The local government electoral process: discussion paper

Does existing Queensland legislation sufficiently maintain the integrity of the local government electoral process?

December 2005

CRIME AND MISCONDUCT COMMISSION
QUEENSLAND

The CMC invites key stakeholders and interested members of the public to comment on the issues raised in this discussion paper and on any other issue relevant to the topic.

Written submissions must reach the CMC by 10 February 2006.

This paper is a discussion paper only; it does not reflect any concluded views about the issues or facts canvassed.

The Department of Local Government, Planning, Sport and Recreation has also released a discussion paper that looks at a broad range of issues concerning the local government electoral process. To read the department's discussion paper, go to www.lgp.qld.gov.au.

Contents

Abbreviations

AEC	Australian Electoral Commission
CJC	Criminal Justice Commission
CMC	Crime and Misconduct Commission
DLGPSR	Department of Local Government, Planning, Sport and Recreation
EARC	Electoral and Administrative Review Commission
LGA	*Local Government Act 1993* (Qld)

Legislation

Australian

Commonwealth Electoral Act 1918 (Cwlth)

Election Funding Act 1981 (NSW)

Election Funding Regulation 2004 (NSW)

Electoral Act 1992 (Qld)

Electoral and Other Acts Amendment Act 2002 (Qld)

Electoral and Other Legislation Amendment Act 1999 (Qld)

Electoral and Referendum Amendment Act (No. 2) 1998 (Cwlth)

Local Government Act 1936 (Qld)

Local Government Act 1993 (Qld)

Local Government Act 1989 (Vic.)

Local Government Act 1995 (WA)

Local Government (Elections) Act 1999 (SA)

Local Government (Elections) Regulations 1997 (WA)

Local Government Regulation 2005 (Qld)

Tasmanian Local Government (General) Regulations 2005

Trust Accounts Act 1973 (Qld)

Overseas

Canada Elections Act 2000 (Ca)

Election Statute Law Amendment Act 2005 (Ca)

Local Electoral Act 2001 (NZ)

Political Parties, Elections and Referendums Act 2000 (UK)

Representation of the People Act 1983 (UK)

Invitation to comment

The CMC invites key stakeholders and interested members of the public to comment on the issues raised in this discussion paper and on any other issue relevant to the topic: *Does existing Queensland legislation sufficiently maintain the integrity of the local government electoral process?*

How to make a submission

Please send your written submission to:

The Gold Coast City Council Inquiry
Crime and Misconduct Commission
GPO Box 3123
Brisbane Qld 4001
Email: mailbox@cmc.qld.gov.au

Your written submission will be displayed on the CMC's website (www.cmc.qld.gov.au), unless you ask for it not to be displayed. Your identity may be suppressed if you request it.

All submissions must reach the CMC by 10 February 2006.

Attending the public hearing

The CMC will be conducting a public hearing on this topic early in 2006. If you are willing to attend to present your views, please say so in your submission and provide your contact details. (*Note:* The CMC will attempt to obtain a cross-section of views. However, attendance will be limited, and the CMC retains the right to decide who will be asked to present.)

Information sharing with the DLGPSR

The Department of Local Government, Planning, Sport and Recreation (DLGPSR) has also released a discussion paper to seek the views of the Queensland community on a broad range of issues, including election gift disclosure requirements and whether legislative changes are required to improve the current electoral arrangements. The department's discussion paper and questionnaire, which can be found on its website (www.lgp.qld.gov.au), form part of a regular review conducted after local council elections.

The CMC and the department will share relevant submissions, and the department has indicated that it will take into account any CMC recommendations for amendment to the *Local Government Act 1993*.

This discussion paper in context

In September 2005 the CMC released terms of reference for a wide-ranging public inquiry into allegations concerning the Gold Coast City Council. This discussion paper relates to terms of reference 2 and 3, which reflect the CMC's obligation to help prevent official misconduct in the Queensland public sector.

The terms of reference were:

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 and material personal interests by councillor.

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.

Public hearings ran between October and December 2005. The CMC is now analysing information collected in relation to the Gold Coast City Council, and is examining in more detail certain issues relating to the conduct of local government elections in general.

The CMC will be making recommendations for any changes to current policies, legislation and practices considered necessary.

Background to the Gold Coast City Council Inquiry

In 1991, the predecessor organisation of the CMC, the Criminal Justice Commission (CJC), held a public inquiry into payments made by property developers to aldermen and candidates contesting Gold Coast local government elections. The legislation then governing local government matters, the *Local Government Act 1936* (Qld), did not require members of local authorities or candidates for local office to disclose gifts they received for political purposes.

The CJC refrained from making detailed recommendations on this issue in 1991, because the issue was then also being considered by the Electoral and Administrative Review Commission (EARC).[1] However, the CJC did recommend that legislation be introduced to make it compulsory for candidates to disclose donations, and that elected officials be required to disclose other gifts received. The CJC recommended that there be harsh and enforceable penalties for failure to disclose, and suggested that the forfeiture of a seat would be the most effective sanction.[2]

In its report, EARC recommended that candidates and political parties contesting state, local government and community council elections be required to disclose political donations they received.[3] While EARC recommended that the disclosure of donation provisions recommended at a state level should also apply to candidates at local government elections, its primary focus was on Legislative Assembly elections.

EARC's report and the *Commonwealth Electoral Act 1918* provided the basis for the disclosure provisions in the *Electoral Act 1992* (Qld) applicable to state elections, which in turn were used as a template for the disclosure provisions inserted in 1996 in the *Local Government Act 1993* (Qld). The LGA was further amended in 1999 to extend the disclosure requirements to the Brisbane City Council and to groups of candidates.[4]

1 *Report on a public inquiry into payments made by land developers to alderman and candidates for election to the City of Gold Coast*, 1991, p. 91.
2 ibid., p. 92.
3 *Report on investigation of political registration of political donations, public funding of election campaigns and related issues*, 1992, p. 19.
4 *Local Government and Other Legislation Amendment Act 1999*.

