

SUMMARY

Findings and recommendations

EVENTS THAT LED TO THE INQUIRY

On 22 July 2005, the CMC received a 230-page dossier of material from the Honourable Desley Boyle, Minister for Environment, Local Government, Planning and Women, about the conduct of candidates and others during the Gold Coast City Council election held on 27 March 2004.

In broad terms, the allegations concerned the relationship between developers and some candidates. Central to the allegations was the administration of a fund to which developers had made financial contributions to assist a number of candidates with their election campaigns.

A number of media articles, in particular in the *Gold Coast Bulletin*, the *Gold Coast Sun* and the *Courier-Mail*, had raised concerns about the conduct of councillors and others before, during and after the March 2004 election.

The CMC also received complaints from private citizens and councillors calling for an investigation into the election. Some of the complaints alleged that there were striking similarities between the conduct of certain parties during the 2004 Gold Coast City Council election and the conduct of parties during the 2004 Tweed Shire Council election.

The CMC was aware that the conduct alleged in the case of the Tweed Shire Council had resulted in public hearings, public reports and, on 25 May 2005, the dismissal of the Tweed Shire Council by the New South Wales Minister for Local Government, the Honourable Tony Kelly MP.

It was against this background that the Commission resolved to hold public hearings in relation to the March 2004 Gold Coast City Council election.

THE INQUIRY'S TERMS OF REFERENCE

The inquiry set out to investigate any alleged official misconduct relating to:

- false or misleading statements of candidates for the Gold Coast City Council election in March 2004 with respect to details of any association with other candidates or entities
- electoral bribery with respect to the Gold Coast City Council election in March 2004
- returns about election gifts with respect to the Gold Coast City Council election in March 2004
- declaring and dealing with conflicts of interest or material personal interests since the Gold Coast City Council election in March 2004
- any criminal offence involving the performance of their functions since the Gold Coast City Council election in March 2004.

The inquiry was also required to examine the adequacy of existing legislation in relation to the conduct of local government elections and local government business, including provisions relating to:

- misleading voters
- electoral bribery
- returns about election gifts
- declaring and dealing with conflicts of interest or material personal interests by councillors.

ROLE OF THE CMC

The CMC has the responsibility to investigate matters that may involve official misconduct by anyone who holds office in a unit of public administration in Queensland. Local government councillors are such office holders. The CMC can also investigate any action by others that may be intended to influence public sector officials improperly.

WHAT THE INQUIRY REVEALED IN GENERAL

In their opening statement, counsel assisting the inquiry said:

Most people would agree that the legitimacy of an elected council depends upon the integrity of the electoral process and that this is obtained through free and fair elections following open debate.

The Commission agrees with this statement.

It must be seriously questioned whether the integrity of any electoral process could withstand the barrage of secrecy, deceit and misinformation that this inquiry has found occurred during the Gold Coast City Council election of 2004.

In that election, through false statements made to the media, a positive case contrary to the facts was presented to the public concerning some candidates.

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

The inquiry found that considerable efforts were put into hiding these circumstances from the public.

In the Commission's view, the hiding of this situation from the public through the deceit and misinformation outlined in this report must have adversely affected the integrity of the electoral process.

PART A: SUMMARY OF FINDINGS FOR FIRST TERM OF REFERENCE

Origin of the idea to fund a group of selected candidates

- 1 Before the Gold Coast City Council election on 27 March 2004, two sitting councillors, David Power and Sue Robbins, became concerned about the possibility of 'wild-card' candidates being elected. They became involved in a plan to secure funding for 'worthy' candidates.
- 2 The removal of Crs Young, Crichlow and Sarroff from office was one of the strong motivating factors in the plan to fund selected candidates for the election.
- 3 Members of the various Gold Coast chambers of commerce were highly receptive to the idea of supporting pro-business, 'sensible' candidates. However, no chamber, as a body, took any active role in selecting such candidates or raising funds for them.
- 4 The idea of having a central fund to support the candidates came from the late Brian Ray, a Gold Coast developer, but there is no doubt that Power embraced the idea enthusiastically and, with Ray, was largely responsible for its implementation.
- 5 The Commission is satisfied that Power played a dominant role in the selection of a group of candidates to be funded, and also in soliciting funds for the selected candidates and controlling the distribution of those funds.
- 6 In the Commission's view, it was inappropriate for sitting councillors such as Power and Robbins to undertake these roles in circumstances where the support provided to candidates was not to be made public before the election, and was in fact falsely denied.
- 7 While Brian Ray took an active part in soliciting funds for the group of selected candidates, the evidence shows that he, like the chambers of commerce, played little or no part in selecting the candidates or in deciding which of them received funds. These important roles were to be undertaken by Power and Robbins exclusively.

