

OP GRAND

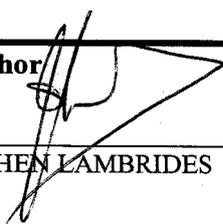
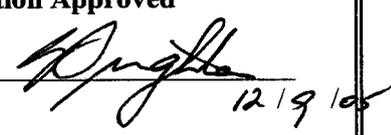
**RESOLUTION**

A. The Crime and Misconduct Commission resolves pursuant to the *Misconduct Act 2001* (the Act), to hold hearings in relation to the following terms of reference: EXHIBIT No. 1  
CLERK

- (1) To investigate:
  - (i) cases of alleged or suspected official misconduct by councillors of the Gold Coast City Council concerning:
    - (a) 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
    - (b) electoral bribery with respect to the Gold Coast City Council election in March 2004
    - (c) returns about election gifts with respect to the Gold Coast City Council election in March 2004
    - (d) declaring and dealing with conflicts of interest or material personal interests since the Gold Coast City Council election in March 2004
    - (e) any criminal offence involving the performance of their functions since the Gold Coast City Council election in March 2004
  - (ii) any related cases of alleged or suspected official misconduct by other persons.
- (2) To examine the adequacy of existing legislation in relation to the conduct of local government elections and local government business, including provisions relating to:
  - (a) misleading voters
  - (b) electoral bribery
  - (c) returns about election gifts
  - (d) declaring and dealing with conflicts of interest or material personal interests by councillors.
- (3) To make any recommendations as may be considered appropriate in relation to (2), including recommendations for any necessary changes to current policies, legislation and practices.

B. The Commission also resolves that the terms of reference for the hearings may be amended or varied as deemed appropriate by the Chairperson.

C. The Commission also resolves pursuant to section 177(2)(b) of the Act that it considers it would be contrary to the public interest to close the hearings and approves that any hearings be public hearings.

<p>Author</p>  <p>STEPHEN LAMBRIDES</p>	<p>Resolution Approved</p>  <p>12/9/05</p>
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OP GRAND

**RESOLUTION**

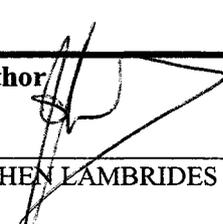
EXHIBIT No. 1  
*W. H. ...* CLERK

A. The Crime and Misconduct Commission resolves pursuant to the *Misconduct Act 2001* (the Act), to hold hearings in relation to the Gold Coast City Council with respect to the following terms of reference:

- (1) To investigate:
  - (i) cases of alleged or suspected official misconduct by councillors of the Gold Coast City Council concerning:
    - (a) 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
    - (b) electoral bribery with respect to the Gold Coast City Council election in March 2004
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    - (e) any criminal offence involving the performance of their functions since the Gold Coast City Council election in March 2004
  - (ii) any related cases of alleged or suspected official misconduct by other persons.
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  - (a) misleading voters
  - (b) electoral bribery
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- (3) To make any recommendations as may be considered appropriate in relation to (2), including recommendations for any necessary changes to current policies, legislation and practices.

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<p>Author </p> <hr/> <p>STEPHEN LAMBRIDES</p>	<hr/>	<p>Resolution Approved </p> <hr/> <p>12/9/05</p>
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**CRIME AND MISCONDUCT COMMISSION**  
**INQUIRY INTO ALLEGATIONS CONCERNING THE GOLD COAST CITY**  
**COUNCIL ELECTION HELD IN MARCH 2004**

**Submissions in support of application by Local Government Association of Qld  
(Incorporated) ("LGAQ") for leave to appear under section 181(3) of the *Crime  
and Misconduct Act 2001***