Issues for consideration

The CMC invites submissions on the issues listed below and on any other issue relevant to the terms of reference (see page 2 of this discussion paper).

- **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?*
- **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?*
- **Electoral bribery**
  - » *Is the existing law relating to electoral bribery in local government elections appropriate?*
- **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?*
- **Fundraising**
  - » *Should the LGA be amended to clarify the disclosure requirements for monies received through fundraising activities?*
- **Lodgment date for returns**
  - » *Before an election, should candidates have to disclose elections 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?*
- **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?*
- **Donations via solicitors'/accountants' trust accounts**
  - » *Should there be specific reference to solicitors' /accountants' trust accounts in the LGA? If so, in what form?*
- **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?*

- **Anonymous donations**
  - » *Is the current penalty for accepting anonymous donations adequate?*
  - » *Should the acceptance of anonymous donations above the prescribed amount be an offence?*
- **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?*
- **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?*
- **Loans to candidates**
  - » *Should the LGA be amended to require candidates to disclose details of loans received?*
- **Enforcement**
  - » *Is the existing system of enforcing the disclosure provisions of the LGA operating effectively, and can it be improved?*
- **Penalties**
  - » *Are the current penalties for offences in relation to election returns appropriate?*
- **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?*
- **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?*

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 provisions for local government candidates may be the same as those for candidates in state and federal elections — but the political environments in which they operate are very different.

The nature of local government is such that a donor can achieve more influence with less money at a local level than at a state level. This is partly because of the different legislative structures, but also because candidates in a local government election can markedly increase their chance of being elected by spending a relatively small amount of money promoting themselves. The Tweed Shire Council Public Inquiry found that, because the average expenditure by local government candidates is low, even modest donations can provide candidates with electoral advantages.[5]

Tweed Directions, the syndicate found to have influenced the outcome of the 2004 Tweed Shire Council elections on behalf of property developers, noted in their campaign strategy documents:

> Local authority elections do not have the intense media scrutiny of a federal or state election where policies or groups and candidates' personalities, records of government, etc. are analysed and highlighted. Consequently, a large percentage of voters simply vote for someone whom they recognise.[6]

Political parties do not contest most local government elections.[7] This can allow an ostensibly independent candidate certain tactical advantages. Unlike party-endorsed candidates, for example, they are not bound to a party platform; it is comparatively easy for them to disguise their views on issues and make expedient statements in an attempt to improve their standing with voters. In elections contested by political parties, a party can direct additional funds to its candidate if necessary to compete against a better-funded opposition candidate. In elections contested by independents, on the other hand, it is easy for well-funded independent candidates to outspend other independent candidates for the purpose of promoting themselves to the electorate. (Candidates at local government elections do not generally spend large amounts of money campaigning, and a candidate can therefore make a big impact on the electorate by spending more than an opponent spends.) Independents, who have to solicit their own funding and have no party to back them, are often helpless to financially compete with a well-funded opponent.

The rudimentary nature of local government election campaigning can allow an interest group that is willing to fund a sophisticated campaign to effectively buy itself votes on a council. Because local governments make planning decisions, the interest groups that have the most to gain or lose from such decisions are those involved in developing property. Almost half of all donations given to candidates at the 2004 Gold Coast City Council elections came from those involved in, or associated with, the property development industry.

The Tweed Shire Council Public Inquiry found that the significance of electoral donations is much greater at council elections than at state or federal elections, because the range of policy areas in the domain of councillors is quite small in comparison with other levels of government. But the fusion of legislative and executive functions within local government means that individual councillors, or associated groups of councillors, can establish policies

5 *Tweed Shire Council Public Inquiry Second Report*, August 2005, p. 951.
6 *Tweed Shire Council Public Inquiry First Report*, May 2005, p. 307.
7 Notable exceptions are the Brisbane City Council and Townsville City Council.

or take actions that can provide immediate and substantial material benefits to those who support their campaigns.[8]

There is an argument that local government should have unique disclosure laws to take account of its particular responsibilities, and to ensure that voters know what interest groups have supported a candidate's election campaign.

It appears to be conventional wisdom that, in most local government areas, anyone wanting to become a councillor needs to indicate that they will be an independent community representative not beholden to any particular interest group. The evidence received at the CMC public hearings and at the Tweed Shire Council Public Inquiry suggests that it is all too easy for local government candidates not endorsed by a political party to mislead the electorate ahead of an election about their associations with interest groups and their funding sources.

A candidate's funding sources are revealed once election gifts are disclosed after the election. By then, any unethical conduct by a successful candidate will only serve to undermine the willingness of the community to remain involved with the council. The general acceptance of the role of local governments and the exercise of local government powers rests on public confidence. The role of local government is not always easy, and unpopular decisions may sometimes need to be made, particularly in relation to planning and development. To maintain public confidence and the peaceful acceptance of unpopular decisions, local governments must maintain both the reality and the appearance of integrity.

One of the key reasons behind having the same disclosure provisions in the Queensland *Electoral Act 1992* as in the *Commonwealth Electoral Act 1918* was to ensure that state branches of federal political parties were not burdened with an unnecessary duplication of administrative systems.[9] There was recognition that most candidates in state and federal elections were endorsed by three registered political parties.

Given that political parties do not participate in most local government elections in Queensland, there should be little additional burden on political parties if the disclosure laws in the LGA were to differ from those in the Electoral Act.

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?**

This inquiry required the CMC to consider whether candidates had made public denials about receiving donor funding for their election campaigns, knowing the denials to be untrue; and whether candidates were independent of one another or independent of a common funding source as some publicly claimed to be. For example, one candidate at the March 2004 Gold Coast City Council election informed the inquiry that, in the period leading up to the election, he had told media that he had been funding his own campaign, when the evidence suggests he had received thousands of dollars in election gifts.

8 *Tweed Shire Council Public Inquiry Second Report*, August 2005, p. 951.
9 Parliamentary Committee for Electoral and Administrative Review, *Report on public registration of political donations, public funding of election campaigns and related issues*, Legislative Assembly of Queensland, November 1993, p. i.

