

Mr R Burton
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30 January 2006

The Gold Coast City Council Inquiry
Crime & Misconduct Commission
GPO Box 3123
BRISBANE Q 4001

Dear Sir/Madam,

CMC Local Government Election Process – Discussion Paper

Please find attached Council's submission to the CMC in respect to the Local Government Election Process Discussion Paper dated December 2005.

Also attached for your information is a copy of Council's submission to the Department of Local Government's Queensland Council Elections Discussion Paper dated December 2005. As you are aware there were a number of overlaps in respect to the two Discussion Papers.

Council has no objection to its submission being placed on the CMC website.

Should there be any matters requiring clarification in respect to Council's submissions, please contact the undersigned.

Yours sincerely,



Ray Burton
Chief Executive Officer

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**PINE RIVERS SHIRE COUNCIL SUBMISSION TO CMC RE CMC LOCAL
GOVERNMENT ELECTORAL PROCESS DISCUSSION PAPER (DECEMBER
2005)**

The CMC Discussion Paper invites response/feedback on a number of questions categorised under subheadings on pages 4 and 5 of the Discussion Paper. The Discussion Paper also invites comment on the Terms of Reference to the Gold Coast City Council CMC Inquiry on election matters.

This submission is presented by the Pine Rivers Shire Council in response to the abovementioned invitations. The submission uses the subheadings presented in the CMC Discussion Paper as a point of cross-reference.

There are some very basic values/principles that council considers should be adhered to at all times by Councillors in office and by all candidates during the local government election process. These are:

- The need for total transparency;
- The need for accountability;
- The need for integrity;
- The need for honesty, openness and to be truthful.

With these values/principles set in stone the Council offers the following comments on the questions posed in the Discussion Paper:

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?

Council considers voters are entitled to know (where possible before election day) what interest groups are supporting individual candidates and the particulars of the funding sources of each candidate's election campaign provided this principle is also applied to State and Federal Elections.

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 refers to Supreme Court Judgement 27 March 2004 Case Tris Van Twest –v- Chris Monsour. Council contends that the wording of S.394(1) of the *Local Government Act 1993* does not achieve what is intended. In this case a candidate at the last Pine Rivers Shire Council Election produced a “How to Vote” card on the day of the Election which included a photograph of the Mayor of the Shire (who had been elected unopposed) and a photograph of herself. The “How to Vote” card was in a distinctive mauve colour used by the Mayor at the previous election. The “How to Vote” card could be interpreted as an attempt to convince the voters that the Mayor was supporting this candidate or even that a vote for this candidate was also a vote for the Mayor. The voters could be misled as the Mayor had offered no support for this candidate, in fact the Mayor had publicly opposed this candidate. Council took the matter to the Supreme Court on the basis that S.394 (1) had been contravened. The Court found that whilst it agreed a voter could be misled by the “How to Vote” card the voter had not been misled about “the way of voting at the election”. Council considers this technicality needs to be removed from S.394 (1) and that no candidate should attempt to mislead any voter regarding matters such as support or policies of the candidate.

The penalty of 40 penalty units would appear adequate although it is noted other sections relating to election carry penalties of 85 penalty units or 2 years imprisonment.

3. Electoral Bribery

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

Council considers S.385 of the *Local Government Act 1993* relating to electoral bribery is adequate as is the penalty of 85 penalty units or 2 years imprisonment.

4. Period 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?**

Council considers the Act needs to be amended to provide for a disclosure period of 4 years before election for all candidates and up to 30 days after an election for non-successful candidates and 6 months after an election for successful candidates.

There is no logical reason why candidates should be treated differently prior to an election, that is, the 4 year uniform period should apply to all in the interests of equity and transparency.

The period of disclosure after the election for successful candidates (Councillors) should be as long as possible to ensure all election gifts have been received and listed. A longer period may also prevent attempts in deliberate avoidance through delaying receipt/record of the gift.

5. Fundraising

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

Council supports the view of the Commonwealth Electoral Commission that all contributions received by candidates from fundraising ventures should be defined as gifts or donations for the purposes of S.414 of the Act and therefore included in the disclosure requirements, provided this principle applies also to State and Federal Elections.