1. LGAQ is a statutory corporation constituted under section 194 of the *Local Government Act 1993*.
2. It functions as the peak representative body for all local governments in Queensland. Local governments are not automatically members of LGAQ by force of the legislation, and membership is not otherwise compulsory. However, each of Queensland's 138 local governments<sup>1</sup> is in fact a member.
3. LGAQ, representing local governments, was the primary stakeholder in consultations with the State government during the development of the *Local Government Act 1993*, and also had that role in relation to all subsequent substantive amendments of the Act including, with specific reference to the present inquiry:-
  - (a) the 1996 amendments to incorporate electoral donation disclosure requirements;
  - (b) the 2005 amendments to incorporate a requirement for a code of conduct for councillors, including provisions to enforce the code.
4. Since the inception of the current Act, LGAQ has, through:
  - (a) its legal opinions service, by which any member Council may seek an interpretation or opinion on a point of principle of general application to local governments (the answer given being then available online to all members);
  - (b) its loose-leaf section-by section legal and operational commentary service on the *Local Government Act 1993*, and
  - (c) its general dealings day-to-day with issues of councillor and corporate conduct raised with it by its members,

developed an extensive body of knowledge in relation to the legal interpretation and, just as importantly (if not more so) the practical application of the *Local Government Act 1993*, including areas where practical understanding or the logistics of practical application sometimes depart from the written word or strict

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<sup>1</sup> This figure includes the 13 Aboriginal Councils which became local governments under the *Local Government Act 1993* on 1 January 2005.

requirements of the legislation (primarily, in the latter case, for real-world operational reasons, rather than by reason of deliberate intent to break the law).

5. Some of the significant areas in this regard are those with which the present inquiry is directly concerned, such as the distinction between material personal interest and conflict of interest, the associated requirement to disclose financial interests, and the disclosure of electoral donations.
6. It is submitted that this resource base of knowledge and experience in relation to the interpretation and application of the Act has the potential to be of great assistance to the Commission. That is certainly so in relation to the second stage of the inquiry in relation to which LGAQ anticipates making extensive submissions, both in terms of the matters referred to in the preceding paragraphs, and also in terms of the practical workability of any alternate approaches or reforms which may be suggested.
7. While its role would be more limited during the first stage of the inquiry, it nevertheless seeks leave to participate in that stage of the inquiry as well. Its particular interest in this stage is merely to bring to the Commission's attention, to the extent which may be relevant or appropriate as the inquiry develops, matters concerning:-
  - (a) the interpretation adopted or understood by local governments generally of the particular statutory provisions under consideration in that first stage; and
  - (b) the way in which those provisions are applied in practice throughout Queensland generally as a point of reference for assessing the way in which they are or were applied in the particular case of Gold Coast City Council.
8. LGAQ does seek the leave of the Commission to be entitled to examine witnesses during the first stage of the inquiry, either generally or on the basis of leave being sought on specified grounds on any occasion when examination is desired. This would not be for the purpose of defending or promoting the interests of any witness or entity in terms of a conflict in evidence, or otherwise for the protection or advancement of the interests of that particular person or entity. This entitlement, if granted, would be exercised judiciously and with restraint, for the sole purpose of ensuring that available and potentially useful evidence (which has not otherwise come out) is given about matters which LGAQ considers relevant to the Commission's final determinations about-
  - (a) the interpretation and effectiveness of the current legislation and
  - (b) possible recommendations for change.
9. LGAQ is fully aware of the time constraints within which the Commission must operate in order to meet the intended timeframe for the completion of its report, particularly in relation to the first stage of the inquiry. It will seek direct involvement in the evidence-taking part of the first stage only where it considers that to be essential for the purposes just described.

10. In releasing the terms of reference for the inquiry, the chairperson observed

*'The CMC's public inquiry will have a far-reaching effect on all local councils in Queensland and will assist in preventing misconduct from occurring in the first place.'*

11. As the representative of all local councils in Queensland, LGAQ seeks leave to appear to ensure that the Commission is fully informed about what is understood, applied and practised in Queensland Councils generally in connection with the matters into which the Commission will inquire, and to provide, for the assistance of the Commission, the perspective of all local councils in Queensland as to the desirability, workability and likely effectiveness at a practical level of any legislative and related changes which the Commission may consider recommending as part of the inquiry outcomes
12. All of these matters are respectfully submitted to amply demonstrate the existence of the required "special circumstances" within the meaning of section 181(3).