Section 394(2) of the LGA states that a person must not, for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact about the personal character or conduct of the candidate. It is arguable that this section not only prohibits false statements made about a candidate by another person but also false statements candidates may make about themselves.

The Tweed Shire Council Public Inquiry found that the nine groups that made up the Tweed Directions team of candidates in the 2004 election lied to the community about their true identity. They deliberately misled the community by proclaiming that they were independents when in fact they had strong operational links to Tweed Directions and to each other, and were almost wholly funded by Tweed Directions.[10]

Most Australian jurisdictions have laws prohibiting the publication of 'false', 'defamatory' or 'misleading' material — except Tasmania, which deals with the issue by prohibiting the distribution of election advertising that contains the name, photograph or likeness of a candidate without the candidate's written consent. The potential flaw in the Tasmanian provision is that, while it may prohibit others from publishing false statements about the character or conduct of a candidate, it does not prevent a candidate publishing false statements about their own character or conduct. Section 28 of the South Australian *Local Government (Elections) Act 1999* states that, if election material contains a statement purporting to be a statement of fact and the statement is inaccurate and misleading to a material extent, the person who authorised, caused or permitted the publication of the material is guilty of an offence.

Electoral bribery

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

The CMC's public hearings have attempted to explore whether there was any connection between a person's decision to become a candidate at the March 2004 Gold Coast City Council election and an offer of funding. That is, were certain people offered election gifts because they were candidates, or did they become candidates because they were offered election gifts?

Section 385 of the LGA specifies:

> (2) A person must not—
>
> (a) ask for or receive; or
>
> (b) offer, or agree, to ask for or receive;
>
> property or a benefit of any kind (whether for the person or someone else) on the understanding that the person's election conduct will be influenced or affected.
>
> (3) A person must not, in order to influence or affect another person's election conduct, give, or promise or offer to give, property or a benefit of any kind to anyone else.

The Act defines 'election conduct' as:

> (a) the way in which the person votes at an election; or
>
> (b) the person's nominating as a candidate for an election; or
>
> (c) the person's support of, or opposition to, a candidate or a political party at an election.

All other states have similar provisions prohibiting a person from improperly influencing a candidate or a voter to act in a certain manner.

10 *Tweed Shire Council Public Inquiry First Report*, May 2005, p. 96.

Most local government candidates do not run on party tickets and therefore meet most of their campaign costs either from their own funds or from the gifts of others. For new candidates, campaigning may also mean incurring the cost of taking time away from their normal employment. As there is a relationship between how much money candidates spend during a campaign and their chances of winning an election, candidates may want to know what funds are likely to be available before they decide to nominate. Discussions between potential candidates and potential donors concerning the availability of election funding may lead to either party breaching section 385 of the LGA.

The interpretation of the term 'electoral bribery', as used in the *Electoral Act 1992* (Qld), is discussed in detail in a 1996 CJC publication,[11] the relevant pages of which can be found on the CMC's website.

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?**

Candidates have to disclose gifts they receive within defined periods. While candidates at the preceding election have to disclose gifts they received throughout the four years leading up to the new election, the disclosure period for new candidates starts only when they announce their candidacy or nominate as a candidate. This allows a new candidate to choose when the disclosure period starts. South Australia has similar provisions. In New South Wales the disclosure period for new candidates begins 12 months before the day on which the candidate was nominated for election; in Western Australia, six months before a candidate's nomination. In Victoria, the disclosure period for new candidates runs from 30 days after the last election, effectively covering the entire period between elections. The disclosure period in Tasmania runs from 30 days before notice of the election.

Candidates in Queensland local government elections also have to disclose gifts they receive up until 30 days after an election. Other jurisdictions capture post-poll donations in periods ranging from 60 days to six months after an election. The exception is Western Australia, where unsuccessful candidates must disclose gifts received up until election day and successful candidates must disclose gifts received up until they take their oath of office.

Fundraising

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

Some candidates in the March 2004 Gold Coast City Council election raised significant amounts of money from fundraising activities. For example, certain candidates held functions where invited guests paid a ticket price in return for food, drink and entertainment. One

11 CJC, *Report on an investigation into a memorandum of understanding between the coalition and QPUE and an investigation into an alleged deal between the ALP and the SSAA*, December 1996. pp. 6–44.

candidate raised $58 000 from hosting a fundraising lunch. The available evidence indicates that the food and beverage bill for this function was approximately $3200.

Candidates have to declare gifts as defined by the LGA. The LGA (s. 414) defines a gift as:

> the disposition of property or the provision of a service, without consideration or for a consideration less than the full consideration ...

It is arguable that fundraising activities by a candidate would constitute a disposition of property, which in turn would require a candidate to disclose the proceeds of fundraising activities in their election return. If, within the disclosure period, a candidate receives a gift or gifts from a person over $200 in value, the candidate has to declare the total value of the gift or gifts received and the name and residential address of the person who gave them. Some people invited to fundraising activities held by candidates at the March 2004 Gold Coast City Council election purchased attendance tickets totalling more than $200 in value; some appear to have purchased tickets totalling up to $5000 in value.

The DLGPSR publication *Disclosure of election gifts: guidelines for candidates and councillors for local government elections* states at page 15:

> The following items are not required to be reported in the return:
> - proceeds of raffles, dinners and other similar fundraising activities conducted by a candidate or a candidate's campaign committee

The department informed the CMC that this text was included in the handbook because of a similar statement in an Electoral Commission of Queensland handbook declaring that the 'proceeds of raffles, dinners and other similar fundraising activities you or your campaign committee conduct' were not required to be disclosed.[12]

The definition of 'gift' in the *Electoral Act 1992* (Qld) is the same as the definition of 'gift' in the LGA.

The disclosure provisions operating in New South Wales and Victoria make specific mention of monies a candidate receives through fundraising activities.