6. The 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?**

Council considers in the interests of transparency all candidates should disclose any election gifts they have received before Election Day provided this principle also applies to State and Federal Elections.

Council also considers a prohibition on receipt of election gifts after the election is appropriate with a prohibition period of 12 months being reasonable provided this principle also applies to State and Federal Elections. In the event this prohibition is not adhered to Council considers the Councillor concerned should be disqualified from Office.

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?**

Council considers soliciting of election gifts should not be a matter requiring legislation as the issue is the receipt and disclosure of such funds rather than their soliciting.

There may be cases where candidates share election funding from a particular source but still seek to remain an “independent” candidate rather than part of a group of candidates within the meaning of the Act.

The disclosure provisions for a group of candidates should be the same as a candidate and that such disclosure should be made before Election Day.

It is not considered necessary to amend S.426 definition of “group of 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?

Council considers there should be no difference in treatment/disclosure of election gifts from trust funds or from Solicitors’/Accountants’ trust accounts.

9. The Origin of Candidates’ Donations

- **Is there any good reason for allowing candidates to accept donations from unincorporated associations, 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?**

Council considers the provisions of S.427 and S.428 of the Act as being adequate in terms of disclosure maintaining the principle of transparency where both the candidate and voters need to know the sources of election gifts.

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 considers S.428 of the Act to be appropriate therefore it follows that if it is unlawful to receive anonymous election gifts over \$200 then it should be an offence to do so.

11. Third Parties and Parallel Campaigns

- **Should a third party have to disclose its expenditure as well as donations received?**
- **Should the \$1000 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?**

The difficulty with S.430 of the Act is that the third party may not be aware of the requirements to lodge a Return to the CEO detailing expenditure on an election greater than \$1,000. In addition the CEO may not be aware of the existence or identity of the third party.

Under the transparency principle third parties should be required to disclose election expenditure and donations and to do so prior to Election Day.

Council considers the \$1,000 threshold for third party disclosure is appropriate and that the third party should be identified in election advertising.

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 does not consider there should be limits placed on election expenditure for candidates as this approach would be unnecessarily restrictive and inflexible. Should it be proposed to introduce election expenditure limits Council considers the campaign costs of a Mayor needs to be sufficient to cover an electorate at times larger than a Federal Election seat.

If election expenditure limits were to be imposed, all candidates should be treated equitably and the auditing of such expenditure should be by way of statutory declaration by the candidates.

13. Loans to Candidates

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

Council considers there should be a requirement in the Act for disclosure of loans received during disclosure period similar to State and Federal systems.

14. Enforcement

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

The suggestion that CEOs are responsible for ensuring that Election Returns are completed properly is a point of contention. The CEO can seek to ensure the Returns are lodged within a specific time frame however the accuracy of those Returns should not be the CEO responsibility.

Pine Rivers Shire Council had full compliance with the Return lodgement dates by Councillors at the last election but cannot attest to the accuracy or full completion of those Returns.

15. Penalties

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

On the basis of benchmarking with other States it appears the penalty for failure to lodge a return at \$1,500 is too low. The disqualification of a Councillor if convicted of false and misleading information in an Election Return is appropriate.

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 does not consider the current provisions of the Act in relation to conflicts of interest to be adequate in that unlike the material interest provision there is insufficient guidance to Councillors on the course of action required.

Council has included a clause on dealing with conflict of interest in its draft Code of Conduct for Councillors which includes the requirement that the Councillor declare to the Chair the existence and nature of the conflict and to have the declaration recorded in the minutes of the meeting.

The recording of the conflict of interest in the Council meeting minutes could be an addition to the Act.

The decision on inclusion in the decision making process by a Councillor who has a conflict of interest, is a decision which should rest with the Councillor concerned in responsibly carrying out his/her duties under S.229. Once the conflict is declared the subsequent action of that Councillor remains open to public scrutiny.

