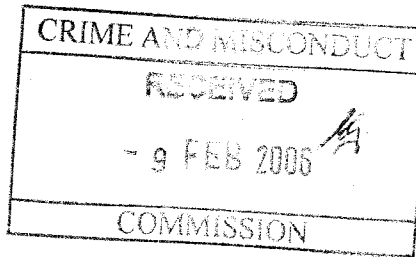


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6 February 2006

The Gold Coast City Council Inquiry
Crime and Misconduct Commission
GPO Box 3123
BRISBANE QLD 4001

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Dear Sir/Madam

THE LOCAL GOVERNMENT ELECTORAL PROCESS DISCUSSION PAPER

I refer to the discussion paper in relation to the local government electoral process which is currently open for public comment.

Council considered this matter at its meeting of 31 January 2006. Council's response on the key issues are as follows:

(1) Unique disclosure provisions for local government

Should the laws relating to the disclosure of election gifts for candidates at local government elections differ from those applying to candidates at state government elections?

The disclosure requirements for local government elections should be the same as state government elections. Candidates seeking election to local government should not have accountability requirements above and beyond those expected of state election candidates.

(2) False or misleading statements of candidates

Is the existing law prohibiting false statements of fact about the personal character or conduct of a candidate adequate to safeguard the integrity of local government elections?

If the current law is inadequate, what changes should be made?

Council agrees that the current law as prescribed in section 394 of the LGA (Misleading voters) is inadequate. A new section should be included that makes it an offence for a candidate to make a false or misleading statement about themselves.

(3) Electoral bribery

Is the existing law relating to electoral bribery in local government elections appropriate?

Section 385 (Bribery) of the LGA needs clarification particularly in response to recent media reports involving the Mayor of Launceston and a Councillor in a North Queensland town and their promise to give a proportion of their salary to charities and community groups and the allegation that this related to bribery and undue influence.

Whilst the factual circumstances surrounding the charging of the Mayor of Launceston are distinguishable from the North Queensland example, it is becoming an increasingly popular electioneering strategy to promise to donate a proportion of the salary to a range of charities and community groups.

Council suggests that this section of the Act be clarified to either support candidates in their attempts to donate a proportion of their salary to charity groups if successful or alternatively make the practice an offence.

(4) Periods in which election gifts have to be disclosed

Should the period in which candidates must disclose election gifts be changed?

Should candidates have to disclose election gifts received at any time before an election?

Should the period after an election in which candidates have to disclose gifts be increased?

The period for which candidates must disclose election gifts should be changed so that the disclosure requirements are the same for the candidates and the incumbent.

The disclosure period for new candidates should be as it is for incumbents, ie the three year period leading up to the new election. Three years has been suggested based on Council's response to issue (6) 'Lodgement date for returns'.

Council believes that the existing period of 30 days after an election is a sufficient time period for making full and final disclosure.

(5) Fundraising

Should the LGA be amended to clarify the disclosure requirements for monies received through fundraising activities?

Council believes that the disclosure requirements for monies received through fundraising activities should remain the same as the state government, ie no requirements for disclosure. Again, if the CMC places this requirement on local government candidates, the same should apply to candidates in state elections.

(6) Lodgement date for returns

Before an election, should candidates have to disclose election gifts they have received?

Should candidates be prohibited from accepting election gifts for a period after the disclosure deadline? If so, for how long?

If candidates are prohibited from accepting election gifts for a period after the disclosure deadline, what other provisions should be introduced to prevent abuse of this prohibition?

The LGA should be amended in accordance with the recommendations from Tweed Shire Council Public Inquiry providing for candidates to lodge an interim election gifts return (5) days before an election and that no donation be accepted for 12 months after the election.

(7) Groups of candidates

Should any person who is not a member of candidate's campaign committee be allowed to solicit funds on behalf of the candidate?

Should candidates who share election funding be required to be part of an identifiable group of candidates?

Should there be a registration requirement for groups of candidates?

Does the definition of a 'group of candidates' require amendment?

The LGA be amended to provide for disclosures in a situation where one candidate solicits and distributes campaign funds to other candidates.

(8) Donations via solicitors'/accountants' trust accounts

Should there be specific reference to solicitors'/accountants' trust accounts in the LGA? If so, in what form?

The LGA should be amended to contain a specific reference to solicitors' or accountants' trust accounts utilised for the reception of election gifts.

(9) Origin of candidates' donations

Is there any good reason for allowing candidates to accept donations from unincorporated association, trust funds or foundations that have sourced donations from individuals or companies?

Should candidates be allowed only to accept election gifts directly from the person making the gift?