In New South Wales amounts paid by a person who obtains a benefit from a fundraising venture or function is included in the definition of political contributions that have to be disclosed by candidates — more than $1000 at a group of candidates' fundraising function or more than $200 at a single candidate's fundraising function.[13]

The Victorian legislation includes the making of a payment or contribution at a fundraising function (over the prescribed amount of $200) within its definition of a gift.[14]

Canadian law requires the disclosure of the difference between the price of the ticket for a fundraising activity and the fair market value of what the ticket entitles the bearer to obtain.[15]

The Representation of the People Act 1983 (UK) provides that money paid to a fundraising activity is a donation if the payment exceeds the commercial value of the goods or services provided.[16]

The Australian Electoral Commission (AEC) considers that the question of whether a payment to attend or sponsor a fundraising dinner or other organised event is a donation is a grey area under the *Commonwealth Electoral Act 1918*. The AEC has also raised concerns that functions

12 *Election funding and financial disclosure handbook, volume 2: for candidates not endorsed by registered political parties*, p. 9.
13 *Election Funding Act 1981* (NSW), s. 87(1AA).
14 *Local Government Act 1989* (Vic.), s. 2.
15 Canada Elections Act, s. 408.
16 Electoral Commission, United Kingdom, *Election expenditure and donations: guidance for candidates and election agents*, p. 33.

can be used as a means of disguising donations. For example, a donation could be provided to another person or organisation who uses those funds to purchase a table at a fundraising event. The AEC has recommended that the Commonwealth Electoral Act be amended to deem all payments at fundraisers to be donations.[17]

The lodgment date for returns

- **Before an election, should candidates have to disclose the 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?**

Queensland and all other states except Western Australia require election gift returns to be lodged after an election. In Western Australia disclosures have to be made within three days of the receipt or promise of the gift once a candidate has nominated; and the candidate must disclose, within three days after nominating, any gifts received or promised in the period six months before nomination.[18]

Queensland councillors standing for re-election would, in addition to lodging an election return, have to record any gifts of $500 or more on their register of interests.[19] Councillors must also record on their register any financial or non-financial interest that could raise, or appear to raise, a conflict of interest for them or any related person of whom they are aware. While a register of interests may give some insight into election gifts that existing councillors have received before an election, it would only apply to existing, not prospective, councillors. Also, because councillors have three months in which to amend their register, changes to a councillor's interests in the three months leading up to an election could be recorded ***after*** the poll is held.[20]

The Tweed Shire Council Public Inquiry highlighted that the voting public have a right to know what groups or individuals are supporting candidates, but that the disclosure of election gifts after an election prevents voters from exercising this right in any practical way.[21] Voters need access to the information ***before*** the election if they want to take account of the source of candidates' election gifts when deciding whom to vote for. The general interest in the origin of election gifts before the March 2004 Gold Coast City Council election suggests that voters *are* interested in candidates' funding sources.

The Tweed Shire Council Public Inquiry recommended that the law in New South Wales be changed so that each party, group or individual be required to lodge an election return five days before an election, and that no donation be accepted for 12 months after the election.[22] The 12-month ban on receiving donations after lodgment of the election return would prevent the situation where a candidate incurs costs associated with an election campaign on the promise that a donor will reimburse the candidate once the election is over.

17 Australian Electoral Commission, submission to the Joint Standing Committee on Electoral Matters Inquiry into Election Funding and Disclosure, 17 October 2000, Parts 8.2–8.7.
18 Local Government (Elections) Regulations 1997 (WA), r. 30(D).
19 Local Government Regulation 2005, Schedule 1 Part 10.
20 ibid., Schedule 1 Part 15.
21 *Tweed Shire Council Public Inquiry Second Report*, p. 88.
22 ibid., p. 950.

Other jurisdictions have attempted to introduce measures to provide voters with up-to-date information on the origin of election candidates' funding. The Election Statute Law Amendment Act 2005 (Ca), which passed through the Legislative Assembly of Ontario, Canada (the equivalent of the Legislative Assembly of Queensland) earlier this year, includes provisions to introduce real-time disclosure of donations, and requires that those contributions be made public through the internet. The legislation applies to both election and non-election periods, and requires donations to be reported to the Chief Election Officer at Elections Ontario within five business days. The Chief Election Officer posts the reports on the internet within five business days of receiving them.[23]

Groups of candidates

- **Should any person who is not a member of a 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?**

A candidate at a local government election can run as an individual, as an endorsed candidate of a registered political party, or as part of a group of candidates. The LGA (s. 426) defines 'a group of candidates' as:

> a group ... formed to promote the election of the candidates for a particular local government, but does not include a political party or an associated entity.

Special disclosure provisions apply to groups of candidates. A candidate who is part of a group of candidates must provide a return after the election stating:

- the names of the candidates forming the group
- the name, if any, of the group
- the total value of all the gifts received by the group
- the number of people who made the gifts
- the relevant details of each gift made to the group by a person if the total value of all gifts made by the person to the group during the disclosure period is $200 or more.[24]

The practical effect of this provision is that, in a group of candidates, the members of the group must declare all gifts that they and their campaign committee receive during the disclosure period.

The CMC's public hearings heard that in 2003 and 2004 two Gold Coast councillors were responsible for distributing solicited donations to selected candidates for the March 2004 Gold Coast City Council election.

It might be impossible to say whether the candidates who received this election funding are conscious of owing any obligation to the councillors who distributed the funding. It could be argued, however, that, if the recipients hoped to obtain election funding from similar sources

23 M Bryant, Election Statute Law Amendment Act, First Reading Speech, Debates of the Legislative Assembly of Ontario, 7 March 2005, p. 5618.

24 LGA, s. 427A.

again, or at the very least not face an election opponent funded by these sources, those recipients would want to stay in the councillors' favour.

The fact that certain candidates received money at the discretion of councillors is not apparent from the candidates' election returns. A financial relationship between the candidates would have been revealed if these candidates had lodged a group return. Assuming that these candidates were not a 'group of candidates' for the purposes of the LGA, it may be that the LGA requires amendment to ensure disclosure of a situation where one candidate solicits and distributes campaign funds to other candidates.

