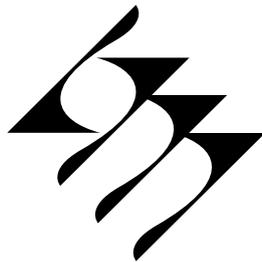


# INDEPENDENCE, INFLUENCE AND INTEGRITY IN LOCAL GOVERNMENT

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A CMC INQUIRY INTO THE 2004 GOLD COAST CITY COUNCIL ELECTION

CRIME AND  
MISCONDUCT  
COMMISSION



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QUEENSLAND

**CMC vision:** to be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

**CMC mission:** to combat crime and improve public sector integrity.

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Dear Madam and Sirs

In accordance with section 69 of the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission hereby furnishes to each of you its report, *Independence, influence and integrity in local government: a CMC inquiry into the 2004 Gold Coast City Council election*.

The Commission has adopted the report.

Yours faithfully



**ROBERT NEEDHAM**  
Chairperson



# FOREWORD

## *The Gold Coast: Queensland or a foreign land?*

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*The past is a foreign country: they do things differently there.* — LP Hartley, *The go-between*

On the third day of the CMC's public hearing in this matter, a Gold Coast solicitor appearing for Cr David Power suggested to a witness that 'some people in Brisbane' did not understand that, on the Gold Coast, big business meant development. A number of comments by later witnesses reflected a similar theme: outsiders (like the CMC) can never really understand the way things are done on the Gold Coast.

In their view, to paraphrase LP Hartley's famous opening line to *The go-between*, 'The Gold Coast is a foreign country: they do things differently there.'

It was also suggested in several of the final submissions to the inquiry that counsel assisting did not understand the political arena. They were accused of 'political naivety' for criticising candidates who made false or misleading statements during the election, and called pious and hypocritical for suggesting that councillors should be concerned about the likely public perception of their actions. The latter comments appeared in submissions made on behalf of partners in an advertising agency, and presumably reflect their views about acceptable political behaviour.

More surprisingly, the accusation of political naivety was contained in submissions made on behalf of the Local Government Association of Queensland (LGAQ), a body whose mission is, according to its website: 'To strengthen the ability and performance of local government to better serve the community'. This is a commendable goal; yet the LGAQ submission to the inquiry suggested that the CMC should take a 'real world' view and accept that political candidates are entitled to do anything that does not contravene the law to advance the political causes they support. This may be true in a strict legal sense, but it is hard to see how encouraging local government members to this view equips them to better serve the community.

The LGAQ categorised the actions undertaken in this matter at the instigation of Crs Power and Robbins as a 'perfectly ordinary political process'.

In the Commission's view, what happened in this matter could not legitimately be categorised as an ordinary political process unless the Gold Coast is to be treated as another country, where the ordinary responsibilities of public life and obligations to the law that bind the rest of Queensland do not apply.

Like all local government areas in Queensland, the Gold Coast has unique problems and some idiosyncratic practices. But those who hold public office there are not above the law, nor can their actions be measured by a yardstick cut down to take account of the fact that they live on 'the Coast'.

As to the political arena generally, the CMC (including its forerunner, the Criminal Justice Commission) has had to examine conduct undertaken in a political context in many inquiries (see reports listed on page 182). It has never been suggested during those inquiries that involvement in political activity amounts to a licence to ignore accepted ethical standards or legal responsibilities.

*'When I use a word, Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean — neither more nor less.'* — Lewis Carroll, *Through the looking glass*

There were occasions during this inquiry when an ordinary observer could have been forgiven for thinking that they had fallen through a hole, not just into a foreign country but into a Wonderland where all the usual notions of reasonableness and honesty were reversed.

This report details many instances of false or misleading statements made by candidates during the election process, and also highlights the less than frank evidence from some witnesses who attempted to explain away words attributed to them in the media and in emails and other documents.

On 8 February 2006, the Mayor of the Gold Coast issued a media statement to say that counsel assisting the CMC's inquiry had 'effectively cleared' the council of major corruption or misconduct by not recommending charges against the council. He said that he was 'delighted' with this outcome. He accused a few councillors of 'grandstanding and muckraking' (presumably a reference to Crs Young, Crichlow and Sarroff who, with others, had made complaints to the CMC about the conduct of councillors during the 2004 election).

It is hard to imagine how the most senior elected official on the Gold Coast could legitimately be 'delighted' that only some of the participants in the last election had been recommended for consideration of prosecution. Instead of accepting that there had perhaps been errors of judgment, inappropriate behaviour or even breaches of the law, the mayor seemed happy to target for criticism those who had made complaints against councillors.