The failure of a Councillor to resolve a conflict of interest will be a breach of Pine Rivers Shire Council's Code of Conduct. Such a breach carries no monetary penalty whereas if the requirement was listed in the Act it could be an offence carrying a monetary penalty. Council supports its inclusion in the Act.

17. Donation 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?

Pine Rivers Shire Council has no party endorsed Councillors.

In the interests of transparency Council considers all candidates regardless of whether standing as independents, sitting Councillors or endorsed political candidates should be responsible for election gift disclosure.

Terms of Reference Comments

Terms of Reference 2 (a) Misleading Voters –

Council refers to the comments above under "2. False and Misleading Statements of Councillors".

Council considers the voters in Division 9 at the last Council Election could have been misled through the wording of a candidate's "How to Vote" card and that the wording of S.394 of the Act should be amended to put in place the clear intent of this Section.

Further Council supports an approval process for "How to Vote" cards where candidates are required to submit their "How to Vote" cards to the Returning Officer for approval prior to their subsequent distribution.

Council thanks the CMC for the opportunity to comment on its Discussion Paper.

Yours sincerely,



Ray Burton

Chief Executive Officer

**PINE RIVERS SHIRE COUNCIL SUBMISSION TO DEPARTMENT LOCAL
GOVERNMENT, PLANNING, SPORT & RECREATION
QUEENSLAND COUNCIL ELECTIONS DISCUSSION PAPER (DECEMBER
2005)**

Council was invited by the Minister for Local Government & Planning, the Hon. Desley Boyle, MP, to make submission to the Department on its Queensland Council Election Discussion Paper received at this office on 3 January 2006.

Council notes that the CMC has also released a Discussion Paper on the Gold Coast City Council Inquiry into election matters. Council has made a submission to the CMC on its Discussion Paper and forwarded a copy of same to the Department.

The following submission is now made to the Department in regard to its Discussion Paper:

2.1 The Electoral Commission of Queensland's role in Council Elections

2.1.5 Should the LGA be amended to allow large urban Councils that use Optional Preferential Voting, to enter into an agreement with ECQ for the administration of Council Elections, similar to the BCC?

Pine Rivers Shire Council is a large urban Council which uses Optional Preferential Voting. The Chief Executive Officer delegated the Returning Officer duties at the last election to an external person and appointed a Deputy Returning Officer from Council staff to assist with the conduct of the election thus ensuring close liaison between the organisation and the Returning Officer during the election process.

Council supports the proposal for ECQ to be included as an option for the Chief Executive Officer in delegating the Returning Officer role and would be confident the ECQ would carry out this role most effectively.

2.2 Returning Officer training and support

2.2.4.1 Should RO training be more tailored to particular Council characteristics, for example voting requirements, Council size?

Yes – targeted training can only assist in greater understanding and expertise of Returning Officers.

2.2.4.2 Is there any value in seeking to accredit RO training, or have it included in an accredited course dealing with Council skills?

Yes – an accredited training course will assist Chief Executive Officers in the selection process and guarantee quality control.

2.2.4.3 Who would be potential partners in developing accredited RO training?

Any registered training organisation could specialise in this area if approached and if demand would meet costs.

The LGAQ now runs accredited training programs and the LGMA may also be interested in auspicings such training.

2.2.4.4 Would there be benefits in ensuring that prior experience in Council Elections is gained before a person takes on the RO role?

Yes – the role of Returning Officer and the conduct of elections with its myriad of legislative controls is very complex and prior local government election experience would certainly be advantageous. The reality however is that there are few people in the market place with local government experience who are not already working for a local government authority. The level of experience required by a Returning Officer may vary depending on the size of the Council.

2.2.4.5 Are there any other strategies that might develop the available pool of suitably experienced ROs?

The secondment of a Chief Executive Officer or experienced staff with election experience from a neighbouring local authority may be an option, however this would not seem practical in larger Councils and the support is dependant on Councils having discretion on releasing the Chief Executive Officer.

2.2.4.6 Would accountability of ROs be improved by requiring ROs to be approved under legislation?

Yes – this vetting process would assist Chief Executive Officers in selecting appropriately qualified ROs and assist the training and skill development/support of Returning Officers.