One means of achieving this level of disclosure would be to only allow a candidate to solicit election funds on behalf of another candidate if those candidates were part of a group of candidates. This may require groups of candidates planning to contest elections to register as a group before the election. It may also involve a revision of the definition of a 'group of candidates'.

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 public hearings have heard that some candidates at the March 2004 Gold Coast City Council election received election gifts through solicitors' trust accounts. The LGA requires candidates who receives gifts out of a trust fund to disclose the names and residential or business addresses of the trustees of the fund and the title or other description of the trust fund in their return. The inquiry has heard some discussion about whether a solicitor's trust account falls within the definition of a trust fund in the LGA. The DLGPSR publication *Disclosure of election gifts: guidelines for candidates and councillors for local government elections* indicates that donations that come to a candidate from a solicitor's or accountant's trust account are not be treated as though they came from a trust fund. The guidelines state at page 16:

> Where a gift is made by a client through a solicitor's/accountant's trust account, the return must include the name and address of the client who made the donation. The relationship between solicitor/accountant and client is that of agent and principal. For the purposes of the Act's disclosure provisions, a gift paid by an agent at the direction of his/her principal is a gift made by the principal and not the agent.

The Electoral Commission of Queensland publication *Election funding and financial disclosure handbook*, volume 2: *for candidates not endorsed by registered political parties* provides similar information to candidates but gives a fuller explanation. It states (p. 11):

> Care needs to be taken when you receive gifts to establish who is the real donor, especially on receipt of a gift from a firm of solicitors or accountants.
>
> Where the relationship between solicitor and client is that of agent and principal, the money received by a solicitor on behalf of his/her client is held by the solicitor as the client's agent and as trustee of the money in relation to the client. As the client's agent, the solicitor is bound to follow the client's directions in relation to the money. The solicitor does not, therefore, have the usual powers of discretion of a trustee. A gift paid by an agent (that is, the solicitor or accountant) at the direction of his/her principal to a candidate would, for the purposes of the Act (the *Electoral Act 1992*) be a gift made by the principal and not the agent.
>
> The 'person who made the gift', and thus the person whose name and address is required to be disclosed in your return, is the client. In this context, a gift by way of a cheque drawn on a trust account is prima facie a gift from an undisclosed principal and not the drawer of the cheque.
>
> Gifts received from undisclosed principals are unlawful (as described below) and forfeited to the State under section 306(5).

Some claims have been made during the public hearings that the term 'trust fund' used in section 414 of the LGA does apply to solicitors' or accountants' trust accounts. Although the statements in the respective handbooks appear to have much to commend them, the CMC has refrained from forming a definitive position on this issue, pending the receipt of submissions in the investigative hearings. It is relevant, nonetheless, to consider whether there should be specific reference to solicitors' or accountants' trust accounts in the LGA.

The origin of candidates' donations

» **Is there any good reason for allowing local government election candidates to accept donations from unincorporated associations, trust funds or foundations that have sourced donations from individuals or companies?**

» **Should candidates in local government elections be allowed only to accept election gifts directly from the person making the gift?**

The Tweed Shire Council Public Inquiry and the Gold Coast City Council Inquiry have heard that syndicates were established before the 2004 elections in those local government areas to collect and distribute money to certain candidates.

The law relating to the disclosure of election gifts by candidates requires the source of donations to be identified. As well as disclosing the value of a gift and when the gift was made, a candidate must disclose:

- the name and residential or business address of the person who made the gift, or
- for a gift purportedly made on behalf of the members of an unincorporated association, the association's name and (unless the association is a registered industrial organisation), the names and residential or business addresses of the members of the executive committee (however described) of the association, or
- for a gift purportedly made out of a trust fund or out of the funds of a foundation, the names and residential or business addresses of the trustees of the fund or other people responsible for the funds of the foundation, and the title or other description of the trust fund or the name of the foundation.

Similar requirements are made of candidates in New South Wales, Victoria and South Australia. Tasmania requires only disclosure of expenditure. Western Australia requires a candidate to disclose the true source of a gift if the source is known.

It is arguable that candidates should know the true source of all donations they receive when they receive them. Candidates can then make a judgment as to whether they want to be associated with a donor. Knowing the true source of donations would also allow candidates to account honestly to the public as to the sources of their campaign funds.

Anonymous donations

- **Is the current penalty for accepting anonymous donations adequate?**
- **Should the acceptance of anonymous donations above the prescribed amount be an offence?**

If there is a requirement for candidates to identify donors who give a gift valued at more than a prescribed amount, it follows that it would be unlawful for candidates to accept gifts of a value over the prescribed amount without knowing the identity of the donor. Section 428 of the LGA provides that it is unlawful for a candidate to receive a gift valued at $200 or more without knowing the relevant details of the donor. If a candidate breaches section 428, an amount equal to the value of the gift is payable by the candidate to the local government, and may be recovered by the local government through the courts. However, it is not an offence.

Similar provisions exist in New South Wales, Victoria and South Australia, although in Victoria a breach of the relevant provision requires the candidate to pay an amount equal to twice the value of the gift. Western Australia provides for a $5000 fine for the failure to identify the source of a gift, but allows a statement on the disclosure of gifts form that the true source of the gift is unknown to the candidate. The Representation of the People Act 1983 (UK) provides a maximum of one year's imprisonment for accepting a donation over the prescribed amount from an unidentifiable source.[25]

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 term 'third party' refers to a person (or entity) that is not a candidate, a political party or a body or trust controlled by, or operates for, the benefit of a political party, but that incurs expenditure for a political purpose in relation to a local government election.[26] For example, the public hearing has heard that, during the period leading up to the March 2004 Gold Coast City Council election, a fictitious group called Southport Citizens for Change circulated material critical of the councillor in division 6 to households in that division.