The mayor's statement echoed inappropriate comments made by the deputy mayor, Cr Power, while the hearing was still proceeding, to the effect that the council would be forced to consider prosecuting Crs Young, Crichlow and Sarroff for official misconduct because of the accusations they had made. The mayor chose to take a similar stance, despite the fact that Cr Power's comments had been the subject of strong criticism during the hearing and even condemned as 'inappropriate' by his own legal representatives.

As recently as 10 March 2006, the Gold Coast Mayor and Deputy Mayor were quoted in the media in response to comments by the Minister for Environment, Local Government, Planning and Women that the implementation of a code of conduct was very important for Gold Coast councillors, as the majority of them had 'tarnished reputations' at the moment. The mayor is reported as having said that, if reputations had been damaged, they should not have been. The deputy mayor is quoted as saying that, if reputations were damaged, it was because of 'muckraking' and misuse of the complaints system.

Overall, the evidence given by some councillors at the inquiry, and their conduct outside the inquiry, has created an impression that they are entirely unwilling to accept responsibility for either their actions or their words. They have shown a worrying lack of insight into how their actions might be perceived by the general public and an even more worrying mindset that the only remedial action necessary in this matter is punitive action against those who have made complaints.

Mr Lionel Barden, a former president of the Robina Chamber of Commerce, regretted during his evidence the Gold Coast's perceived reputation for 'sex, drugs and rock and roll', and detailed efforts he and others had made to lift its profile.

Changes to the public perception of the Gold Coast require a realistic assessment of what the problem areas are. An indication of how much needs to be done

before there can be any real change is perhaps best obtained by examining a report produced in 1991 when the Commission examined similar issues about Gold Coast developers making donations to candidates for election (*Report on a public inquiry into payments made by land developers to aldermen and candidates for election to the council of the City of Gold Coast*).

Despite the 15 years between that report and this, the conduct reported is uncannily similar, even to the extent that some of the same parties are involved. The 1991 report examined, among other things:

- whether there had been any attempt to keep confidential donations made by developers (including the Niecon Group and the Raptis Group) to candidates
- the taxation ramifications of some of the donations being recorded as business expenses
- whether benefits were sought or received by any land developers for the payment of funds
- whether any alderman or candidate was compromised or potentially compromised by any payment.

The report concluded that there had been an attempt to keep some payments to candidates confidential because of the belief that the public would react adversely to the knowledge that developers helped the election campaigns. The report also rejected the evidence of one developer that donations were made only to lift the standard of the council by actively assisting candidates of 'superior fairness, intelligence, honesty and perhaps courtesy'.

Those who have followed the evidence in this inquiry would find it hard to identify which decade some of these comments relate to. In particular, the idea of a concerted effort to keep developer donations confidential for fear of voter backlash and the search for 'courteous' candidates to support will ring a bell with anyone who has shown even a passing interest in the inquiry.

The 1991 report made a number of recommendations for legislative amendments, including the introduction of a requirement that candidates disclose election gifts (which was not a legal requirement at that time). Most of the recommendations were eventually followed. The fact that the CMC is still examining almost identical problems, despite those amendments, is perhaps some indication of how difficult it is to prevent corruption of the electoral process through legislative change, unless that change is accompanied by a grassroots change in attitudes towards accountability.

It perhaps should not need to be said, but the Gold Coast is not a foreign land, and it is not Wonderland. It is a part of Queensland, and its citizens are entitled to hold their elected officials to the same standards of conduct that apply in other parts of the state. Legislative amendment is one way to help this occur, and this report makes recommendations for changes that might assist the process.

But unless elected officials and public officers are willing to take a healthy attitude towards compliance obligations, rather than looking for loopholes to avoid them, legislation will do little to change the present public perception that private interests are being placed above public duty on a regular basis on the Gold Coast.

**Robert Needham**  
Chairperson  
Crime and Misconduct Commission



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# ABBREVIATIONS

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BCC	Brisbane City Council
CEO	chief executive officer
CJC	Criminal Justice Commission (forerunner to the CMC)
CMC	Crime and Misconduct Commission
CM Act	<i>Crime and Misconduct Act 2001</i> (Qld)
DAF	Development Assessment Forum
DLGPSR	Department of Local Government, Planning, Sport and Recreation (formerly the Department of Local Government and Planning)
EARC	Electoral and Administrative Review Commission
ECQ	Electoral Commission of Queensland
GCCC	Gold Coast City Council
ICAC	Independent Commission Against Corruption (NSW)
LGA	<i>Local Government Act 1993</i> (Qld)
LGAQ	Local Government Association of Queensland Inc.
LVA	Licensed Venues Association
PCEAR	Parliamentary Committee for Electoral and Administrative Review
UDIA	Urban Development Institute of Australia