2.2.4.7 Would an alternative dispute resolution process be useful for resolving disputed decisions of ROs?

Yes – the process of challenging Returning Officer decision through the Supreme Court may act as a deterrent for those aggrieved but it may also “scare off” potential Returning Officers. A simplified dispute resolution system could reduce costs and time delays. Council considers however that

additional powers to Returning Officer to deal with issues as they arise during election period would be beneficial.

Council is interested in further “partnering” discussions with the Department to improve the Returning Officer skill base, e.g. Council has a cadet program in place across a number of areas and this approach could be extended to Returning Officer functions during election periods.

2.3 Caretaker Requirements

2.3.5.1 Should Councils be required to adhere to election caretaker principles?

Pine Rivers Shire Council has not applied a “caretaker mode” principle prior to elections. Councillors are of the view they were elected with specific responsibilities which are required to be carried out right up to the day of the next election. Council would not support a caretaker period.

2.3.5.2 Should the LGA specify the caretaker requirements for all local Councils in Queensland, or would it be preferable to legislate for each Council to develop its own caretaker conventions?

Should the Government be intent on forcing Councils into caretaker mode prior to election it is appropriate this be legislated through the Act and/or Regulations to ensure all Councils are applying the same principles over the same time period.

2.3.5.3 What impact would caretaker requirements have on Council’s ability to meet their statutory obligations during an election period?

Considerable, this is why there should be no caretaker period. The Council cannot simply shut up shop for 2 months or longer prior to election then another month after the election (waiting for Statutory Meeting and induction process).

2.3.5.4 What arrangements would allow local Councils to respond to emergency situations that arise during the caretaker period?

Council does not support concept of caretaker period.

2.3.5.5 Should the caretaker period be set for the election period as currently defined in the LGA, or should a uniform caretaker period be set that applies to all Councils?

Council does not support concept of caretaker period.

2.3.5.6 Could a caretaker period affect Councils' ability to meet their statutory obligations under State law?

Yes – Council does not support concept of caretaker period, but if one was imposed it could affect Council's ability to meet its statutory obligations.

2.4 Candidate behaviour

2.4.5.1 Would a Code of Conduct for Council elections be effective in providing guidance as to what is considered appropriate behaviour for election candidates?

Council supports the proposal for a Code of Conduct for election candidates as it will give guidance to both sitting Councillors and all candidates on the behaviours expected during an election campaign and may remove candidate concerns about the perceived beneficial position of candidates who are sitting Councillors.

2.4.5.2 Should a Code of Conduct for Council election candidates be voluntary or made mandatory through legislation?

Council considers a voluntary Code will not carry the level of compliance necessary during a period of such critical importance. Should a candidate fail to comply with the Code the election could be over before the public are aware of the infringement or before corrective action maybe possible. The candidates who have complied with the Code may then be placed at a considerable disadvantage in the last day/s of the election even though they have done the right thing. A voluntary Code may leave the door open for abuse through either intentional or unintentional actions of candidates.

Council supports a mandatory Code with penalty provisions for offences.

2.5 Election Donations

2.5.4.1 Should candidates at Council elections be required to disclose details of loans received?

Yes in the interests of transparency.

2.5.4.2 Should donors to candidates be required to make disclosures?

Yes in the interests of transparency.

2.5.4.3 Should broadcasters and publishers of authorised election advertisements be required to make disclosures relating to local government elections?

Yes in the interests of transparency.

2.5.4.4 Are there any other issues to be considered about election donations?

Council considers election donations should be disclosed by all candidates prior to election day to enable voters to be aware of such donations and third party support.

2.6 Election Candidate Disqualification

2.6.3 Do you think that Councillors who are members of a Council that has been dissolved should be disqualified from standing for immediate re-election?

Council considers past Councillors should be permitted to stand for re-election at the first election for the new Council.

2.7 Other Amendments for consideration

2.7.1 Increased penalties for Election Offences.

Council supports the concept of consistency in penalties between local government and state government election offences.