Third parties can influence the outcome of a poll by supporting some candidates and financing negative campaigns against others. The indirect support of a candidate by a third party is sometimes referred to as parallel campaigning.

The Tweed Shire Council Public Inquiry reported that the third party Tweed Directions, which participated in the 2004 Tweed Shire Council elections, spent $307 000 on negative parallel

25 The Electoral Commission, United Kingdom, *Election expenditure and donations: guidance for candidates and election agents,* p. 43.
26 LGA, s. 430(1)(a).

campaigns attacking candidates whom Tweed Directions did not support, while funding its own candidates to run positive campaigns.[27] It may be said that it would have been in the public interest for voters to know, when making their voting choice, that a third party representing specific interests was responsible for certain campaign advertising.

In Queensland, if a third party spends more than $1000 for a political purpose in relation to an election, the third party has to provide a return three months after the election disclosing any gifts of over $1000 received (that are to be used for a political purpose) in the period from 30 days after the preceding election until 30 days after the current election.

New South Wales is the only other state with specific provisions requiring third-party disclosure in relation to local government elections. However, in New South Wales a third party has to disclose not only where its funds came from but also how it spent that money.

The prescribed amount of $1000 is taken from the *Electoral Act 1992* (Qld). The $1000 threshold may tempt some donors to split donations among family members or employees or different companies. The LGA (s. 147) partly safeguards against this by providing that body corporates related to each other shall be regarded as a single corporation for the purpose of determining whether a donation above a prescribed amount has been made.

As with individual candidate returns, it is arguable that the public cannot exercise any meaningful consideration of which candidate to support unless there is full disclosure by third parties ***before*** *an election* of their funding sources and expenditure.

Even if third parties do lodge returns before an election, it may still be difficult to connect a third party to particular advertising, because advertisements, handbills, pamphlets and notices published during an election period do not have to identify the organisation that is responsible for them. The publication only has to identify an individual who authorised the material. This could make it difficult for the public to know what third parties are behind parallel campaigns.

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?**

As noted earlier, candidates at local government elections do not generally spend large amounts of money campaigning, and a candidate can therefore make a big impact on the electorate by spending more than an opponent spends. One witness has told the public hearing that, during a discussion about possible campaign funding to support his candidacy in a particular division, he was told by a potential supporter that the *candidate basically with the most money would win the election*. While this does not necessarily hold true for incumbent councillors, who can be re-elected on modest budgets, there seems to be some justification for the statement where new candidates are concerned.

27 *Tweed Shire Council Public Inquiry First Report*, May 2005, pp. 18, 30, 271.

Candidates at local government elections do not have to report on what they have spent campaigning, so there is no way of knowing exactly what candidates at the March 2004 Gold Coast City Council elections spent on their campaigns. The amount of election gifts received by a candidate does not always give a true indication of what a candidate spent, as candidates only have to declare gifts received from others and not their own contributions.

Legislated limits on election expenses at federal and state levels now only exist in relation to Victorian and Tasmanian upper house elections.

Section 22 of the Tasmanian Local Government (General) Regulations 2005 places limits not only on how much can be spent by local government candidates but also on what they can spend it.

Tasmanian local government candidates cannot purchase, or permit to be purchased, advertising time on television or radio in relation to the election of the candidate if the advertising time during the relevant period (a period of approximately 11 weeks before the election) is likely to exceed:

(a) 10 minutes on television

(b) 50 minutes on radio

(c) 2 pages of advertising in a daily newspaper circulating in the municipal area

(d) 5 pages in any other newspaper circulating in the state.

A person must not purchase advertising space in relation to the election of a candidate without the written authority of that candidate. The total expenditure for the purchase of advertising time or space by or on behalf of a candidate must not, for a single election, exceed a total amount of $5000 for a councillor or $8000 for a mayor or deputy mayor.

The New Zealand Local Electoral Act 2001 (s. 111) restricts election expenditure according to the population of the local government area. For example, the election expenses of a candidate in a local government area with a population of less than 5000 must not exceed $3500, while the expense limit for a candidate in a local government area that has a population of 250 000 or more is $70 000.

The estimated resident population of the Gold Coast local government area at 30 June 2004 was 469 214 over 14 electoral divisions.[28] If the New Zealand restriction were to be applied to the 2004 Gold Coast City Council elections, the two candidates most affected would be the mayoral candidates Mr G Baildon and Mr R Clarke, who both reportedly spent over $200 000 on their campaigns. Three division candidates — Mr D Power, Mr R Molhoek and Mr B Rowe — also declared donations of over $70 000, which they presumably spent on their campaigns.

The Representation of the People Act 1983 (UK) also places expenditure limits on individual candidates in local government elections. For mayoral candidates outside London, the limit is £2000 plus 5p per elector, and for ordinary candidates £600 plus 5p per elector.[29] 'Per elector' means the number of people on the electoral role for the electoral area.[30] The number of electors in local government areas outside London range from less than 2000 to several hundred thousand in the larger cities.[31] Applying this measure to the 2004 Gold Coast City Council elections would have allowed mayoral candidates to spend approximately $30 000 on their campaigns (as opposed to up to $250 000 reportedly spent by mayoral candidates

28 Queensland Government, Office of Economic and Statistical Research, *Estimated resident population by local government area*, <www.oesr.qld.gov.au>.

29 Electoral Commission, United Kingdom, *Election expenditure and donations: guidance for candidates and election agents*, p. 36. These expenditure limits are separate from those in the Political Parties, Elections and Referendums Act 2000 (UK) controlling expenditure by political parties.

