group who share election funding to be identified as part of that group, and I think this would happen on most occasions now.

There could be registration requirement for groups but the administrative requirements should be kept to a minimum.

Most groups are formed when like minded independent candidates decide to share the cost of election expenses and are happy to recommend to the general public, the other members of that team.

Donations via solicitors/accountants trust accounts

I don't see a problem as long as the donor is made known.

The origin of candidates' donations

This is one of those areas where there are different rules in place to favour political party candidates over non endorsed candidates.

I believe it is important that candidates are aware of the source of the funds. It is they who have to make the decision on whether or not they are in a conflict of interest situation.

It is a smokescreen to suggest that if political party candidates do not know the source of their donations they can have no conflict of interest. I believe they should know the identity of donors, and this may mean they need to be considered under the same disclosure regime as non party endorsed candidates.

It is my experience that donors in these circumstances have made it known to candidates that they are financially supporting them.

That is the nature of some donors. It is then up to the Councillor to ensure they make a proper and subjective decision without taking this fact into account.

Anonymous Donations

I believe the current regulations are sufficient.

Third Parties and parallel campaigns

The issue of parallel negative campaigns is a difficult area and I have had no previous experience of this happening.

It is my understanding that payments by third parties to others, say for media advertising, has to be declared by the candidate as a donation to the candidates election funds.

If this is not the case, then perhaps the Act could be changed to require it.

How would a third party disclose its expenditure? If any case it is there to see in the councillors' disclosure form, which is a publicly available document.

It would be difficult to police a law requiring third parties to lodge returns before an election.

Thought could be given to having a third party who is not an individual having to be identified on the advertisement, but again, those regulations should apply to all, and not just non endorsed candidates.

Limits on election expenses

I don't believe there should be limits on election expenditure. Surely candidates should have the right to decide the cost of their campaigns. Excessive expenditure in local government campaigns can have the reverse effect. It can create suspicion, and encourage voters to support an "underdog".

It is a fallacy that first time Councillors would always be less recognisable in a community – in fact the opposite could well apply. Refer to Peter Garrett at the last federal elections.

It would be virtually impossible to set expenditure by legislation given the vast differences in Local Government areas throughout the state, and just as difficult to audit.

The comment that the candidate with the most money will win the election is purely anecdotal, and in fact quite erroneous. There have been a number of occasions in Thuringowa when candidates spending minimal amounts have beaten those spending more.

Loans to candidates

I have no problem with legislation requiring loans for election campaign purposes from other than recognised lending institutions having to be disclosed.

Enforcement

I have not had occasion to doubt that the current enforcement regime is efficient. Enforcement produces an extra cost, and it would appear to be an overkill to bring in onerous regulations with exorbitant enforcement costs, when I believe that there are only a miniscule number of people with less than noble intentions.

It would appear from the GCCC example that perceived wrong doing can be detected. It is yet to be substantiated whether councillors have made decisions as a result of receiving campaign donations.

We also need to bear in mind that the vast majority of people are standing for Council for the right reason, and are normally people who would be overwhelmed by a rigorous enforcement regime, running the risk of inadvertently breaking the law.

There would be a risk that people unfamiliar with complicated regulations may in fact be in danger of being prosecuted for innocently flaunting complicated regulations. It could well mean that good grass roots candidates are discouraged from standing for election.

Penalties

I believe the current penalties are sufficient.

Conflicts of Interest

This is always a difficult area but I believe the vast majority of Councillors are very cognisant of their responsibilities, and act in an ethical manner.

It is up to the Councillor to decide if they have a conflict which would not allow them to exercise their judgment properly, and I guess this can be subjective from time to time, but it is real "innocent until proven guilty" stuff.

The register of election donations is open to public scrutiny and this fact would almost surely provide for an honest appraisal by Councillors as to whether they have a conflict or not.

It would be impractical to have Councillors prohibited from discussion on matters affecting a donor.

Indeed they may wish to vote against a particular application, or suggest conditions that would provide a good result for all, by approving the application.

In some cases both the applicant and an objector will be donors to a candidate.

If a team has received a donation from an applicant, the Council may well find itself devoid of a quorum.

It is ironical that while it is public knowledge, and known to a team member that certain people have donated to a campaign, in the case of a political party endorsed Councillor, the public are not made aware of donors, even though the Councillor may be.

Your comments indicate a Councillor dealing with an application from a donor could disclose a conflict of interest and participate in debate and voting if they wished to vote against the proposal.

However, a Councillor in the same position may well believe the application is beneficial for Council, but to save accusations of bias may decide to retire from the meeting.

As the donors register is open to public scrutiny I don't believe there is any value in declaring an interest at the meeting.

Again, a political party endorsed Councillor could escape scrutiny knowing there is no public register for donors in their case, and not declare an interest knowing the donation will not come to light publicly, but could be well aware of the fact the applicant or indeed an objector is a donor.

In my 27 years on Council, I have only once perceived that a councillor voted on an issue in which I felt there was a possible conflict of interest, and it was a very minor issue, which I can accept was not seen as a conflict to that councillor.

Donations through Political Parties

There is no evidence to suggest that Political party donations are confined only for use by party endorsed candidates.

I do know of instances where a party branch has donated to Council candidates who were not standing as endorsed candidates.

There should be one rule for all, and if as you point out there are very few party endorsed Council candidates it would be very simple for political parties to disclose the names of their donors.

Political parties would be far more knowledgeable in accounting for these issues than a non political thinking person who just wants to serve their community.

General

Throughout this paper there has been a strong intimation that anyone who accepts a donation from a developer is obliged to give decisions that favour that developer.

The facts in our Council indicate otherwise.

Most donors, including developers provide funding to those candidates who favour a development stance, for the best interests of their community and help elect Councillors with that general view rather than be expected to favour that donor in applications.

Again, only once in my 27 years on council have I had a donor attempt to link a council decision to a donation. That person's donation was not accepted.

Please find attached to the submission, confirmation of support for the submission from the following councillors.

Councillors: Leanne Hanna-McGuffie, Kathleen Girvan, Jenny Lane, Brian Hewett, Ken Turner, Deanne Bell.

Yours faithfully



**CR LES TYRELL
MAYOR THURINGOWA CITY COUNCIL**