**S P Fynes-Clinton**  
Counsel for LGAQ  
23.09.2005

OUTLINE OF SUBMISSIONS ON BEHALF OF GOLD COAST  
CITY COUNCIL TO THE CRIME AND MISCONDUCT COMMISSION

1. The appearance today is on behalf of the Gold Coast City Council (GCCC), being the Body Corporate, which is for both the executive and administrative arms, which includes all Councillors and Council officers ( The Council).
2. The complex nature of the Body Corporate needs to be considered. The Executive can be described as the Councillors who have legislative, administrative, and policy making powers, and acts by minute or delegation. It is different to State or Federal bodies politic - there is for example no cabinet. The administration carries into effect and enforces that legislation and direction, though some powers are given directly to it through the CEO.
3. Council considers that it has a real interest in the matters the subject of the Terms of Reference and therefore seeks leave to appear by legal representation for which it must show there are “ special circumstances” entitling it to leave. . It has submissions to make at the outset regardless of the outcome of it’s application for leave

**Special Circumstances under S 181 (3) CMA 2001.**

- A. The public inquiry was announced to be “wide ranging” .... “into allegations concerning the GCCC”
- B. The matter inquired about vitaly affect GCCC.
- C. GCCC should be able to assist the inquiry -
  - by way of provision of material to matters arising
  - by way of correctly stating procedures and practices
  - by way of indentifying and refuting statements made by witness examined should the Nuremburg like defence be used -ie. The CEO or Directors are to blame - we used blame rather than responsible purposefully, because of the huge responsibility placed on the CEO by section 1131 of LGA.

The CEO does have sole responsibility under 1131 even where he delegates, except where Council directs him not to delegate OR, importantly, given TR 1 (i) (c) - keeping register of interests under 1139 (2) or section 247.

- D. If the LGAQ be given leave to appear, even more compelling are the circumstances to be regarded as "special" when GCCC's position is being considered. The more general interest of LGAQ cannot, at least in the first part of the inquiry, be as great as GCCC's.
- E. A failure to give leave will be tantamount to a denial of natural justice in that GCCC will not know what is being said about it and would not be able to provide assistance in a timely way. Media does not rule our lives but the importance of GCCC being represented will assist in answering the frequent comments made by members of the public to Council Officers in the day to day conduct of Council business about corrupt practices which of course comes from media reports in the main.

4. Further reasons for Council's request to appear on the inquiry which are "special circumstances":

- (a) The Council is, in a preliminary way, of the opinion that the Council officers/employees are within the purview of the enquiry in T.R. 1(ii) as Council employees are clearly "other persons" who could most closely be associated with the official misconduct referred to.
- (b) Council believes that it may be of assistance in the enquiry because of practical experience Council has encountered in the conduct of Council elections. By way of exemplification, it is pointed out the Chief Executive Officer of the Council is the returning officer for the election of those aspirants who will in fact comprise the executive of the Council ("the Councillors") and hence may ultimately be the person responsible or answerable for other matters specifically referred to; namely misleading statements (during the election) and electoral bribery.

- (c) The CEO is responsible for the maintenance of the Register of Election Gifts and hence the Council has an interest in that matter.
- (d) So far as the conflict of interest question is concerned, the CEO and senior Council officers are often required to give rulings or opinions either on the floor of Council or in the committees of Council on this question, so Council is clearly vitally interested in an inquiry into this aspect of the matters referred.
- (e) As the Commission would be well aware, the CEO is obliged to report to the CMC any matters which create, in his mind, suspicion of the commission of criminal offences by Councillors. If matters arise during evidence, GCCC needs to know, as does its CEO.

#### Preliminary Points

5. Council finds some of the Terms of Reference unclear in determining the ambit of the enquiry and seeks clarification, definition or meaning of those Terms for the purposes of the enquiry (so the questions are properly addressed) as follows:-

- (i) The meaning the Commission intends to be applied to “false” or “misleading” statements of candidates [ T.R. 1 (i) (a) ]
- (ii) The Council election in March 2004 “with respect to details of any association with other candidates or entities” (emphasis added). [T.R. 1 (i) (a)]
- (iii) The definition/meaning of “**electoral bribery**”. [T.R. 1(i) (b)]
- (iv) The definition/meaning of “**election gifts**”. [T.R. 1(i) (c)]
- (v) The definition/meaning of “**other persons**” - is the golden rule of interpretation to be applied to mean **all persons other than Councillors** or is there a more limited definition/meaning to be applied, that is “**Council**

**officers/employees only**", rather than including complete strangers outside of the Council. [T.R. 1 (ii)]