30 Ibid, p. 47.

31 Office of National Statistics (UK), *Electoral statistics (UK) — parliamentary and local government electors*, December 2004, <www.statistics.gov.uk>.

in the 2004 Gold Coast Council election) and division candidates approximately $3400 (as opposed to up to $70 000 reportedly spent by division candidates in the 2004 Gold Coast Council election).[32]

A similar system of calculating allowable election expenses by multiplying the number of electors in an electoral area by an amount of money also operates at federal and provincial levels in Canada. Some allowances are made for sparsely populated electorates.[33]

The CMC public hearing heard evidence that incumbent councillors do not have to spend as much money promoting themselves during election campaigns as other candidates, because the incumbents are already known in the community. This may suggest that limits on election expenditure could work to the advantage of incumbent councillors by preventing new candidates from spending the amount of money needed to promote themselves to the electorate to the extent necessary to allow them some chance of winning an election.

Loans to candidates

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

Candidates may also choose to fund their campaign expenses by borrowing money from others.

The *Electoral Act 1992* (Qld) requires candidates for state government elections to disclose all loans (other than from a financial institution) that they have received during the disclosure period and certain details about the origin and terms of those loans over $200.[34] The amendments to the Electoral Act requiring the separate disclosure of loans were inserted in 2002, and followed similar amendment to the *Commonwealth Electoral Act 1918*.[35] Among the reasons given for these amendments was to close the loophole where a loan is forgiven and thus ultimately becomes a gift, and to prevent loans from being received from anyone other than a registered financial institution unless certain information, such as terms and conditions of the loans, was provided.[36] This would allow gifts masquerading as loans provided on uncommercial terms to be identified.

These requirement for candidates to disclose loans are not replicated in the LGA.

The DLGPSR publication advises candidates that they do not have to report loans in their election return, as long as they are evidenced as loans.[37] The term 'evidenced as loans' has some relevance in the state and federal context, as loans have to be declared separately. Because there is no reference to loans in the LGA, the term has no relevance to local government elections.

32 These figures are calculated using the 26 March 2004 $A/UK £ sterling exchange rate of 0.4087 and assuming a mayoral voting population of 220 000 and a division voting population of 16 000.

33 See, for example, Chapter 5 of the Elections Canada publication *Election handbook for candidates, their official agents and auditors*, available at <www.elections.ca>.

34 Sections 304A and 306A.

35 The *Electoral Act 1992* (Qld) was amended by the *Electoral and Other Acts Amendment Act 2002* (Qld). The *Commonwealth Electoral Act 1918* was amended by the *Electoral and Referendum Amendment Act (No. 2) 1998* (Cwlth).

36 Legislative Assembly of Queensland — Legal, Constitutional and Administrative Review Committee, *Issues of Queensland electoral reform arising from the 1998 state election and amendments to the Commonwealth Electoral Act 1918,* Report 23 May 2000, p. 37.

37 *Disclosure of election gifts: guidelines for candidates and councillors for local government elections*, p. 15.

Enforcement

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

Whatever the regulatory system, it will require some means of enforcing compliance.

The chief executive officer of a local authority is responsible for receiving and maintaining a register of election returns. This suggests that it is incumbent on chief executive officers to ensure that all necessary returns are lodged and that the returns are completed properly. The chief executive officer is usually also the returning officer for a local government election. When the disclosure provisions were put in the LGA, it was considered that the CMC (or the CJC, as it was then) would investigate allegations that a person had submitted a false or misleading return.[38] The CMC has jurisdiction to investigate allegations of criminal conduct by councillors, including alleged breaches of section 436 of the LGA, but has limited jurisdiction to investigate allegations against unsuccessful candidates or third parties.

A council's chief executive officer is also the receiving point for election returns in Victoria, Western Australia and South Australia. The Electoral Commissioner receives election returns in Tasmania and decides whether to commence proceeding about electoral offences generally.

In New Zealand an electoral officer appointed by the local authority is responsible for running the election, including receiving returns of election expenses, investigating possible offences and reporting alleged offences to the police.

In New South Wales returning officers are appointed by the Electoral Commissioner for New South Wales, who has overall responsibility for the conduct of local government elections in that state. Under the provisions of the *Election Funding Act 1981* (NSW) the Electoral Commissioner also holds office as Chairperson of the Election Funding Authority. Among the responsibilities of the Election Funding Authority is dealing with declarations by parties, groups, candidates and third parties of political contributions they receive and election expenditure they incur in respect of local government elections. The Election Funding Act (s. 110) provides the Election Funding Authority with certain powers of inspection to investigate contraventions of the Act.

The LGA requires candidates to keep relevant records, including particulars that must be stated in an election return. The LGA does not prescribe which records are to be kept, as is the situation in New South Wales. In that state candidates must keep a receipt book, an acknowledgment book (recording details of gifts received), a cheque book, a petty cash book, a cash book or receipts cash book and a payments cash book; failure to keep these records is an offence punishable by a $2200 fine.[39] If the enforcement regime in Queensland were to be changed, some consideration would need to be given to what records candidates must keep to assist in checking compliance.

38 Ms D McCauley, Local Government Legislation Amendment Bill 1996, Second Reading Debate, Queensland Parliamentary Debates, 28 November 1996 at 4663.

39 Election Funding Regulation 2004 (NSW), s. 22.

Penalties

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

The failure to lodge an election return as required under the LGA can incur a penalty of up to $1500. The lodgment of an election return with false or misleading information can incur a penalty of up to $7500 for a candidate or $3750 for others. A person found guilty of an LGA offence in relation to election returns may also be ordered by a court to pay to a local government an amount equal to the amount of the value of any gifts made to, or for the benefit of, the person and not disclosed in a return (s. 436). A councillor convicted of an LGA offence in relation to their election return is disqualified from office and cannot become a councillor again for four years, unless the court orders to the contrary (s. 222).

The maximum penalties available in other states for return offences in relation to local government elections are listed below.

	NSW	Vic.	SA	Tas.	WA
Failure to lodge return	$11 000	$5115.50	$10 000	$3000	$5000
False or misleading information in return	$11 000	$5112.50	$10 000	$1000	$5000

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?**

The CMC's public hearings have considered whether councillors who received most or all of their election gifts from donors associated with the property development industry would be compromised if they participated in decisions involving those donors. The Tweed Shire Council Public Inquiry explored the same issue. It is apparent, from the evidence given at the CMC's public hearings and the Tweed Shire Council Public Inquiry, that identifying and resolving conflicts of interest is a difficult issue for many councillors.