Meetings at Quadrant and candidates' campaigns

- 8 Sitting councillors Power, Robbins and Shepherd attended a meeting at an advertising agency called Quadrant on 16 December 2003 with Chris Morgan of Quadrant and five prospective candidates for the election: Grant Pforr, Rob Molhoek, Greg Betts, Brian Rowe and Roxanne Scott.
- 9 Morgan had produced a document for the group's meeting on 16 December, outlining topics such as 'objectives', 'strategy', 'consensus on issues' and 'the resource' (see Appendix A: 'The agenda'). In the Commission's view, there is a substantial body of evidence that shows that there was discussion about the contents of this document at the meeting of 16 December 2003; and, judging by the actions of the several candidates who numbered the key city issues and wrote comments beside them, those issues at least were discussed in some detail.
- 10 The Commission is satisfied that Power intended that there should not be any public acknowledgment of a connection between the candidates through funding and shared Quadrant services. This view is supported by the later conduct of the candidates in falsely denying any connection with each other through common funding or otherwise. The false denials also show that the

candidates understood that there was to be no public acknowledgment of the 'common sense candidate resource'.

- 11 The participants at the meeting on 16 December 2003 at Quadrant agree generally that the desired outcome of the proposal to fund selected candidates was to remove existing councillors who were causing trouble and to replace them with 'worthy' candidates.
They also agree that the sitting councillors were there to offer advice about campaign strategies, and to provide a commitment to raise funds to support the candidates at the meeting.
- 12 A number of candidates stressed that they were told at the meeting that they were to be 'independent', as the community would not accept candidates who were not seen to be independent. There is, of course, a difference between giving the appearance of independence and actually conducting a completely independent campaign. The Commission is satisfied that in this case the 'independence' of the candidates was for public display: they knew that they were being assisted by a common fund organised by sitting councillors keen to secure their election and they were willing to share their campaign plans and strategies at group meetings with other selected candidates. If these facts had been known to the electorate, the candidates' frequent public claims that they were running as 'your local independent candidate' would have rung very hollow in the community.
- 13 The events at a second meeting at Quadrant on 8 January 2004 again suggest that the group of candidates present were willing to share ideas and to discuss their campaign strategies in the presence of the others. It would also have been obvious to them from invitations to present a 'wish list' for funding that each of them was being offered financial assistance from a common fund organised by Power and Robbins.
- 14 The Commission accepts that the three candidates who received the most assistance from Quadrant (Betts, Scott and Pforr) focused their election material on individual issues of relevance in their own divisions, but there was also a degree of commonality in the material they used, in particular the emphasis that each placed on being 'your local independent candidate', the common sense theme, and the suggestion that they could work well with others.
- 15 Although the definition of 'group of candidates' in the *Local Government Act 1993* (LGA) is general and broad, it is doubtful that the group of selected candidates in this case was a 'group of candidates' within the meaning of section 427A of the LGA. The fact that they were not, and were therefore not required to find out what funds had been received by the group as a whole, led to the non-disclosure of some of the funds used for the group.

Fundraising and payments to candidates and Quadrant

- 16 The funds raised for selected candidates all came from donors with development interests. Most of them were approached by Power or on behalf of Power and Robbins. According to Tony Hickey of Hickey Lawyers (Brian Ray's solicitor), he explained to all of the potential donors whom he contacted that Power and Robbins would be controlling the funds. This would have had some significance to those donors, because most of them had had dealings with Power or Robbins, as the heads of the council's then north and south planning committees, in the period preceding the election.