Unincorporated associations, trust funds, syndicates and foundations established for the sole purpose of collecting and distributing money or services to certain candidates prior to and during an election should also be required to disclose all receipts and disbursements (5) days prior to the election day.

(10) Anonymous donations

Is the current penalty for accepting anonymous donations adequate?

Should the acceptance of anonymous donations above the prescribed amount be an offence?

Council is of the opinion that candidates should not accept anonymous donations of any amount and that the receipt of such donations should be an offence.

Candidates should know the source of all donations they receive. Similar provisions should be applied to state elections.

(11) Third party and parallel campaigns

Should a third party have to disclose its expenditure as well as donations received?

Should the \$1,000 threshold above which donations have to be declared be lowered?

Should third parties have to lodge returns before an election?

Should election advertising instigated by a third party that is not an individual have to identify the third party as well as the individual who authorised the advertisements?

Third parties who fund a parallel campaign should:

- (a) Disclose the parties' receipts and expenditure;
- (b) Lodge a return five (5) days before the election; and
- (c) Identify itself on all advertising material.

The threshold for declaring donations should be maintained at \$1,000.

(12) Limits on election expenses

Should there be limits on election expenditure in Queensland local government elections?

If so, should first-time candidates be allowed to spend more than incumbent councillors, to take account of the incumbent's natural advantage in relation to voter recognition?

If there were to be limits on election expenditure, how would a candidate's expenditure be audited to ensure compliance?

Council disagrees with any proposal to limit the amount of election expenditure incurred by candidates or incumbents.

The costs of compliance monitoring and auditing the details of each candidates' expenditure would be too onerous for the administering local authority. Secondly, the quantum of expenditure on campaigns is not the real issue here. The source of funds, the subsequent disclosure and potential for future conflict of interest are the real concerns.

In addition, the current \$1,000 limit for tax deductibility of local government election expenses should be increased. Whilst Council acknowledges that this is a federal government issue, an increase in the tax deductibility amount for expenses incurred during an election would make running for Council more affordable.

(13) Loans to candidates

Should the LGA be amended to require candidates to disclose details of loans received?

Candidates should disclose loans (other than from a financial institution) so as to avoid election gifts masquerading as loans.

(14) Enforcement

Is the existing system of enforcing the disclosure provisions of the LGA operating effectively, and can it be improved?

Enforcement provisions for non-disclosure should be the same as for candidates in state elections as defined in the *Electoral Act 1992*.

(15) Penalties

Are the current penalties for offences in relation to election returns appropriate?

The penalties for failing to lodge a return and providing a return within false or misleading information should be increased. The \$5,000 amount currently applicable in Western Australia seems an appropriate amount.

(16) Conflicts of interest

Are the current provisions of the LGA in relation to conflicts of interest on the part of councillors sufficient? If not, what improvements should be made?

Should councillors be prohibited from participating in council matters that involve a person who gave an election gift to the councillor?

Should failure by a councillor to appropriately resolve a conflict of interest be an offence under the LGA?

Council agrees that the issue of identifying and resolving conflicts of interest is a difficult issue.

This Council has been fortunate in this regard as councillors have always adopted the stance of 'if in doubt, step out' promoted by the CMC.

However, this would become an issue if a group of councillors considered it necessary to take no part in a debate on a matter and the number of councillors vacating the meeting room was sufficient to jeopardise a council meeting's quorum, thus preventing the Council from making a decision.

Conversely, there would be occasions where a councillor or group of councillors could disclose a conflict of interest but retain their right to debate and vote on the issue.

It is for these reasons that Council is of the opinion that the issue of managing conflicts of interest should be a decision left to the councillor or group of councillors who can then decide the course of action that best serves the public interest.

This decision can then be tested in the public arena. The electorate can then decide whether they believe the councillor or group of councillors has satisfied their legal obligations as a local government councillor and acted in the best interest of their community.

Accordingly, the existing framework for managing conflicts of interest is sufficient and local government councillors should be trusted to act in the public interest. If a councillor fails the public interest test, the consequences will either result in a formal CMC investigation, a loss at the next election or both.

(17) Donations through political parties

Should local government candidates endorsed by registered political parties have to disclose election gifts received by the candidate's campaign committee, and donations received by the party's central office where the candidate is aware that the donation was made for the candidate's benefit?

Candidates endorsed by registered political parties should disclose election gifts and be subjected to the same disclosure requirements as candidates not endorsed by a political party.

Thank you for the opportunity to provide comment on this issue. If you have any further queries in relation to this matter, please contact Council's City Governance Manager, Mr Simon Benham, on 3826 5212.

Yours faithfully



for Chris Rose

CHIEF EXECUTIVE OFFICER