Through its misconduct prevention materials, the CMC advises all public officials that, regardless of how a conflict is managed, they are expected to disclose any actual or potential conflicts of interest they may have in any matter where the public official is expected to be involved in a decision or action as part of their public duties. Public officials are also expected to declare any circumstances that could result in a third party reasonably perceiving a conflict of interest to exist.

There are various ways in which a councillor who identifies a conflict of interest may manage that conflict. For example, the councillor may:

- take no part in any debate about the issue; and/or
- abstain from voting on decision proposals; and/or
- have restricted access to information relating to the conflict of interest; and/or
- be denied access to sensitive documents or confidential information relating to the conflict of interest.

How to manage a conflict of interest is a particularly difficult decision for a councillor, because the councillor has to reconcile any decision with their obligations under section 229 of the LGA. The easy option would be to opt out of any process where the councillor thinks they have a conflict of interest. Section 229(3) does state that a councillor:

> ... must ensure there is no conflict, or possible conflict, between the councillor's private interest and the honest performance of the councillor's role of serving the public interest.

However, this section cannot be read in isolation. The preceding portion of section 229 states that in performing the role, a councillor:

> (a) must serve the overall public interest of the area and, if the councillor is a councillor for a division, the public interest of the division; and
>
> (b) if conflict arises between the public interest and the private interest of the councillor or another person — must give preference to the public interest.

That is, councillors must act in the public interest, even if it sometimes means participating in decisions where they have a conflict of interest (subject to the material personal interest provisions of the LGA, as discussed below). Councillors would only absent themselves from a decision-making process where it was in the overall public interest for them to do so. For example, a councillor might receive a large election gift from a developer. The developer later lodges a planning application with council, and the councillor who received the election gift believes it is in the public interest that the development application be denied. In this case, although the councillor may be said to have a conflict of interest in participating in any decision involving this developer, the councillor cannot serve the overall public interest by abstaining from any consideration of the issues. In these circumstances the councillor can disclose a conflict of interest but retain their right to debate and vote on the issue.

A practical issue would also arise if elected groups of councillors were to exclude themselves from considering matters relating to a donor to the group. A local government meeting needs one-half or a majority of councillors (depending on whether the council has odd or even numbers of councillors) present at meetings to conduct business.[40]

There is no penalty for a breach of section 229(3) of the LGA. However, a failure by a councillor to appropriately resolve a conflict of interest would breach the code of conduct that must be introduced by councils by 1 March 2006.

Properly dealing with conflicts of interest is an obligation in addition to that imposed on councillors by section 244 of the LGA — for councillors to exclude themselves from meetings where they have a material personal interest in an issue being considered by the meeting. This excludes members from participating in a decision that may lead to a member or a member's associate making a gain or suffering a loss.

Similar provisions relating to material personal interests or pecuniary interests operate in other states. Relevant to the issues under consideration are the provisions in Part 5, Division 6 of the Western Australian *Local Government Act 1995*, which deals with councillors disclosing interests in matters that come before the council. As is the case in Queensland, councillors must consider not only their direct interests but also the interests of people with whom they are closely associated. Included in the definition of 'closely associated persons' in Western Australia are those who gave a notifiable gift to the councillor

40 LGA, ss. 446, 447.

in relation to the election at which the councillor was last elected, or who have given a notifiable gift to the councillor since the councillor was last elected.

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?**

Local government candidates endorsed by a registered political party generally submit nil returns after an election. This is because election gifts given in support of the party-endorsed candidate are given, or are reported to be given, to either the candidate's campaign committee[41] or the party itself. These gifts do not have to be disclosed by the candidate; instead, they are included in the political party's annual return, which is submitted to the Electoral Commission of Queensland at the end of the financial year. The annual returns are not available for public inspection until February the following year.

As mentioned earlier, the disclosure provisions of the *Commonwealth Electoral Act 1918* are replicated in the *Electoral Act 1992* (Qld), and in turn are mostly replicated in the LGA. The rules concerning the disclosure of donations by political parties, including campaign committees, are different from those applying to individual candidates to lessen the administrative burden on the parties. This is in recognition of the fact that most candidates in state and federal elections were endorsed by three registered political parties.

The practical effect of this is that one cannot determine easily, if at all, who has supported local government candidates endorsed by registered political parties. It could be seen as anomalous that the source and value of a donation over $200 to an independent candidate's campaign committee has to be declared by that candidate, whereas a donation over $200 from the same donor to a party-endorsed candidate's campaign committee does not have to be declared. If the basic proposition that it is preferable for the voting public to know the true sources of local government candidates' election funding is accepted, some consideration may have to be given to whether party-endorsed candidates should continue to operate under disclosure rules that differ from those for other candidates. However, as pointed out earlier, very few candidates for local government elections are endorsed candidates of a registered political party.

The issue of conflicts of interest on the part of councillors has already been discussed. An issue raised was whether a councillor might have a conflict of interest in considering matters involving a person who gave them an election gift. Mention was made of the Western Australian provision that includes in the definition of 'closely associated persons', for the purpose of declaring councillor's material personal interests, anyone who gave a notifiable gift to the councillor in relation to the election at which the councillor was last elected, or who had given a notifiable gift to the councillor since that councillor was last elected. Were a similar provision inserted into the LGA requiring councillors to conduct themselves in a certain manner when participating in council business affecting donors listed on the councillors' election gifts return, it would not affect councillors who were endorsed by a political party. As explained above, these candidates normally submit nil returns and are excused from identifying donors who have contributed to their campaign committee or to the candidate's election via the party state office.

41 The LGA requires a candidate to disclose gifts received by a candidate for an election, and this includes gifts received by the candidate's campaign committee for or on behalf of the candidate. However, the definition of 'candidate's campaign committee' excludes a committee that is recognised by a political party as being part of the political party (see LGA, s. 426).