- 17 The Commission is satisfied that, in general terms, business people with development interests were approached by Ray, Hickey or Power to donate to a campaign fund to support 'sensible candidates' against certain existing councillors. Most were not told the names of the candidates to be supported. The donors (with one exception) did not seek to place any conditions on their donations, but were happy for the money to be used at the discretion of Power, Ray or Hickey, whose judgment they trusted. All the donors seem to have been aware that, in general terms, their money would be placed in Hickey Lawyers Trust Account and distributed to candidates.
- 18 During the period that Power and Robbins controlled the funds held at Hickey Lawyers — from 23 December 2003 to 4 March 2004 — a total of \$90 000 was received in donations and a total of \$69 500 was authorised by them to be paid directly to candidates.
- 19 In January 2004, Power and Robbins became concerned about their names being used, in particular about their being responsible for distributing funds. They feared there might be a perception that the recipients were beholden to them, which would damage their appearance of independence. Power's way of dealing with this perception was to attempt to conceal his and Robbins's involvement in the fund, through arranging for Gold Coast businessman Lionel Barden to put his name to the fund.
- 20 Power met with Barden on 4 February 2004. He advised Chris Morgan of Quadrant Advertising that Barden had agreed to act as 'primary client' for Quadrant, and was involved with Morgan in preparing a draft letter of appointment of Barden as the client for Quadrant, in lieu of Power and Robbins.
- 21 On 3 March 2004, Power advised Hickey Lawyers that Barden was to be appointed as their client, in lieu of Power and Robbins, and sent a written authority to transfer funds still held in the trust account to an account in Barden's name.
- 22 In the Commission's view, the appointment of Barden as the client for Hickey Lawyers and Quadrant Advertising was a cynical exercise designed to make it appear that he had exercised control that, in reality, he had not.
It did nothing to lessen any perceived obligation that the candidates might feel towards Power and Robbins, because the candidates knew perfectly well that Power (and to a lesser extent Robbins) were the driving forces in obtaining and distributing the funds.
The appointment of Barden was a device intended to disguise the involvement of Power and Robbins in the funding arrangements for selected candidates.

Secrecy

- 23 The evidence presented to the Commission shows a concerted effort to conceal both the existence of the fund for selected candidates, and the involvement of Power and Robbins.
The evidence supports a conclusion that the operation of the fund created to support selected candidates, and the involvement of Power and Robbins in that fund, was intended to be kept secret, and would not have become public if not for media interest and this inquiry.

- 24 The Commission is satisfied that there were a number of false or misleading statements made to the media in this matter in a concerted effort to conceal the existence of a group of candidates being funded from a common developer-backed fund. These statements were consistent with the strategy put forward in Morgan's draft agenda for the initial meeting at Quadrant on 16 December 2003:
- An agreed media position once awareness of this resource for 'Campaign for Commonsense in Council' (working title) becomes public.
- 25 The offence of misleading voters under section 394 of the LGA is relatively narrow in scope, and does not apply to the statements made in this matter. However, in the Commission's view, the many false or misleading statements made by candidates who were involved in the funding of selected candidates during this election substantially corrupted the electoral process. They forced electors to go to the polls not knowing the truth about issues that were of legitimate public interest.
- There is at present no obligation under the LGA for candidates to disclose campaign donations before the election. This does not, however, give candidates a mandate to blatantly lie about the sources of their donations when asked. The candidates could always have declined to provide the information, saying that it would be provided after the election as legally required.

Candidates' returns and third-party returns

- 26 As a direct result of the use of a central fund channelled through a solicitor's trust account, some of the returns lodged by candidates and the third-party return lodged by Barden after the March 2004 election contained information that was, arguably, false or misleading.
- The returns also failed to disclose funds that had been used for the collective benefit of the funded candidates (such as the Quadrant consultancy fee) or funds that were used for negative campaigns for the benefit of some of the funded candidates.
- 27 It is the Commission's view that any false or misleading statements and omissions in returns made in this matter arose in large part from the secretive way in which the funding was organised and distributed.
- False or misleading information in returns, like false or misleading statements to the media, have the potential to corrupt the electoral process.

Fundraising functions

- 28 One of the issues considered by the inquiry was whether there is an obligation on candidates to disclose proceeds from fundraising functions.
- 29 Evidence was given about fundraising functions held by Power, Shepherd and La Castra. It showed that Power made about \$54 857 from the sale of luncheon tickets, Shepherd collected \$10 360 from a function at the Woodchopper's Inn, and La Castra made \$10 900 from a fundraising dinner.
- 30 The disparity in each case between the cost of holding the function and the money received from those attending supports a conclusion that the proceeds should have been declared. However, it would be unfair to recommend action be taken in circumstances where some, at least, of the candidates have relied on statements in the Department of Local Government and Planning (now the DLGPSR) handbook that proceeds of raffles, dinners and other

fundraising activities do not have to be declared.