2.7.2 Nomination deposit

Council supports the view that there be no amendment to the nomination deposit provisions of the Act as it is important there be an incentive to complete the electoral return (disclosure) form.

2.7.3 How-to-vote Cards

Council supports the State Government system where the Returning Officer must approve the How-to-Vote card before its distribution.

2.7.4 Voting material (how-to-vote cards) in declared institutions

Council considers the Issuing Officer should have available for display at declared institutions, one sheet listing all How-to-Vote cards for the information of voters.

2.7.5 Canvassing in or near polling places

Council supports the relaxation of the “six metre” requirement at the discretion of the Returning Officer during pre-polling and election day.

2.7.6 Misleading voters – publication on the Internet

Council supports the proposal to strengthen s.394 of the Act in respect to internet use for election purposes.

2.7.7 Simplifying State approvals for election procedural changes

Council supports the proposal for the Minister for Local Government to assume the role identified in the Act for the Governor-In-Council in respect to election matters.

Other Issues not raised in the Discussion Paper:

1. Section 394 of the *Local Government Act*

Council had cause to take proceedings before the Supreme Court at the 2004 Election under this Section. Council understands the intent of the Section is generally to prevent candidates misleading voters through their How-to-Vote cards. Her Honour stated in the Court Ruling that the How-to-Vote card in question would mislead a voter “as to the nature of support of the candidate. One can envisage any number of inaccuracies which could appear on a How-to-Vote card so as to mislead voters about whom they should vote for, which simply do not appear to be covered by this provision (i.e. s.394(1))”.

The details of the case Van Twest vs Monsour is outlined in summary below:

In this case a candidate at the last Pine Rivers Shire Council Election produced a “How to Vote” card on the day of the Election which included a photograph of the Mayor of the Shire (who had been elected unopposed) and a photograph of herself. The “How to Vote” card was in a distinctive mauve colour used by the Mayor at the previous election. The “How to Vote” card could be interpreted as an attempt to convince the voters that the Mayor was supporting this candidate or even that a vote for this candidate was also a vote for the Mayor. The voters could be misled as the Mayor had offered no support for this candidate, in fact the Mayor had publicly opposed this candidate. Council took the matter to the Supreme Court on the basis that s.394 (1) had been contravened. The Court found that whilst it agreed a voter could be misled by the “How to Vote” card the voter had not been misled about “the way of voting at the election”.

Council considers this technicality needs to be removed from s.394 (1) and that no candidate should attempt to mislead any voter regarding matters such as support or policies of the candidate.

2. Candidates Election Signs

In order to avoid confusion where some Councils have their own Local Laws on election signage and some don't. Council considers the Act or Regulations should include provision for election signage extending to such detail as number of signs per candidate, size of signs, approval of wording of signs and location of signs.

In recent elections this has been a contentious issue at Pine Shire and if uniform legislative provisions were in place all candidates and all Councils would be aware of signage requirements.

3. How-to-Vote Cards should be banned

Council has strongly advocated over past elections that How-to-Vote cards are a waste of valuable resources, cause unnecessary littering and are costly for candidates to produce and distribute. Council considers the How-to-Vote cards should only be displayed in a prominent position in the polling booth. This policy is supported by LGAQ and ULGA and Victorian Local Government in conducting postal voting.

4. Tax Deductibility for Councillors

Council considers the *Income Tax Assessment Act* should be amended to ensure Councillors have the same rights of tax deductibility for election expenses as do State and Federal members of Parliament.

5. Derogatory Advertisements on Candidates

Council seeks some form of accountability in the case of third parties placing advertisements in local papers during election period criticising some candidates and thus by elimination supporting another candidate without necessarily naming the latter candidate. This "support" would seem not to be covered by Section 430 of the Act.

6. Public Funding of Election Campaigns

Council considers local government election campaigns should be publicly funded similar to State and Federal elections.

Council thanks the Minister for the opportunity to comment on the Discussion Paper and looks forward to the opportunity for further input should any amendments be proposed to the Act arising from consideration of the matters and feedback from the Discussion Paper.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ray Burton", followed by a period.

Ray Burton
Chief Executive Officer