Personal interests and public duty

- 31 The LGA draws a distinction between a ‘conflict of interest’ and a ‘material personal interest’. Essentially, councillors have a material personal interest in an issue if they have, or should reasonably have, a realistic expectation that they (or an associate) stand to benefit or suffer a loss, directly or indirectly, as a result of the resolution of the issue.
- 32 The Commission considers that the statements made by some councillors during the inquiry reflect a fundamental lack of understanding of what constitutes a conflict of interest in connection with their work as councillors. Their stance gives undue weight to their personal views about whether a conflict exists, and ignores the apprehension that a reasonable observer might have about whether they can impartially carry out their public responsibilities. By contrast, Queensland’s Integrity Commissioner, Mr Gary Crooke QC, advises statutory office holders that an objective test — namely whether a reasonable member of the public would conclude that inappropriate factors could influence an official action or decision — should be applied.
- 33 Because of the narrow definition of ‘material personal interest’ under the LGA, none of the specific cases of alleged conflicts of interest examined could amount to offences under that Act.

In each of the cases, the councillors involved seem to have genuinely considered their actions appropriate, and believed that they were not influenced by donations made. However, the Commission considers that the obvious way for councillors to avoid having to grapple with the difficult issue of perceived conflicts of interest would be to refuse donations from those likely to have business before council in the first place.

Consideration of prosecution proceedings

- 34 Chapter 10 details the CMC’s decision to refer to an appropriate officer consideration of prosecution proceedings under section 218(1) of the *Crime and Misconduct Act 2001* against solicitor Tony Hickey and Cr David Power, and to refer reports to the Department of Local Government, Planning, Sport and Recreation about possible breaches of the *Local Government Act 1993* by solicitor Tony Hickey, Crs Grant Pforr and David Power, and candidates Brian Rowe and Roxanne Scott.

Corruption of the electoral process

- 35 The Commission considers that the conduct outlined in this report was not ‘trivial’ or ‘technical’, as suggested by some submissions, but in fact adversely affected the integrity of the 2004 Gold Coast City Council election. For this reason, it has made the following recommendations for electoral reform.

PART B: SUMMARY OF RECOMMENDATIONS FOR SECOND AND THIRD TERMS OF REFERENCE

New disclosure provisions for candidates and councillors

The Commission considers that election gifts received by candidates and councillors should be made publicly known before an election, so that voters can take account of this information when deciding how to vote. Also, other gifts received by councillors throughout their term of office should be open to greater scrutiny. This could be achieved through a system requiring continuous disclosure and limiting the receipt of gifts for a period after an election.

Recommendation 1: That the LGA be amended to establish new disclosure provisions with the following elements:

- Within three business days of receipt of a gift totalling more than \$200 in amount or value that is received by a councillor or a councillor's campaign committee, the councillor must notify the CEO of the relevant details.
- Within three business days of receipt of any sponsored hospitality benefit, a councillor must notify the CEO of the relevant details.
- Within three business days of receiving notification of the receipt of gifts or sponsored hospitality benefits, the CEO must amend the register of councillor's interests.
- Those portions of a councillor's register of interests listing gifts, sponsored hospitality benefits received and the particulars for each political party, body or association or trade or professional organisation of which a councillor is a member will be kept separately from the rest of a councillor's register of interests and will be available for inspection by the public on request.
- If the council maintains a publicly accessible internet site, a councillor's register of interests listing gifts, sponsored hospitality benefits received and the particulars for each political party, body or association or trade or professional organisation of which a councillor is a member will be displayed on the site.
- The abovementioned requirements would apply to nominees for council election who are not existing councillors from the date of nomination.
- Nominees for council election who are not existing councillors will, on nomination, provide the CEO with the relevant details of any or all gifts totalling more than \$200 in amount or value received by a candidate or the candidate's campaign committee in the period commencing six months before nomination day, the relevant details of any sponsored hospitality benefit received by the candidate in the period commencing six months before nomination day and the particulars for each political party, body or association or trade or professional organisation of which a candidate is a member.
- The same publishing requirements that apply to councillors' gifts, sponsored hospitality benefits and memberships would apply to candidates' gifts, sponsored hospitality benefits and memberships.
- Gifts received by a candidate who is a member of a group of candidates for the benefit of the group, or gifts received by the group's campaign committee, may be recorded on a separate register so all group members do not have to separately report all donations received by the group.
- Candidates and councillors are prohibited from receiving any gifts from the Monday the week before the election until six months after the election. For example, the 2004 council election was held on Saturday 27 March. Under this proposal, candidates and councillors would have been prohibited from accepting any gifts from Monday 15 March 2004.

Leaving the cut-off date any later could allow gifts received by a candidate or councillor to be revealed so close to the election as to hinder appropriate public consideration of them.

Some existing provisions relating to disclosure of election gifts would need to be retained; for example, section 428 of the LGA prohibiting the receipt of anonymous gifts and the definitions of terms such as ‘gift’ and ‘relevant details’.

Conflicts of interest

The Commission is of the view that a failure to deal appropriately with conflicts of interest should continue to be subject to sanction under councils’ codes of conduct, rather than through legislative sanction. However, there should be better record-keeping of conflicts of interest.

Recommendation 2: That the LGA be amended to require a local government to minute any declaration made by councillors that they have a conflict of interest, the nature of the conflict, how they dealt with the conflict and, if they voted on the matter giving rise to the conflict, how they voted.

Recommendation 3: That the ethics principles for local government councillors at schedule 1 of the LGA be amended to specify that councillors should note that the consideration of matters before council involving people who have given gifts to a councillor may give rise to a conflict of interest.

Fundraising

Submissions generally supported the proposition that candidates should have to disclose monies received through fundraising activities. While the LGA provisions on declaring gifts, arguably, already apply to such proceeds, the department’s handbook currently advises candidates that they do not have to be declared.

Recommendation 4: That the LGA be amended to deem all payments for fundraising functions, auctions, raffles etc. to be fundraising gifts; and, so as to remove any confusion, the amount required to be declared by the candidate should be the gross amount paid by the donor to a fundraising activity.

Groups of candidates

The present definition of ‘group of candidates’ is broad — it is not clear exactly what sort of group conduct it is meant to cover. In fact, it may have the unintended consequence of grouping together candidates who show each other nothing more than informal support. This is a complex issue that may need to be considered further by the DLGSR. To make it easier to review compliance with disclosure requirements by groups who come within the present definition of a ‘group of candidates’, the Commission makes the following recommendation:

Recommendation 5: That the LGA be amended to require candidates who are part of a group of candidates to record, on nomination, their membership of the group, the name of the group and what other candidates are members of that group.

Anonymous donations

Submissions on this issue generally supported the proposition that there should be a harsher penalty for a candidate accepting an anonymous donation.

Recommendation 6: That the LGA be amended to provide that it is an offence for a candidate or councillor to fail to notify the CEO of, and surrender to the CEO, within three business days any or all gifts totalling more than \$200

in amount or value received by a candidate or councillor, or a candidate or councillor's campaign committee, where the relevant details of the gift are unknown. A suitable penalty should apply.

Donations through a solicitor's or accountant's trust account

Recommendation 7: That the LGA be amended so as to better reflect the instruction in the departmental handbook — *Disclosure of election gifts: guidelines for candidates and councillors for local government elections* — that donations that come to a candidate through a solicitor's or accountant's trust account are not be treated as though they came from the solicitor or the accountant, and that the candidate must disclose the true source of the gift.

Donations through political parties

There are arguments that local government candidates/councillors endorsed by a registered political party should not be subject to the same disclosure obligations as apply to other candidates. Party-endorsed candidates/councillors could be said to be less susceptible to sectional interests. However, this report has emphasised the importance of funding sources being available to public scrutiny, and, in the Commission's view, some candidates should not enjoy lesser scrutiny simply because they are endorsed by a registered political party, despite the arguments to the contrary.

Recommendation 8: That the LGA be amended so that local government candidates/councillors endorsed by a registered political party are subject to the same disclosure requirements as apply to other candidates.

Loans

The DLGPSR discussion paper *Queensland council elections*, released in December 2005 as part of the department's review of rules relating to local government elections, has foreshadowed amending the LGA to require candidates to disclose details of loans received.

Recommendation 9: That the LGA be amended so that loans must be declared in the same way as other gifts received by a candidate or councillor.

Sources of gifts

Artificial constructs that are not legal entities, such as the Power and Robbins Trust and the Lionel Barden Trust, have only an ephemeral and uncertain existence, and should not be allowed to donate to candidates and councillors, in the Commission's view. The fact that the identity and nature of the trust was so uncertain led to confusion and misinformation, as evidenced by the inability of most candidates to correctly record something as basic as the name of the so-called trust in their returns.

Recommendation 10: That the LGA be amended to allow councillors and candidates to accept gifts only from individuals, incorporated associations and companies.

Third parties

Submissions from councillors and councils generally supported the proposition that, if candidates were required to lodge returns before an election, third parties should have to lodge pre-election returns as well.

Recommendation 11: That the LGA be amended to:

- require third parties to lodge a return on the Monday before an election itemising:
 - gifts received in the period commencing 12 months before the election
 - expenditure incurred for a political purpose in the period commencing 12 months before the election
 - gifts expected in the period commencing the Monday before an election and ending six months after the election
 - expenditure expected to be incurred for a political purpose in the period commencing the Monday before an election and ending the Sunday after the election
- make the prescribed amount for requiring the disclosure of relevant details commensurate with the prescribed amount applying to a candidate
- require the CEO to make this information publicly available by the close of business on the Tuesday before an election and, if council maintains a publicly available internet site, the information be displayed on this site
- prohibit expenditure by a third party for a political purpose in the period commencing the Monday before an election and ending the Sunday after the election, other than in accordance with the expected expenditure disclosed in the third-party's return.

False or misleading statements by candidates

The Commission considers that the issues raised in *Tris Van Twest v. Monsour* concerning the inclusion of misleading material on how-to-vote cards require attention.

A number of submissions also expressed the view that the penalties provided for breaches of section 394 of the LGA were inadequate.

Recommendation 12: That the LGA be amended to make it an offence to publish how-to-vote cards containing a false representation of support.

Recommendation 13: That there be a review of the adequacy of the penalties for offences in Chapter 5 Part 6 of the LGA, including the penalty for a breach of section 394.

Enforcement

Submissions from members of the public generally expressed the view that it would be better for a person other than the council's CEO to be responsible for receiving and checking electoral returns. It is practical and cost effective for CEOs to remain responsible for receiving and making publicly available gift disclosures from candidates and councillors. However, the Commission recognises that there may be some difficulties in CEOs adequately performing the task of receiving and checking returns in an often highly politicised environment.

Recommendation 14: That the LGA be amended to enable CEOs to require candidates and councillors to provide further information in response to requests for information in relation to candidates', councillors' and third parties' gift declarations and returns. A failure to respond, or the provision of false information in response to a request from the CEO, should be an offence. This measure will assist CEOs maintain appropriate records. The legislation should require CEOs to report any suspected breaches under these provisions to the DLGPSR as the appropriate prosecuting authority.

Recommendation 15: That an agency (e.g. the DLGPSR or the Electoral Commission of Queensland) be empowered to audit gift records held by a local government and to possess similar powers to those recommended above for a CEO to require candidates, councillors and third parties to provide further information in relation to gift declarations and returns in response to requests.

Penalties

The DLGPSR 2005 discussion paper *Queensland council elections*, released as part of the department's review of rules relating to local government elections, notes that the penalties for electoral offences at state and Brisbane City Council elections were increased in 2002; however, these penalty increases have not yet been replicated in the LGA.

Recommendation 16: That there be a review of the adequacy of LGA penalties for offences relating to the failure to disclose, or the failure to disclose accurately, gifts received by candidates and councillors.

Recommendation 17: That section 222 of the LGA be amended to provide that the disqualification provisions in that section will apply, unless the councillor or other person who is convicted of a relevant offence satisfies the court that there are special circumstances why they should not be disqualified or their office vacated.

Reasons for council decisions

This inquiry has examined some decisions of the Gold Coast City Council where the council has partly or totally rejected recommendations made by a council officer with regard to how a particular matter should be handled. The reasons for these decisions are not always immediately obvious, as the council has not recorded reasons for its decisions.

Recommendation 18: That the LGA be amended to require local governments to provide minuted reasons for all decisions of council or committees made not in accordance with the recommendation of council officers and conduct review panels.

Protection for council employees

Section 230(2) of the LGA states that a councillor cannot direct, and must not attempt to direct, an employee of the local government about the way in which the employee's duties are to be performed. There is no penalty in the LGA for a breach of the section. In the Commission's view, if the LGA is amended to provide that councils have to minute reasons for decisions that go against professional officer advice, there should also be a deterrent to stop councillors who may attempt to direct an employee when the employee is formulating that advice.

Recommendation 19: That the LGA be amended to make it an offence to breach section 230(2) of the LGA, which provides that a councillor cannot direct, and must not attempt to direct, an employee of the local government about the way in which the employee's duties are to be performed.

Concluding remark

There will always be challenges in ensuring that participants in local government political processes abide by the spirit and the letter of electoral laws. The Commission believes that the changes it has recommended in this report will assist in meeting those challenges.