# KEY PLAYERS

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NAME	ROLE
<b>Mr Soheil Abedian</b>	Joint Managing Director (with his son) of the Sunland Group Ltd since its inception 22 years ago.
<b>Mr Lionel Barden</b>	A businessman on the Gold Coast and, until December 2003, President of the Robina Chamber of Commerce. Also a member of the Gold Coast Combined Chamber of Commerce.
<b>Cr Gregory (Greg) Betts</b>	A new councillor of the GCCC, elected in March 2004 for Division 12.
<b>Mr David Brown</b>	National Design Director of Sunland Group Ltd.
<b>Mr Desmond Campbell</b>	A real estate agent at Ashmore First National Real Estate.
<b>Mr Malcolm (Mal) Chalmers</b>	A solicitor who conducts a business under the name Mal Chalmers & Company.
<b>Ms Suk-fun Joyce Chan</b>	A director of Hung Tat Worldwide Pty Ltd, which operates Palm Meadows Golf Course. She is also a director of Framwelgate Pty Ltd, and a director and secretary of Ninaford Pty Ltd. Framwelgate and Ninaford are involved in a residential and commercial development project at Broadbeach called 'The Wave'.
<b>Mr Warren Cheung</b>	A director of Hung Tat Worldwide Pty Ltd, which operates Palm Meadows Golf, and the husband of Ms Suk-fun Joyce Chan.
<b>Ms Niree Christison</b>	A candidate in the 2004 GCCC election for Division 10.
<b>Mr Ronald (Ron) Clarke</b>	Mayor of the GCCC, elected in March 2004.
<b>Cr Dawn Crichlow</b>	A sitting councillor of the GCCC, re-elected in March 2004 for Division 6.
<b>Ms Anne Cunningham</b>	Legal Manager (practice support lawyer) for Hickey Lawyers.
<b>Ms Sue Davies</b>	Personal assistant to the late Mr Brian Ray, a Gold Coast businessman.
<b>Mr Tony Davis</b>	Manager of the Office of the Chief Executive Officer of the Gold Coast City Council
<b>Mr David Devine</b>	Managing Director of Devine Limited.
<b>Mr Dale Dickson</b>	Chief Executive Officer of the Gold Coast City Council.
<b>Mr Col Dutton</b>	Regional Manager, Gold Coast & Northern NSW, for Stockland Development Pty Ltd.
<b>Mr John Fish</b>	Director of the Fish Group of companies.
<b>Cr Jan Grew</b>	A sitting councillor of the GCCC, re-elected in March 2004 for Division 11.
<b>Cr Raymond (Ray) Hackwood</b>	A sitting councillor of the GCCC, re-elected in March 2004 for Division 1.
<b>Mr Brent Hailey</b>	A director and the CEO of Villa World Ltd since 8 September 2003.
<b>Mr Anthony (Tony) Hickey</b>	A solicitor and managing partner of Hickey Lawyers. Hickey was the late Brian Ray's solicitor.
<b>Mr Stuart Hill</b>	Involved with Roxanne Scott's campaign and also with the negative campaign against Cr Dawn Crichlow.
<b>Mr Steven Hodgson</b>	General Manager of Hickey Lawyers.
<b>Mr Graeme Ingles</b>	Managing Director of Ingles Group (Qld) Pty Ltd.
<b>Ms Anne Jamieson</b>	General Manager of Sunland Group Ltd.
<b>Mr Robert Jansen</b>	President of the Nerang Chamber of Commerce, Chairman of the Western Chambers, and a member of the Gold Coast Combined Chamber of Commerce. Unofficial member of Brian Rowe's campaign committee.

<b>NAME</b>	<b>ROLE</b>
<b>Cr Robert (Bob) La Castra</b>	A sitting councillor of the GCCC, re-elected in March 2004 for Division 8. He is also the Chair of the Health and Community Services Committee of the GCCC, and a member of the Nerang Chamber of Commerce.
<b>Mr John Lang</b>	A real estate agent, auctioneer and principal of Lang Realty. He was Brian Rowe's campaign manager and President of the Coomera Chamber of Commerce. He was also, until just before the 2004 election, a member of the Gold Coast Combined Chamber of Commerce.
<b>Cr Robert (Rob) Molhoek</b>	A new councillor of the GCCC, elected in March 2004 for Division 4.
<b>Mr David Monaghan</b>	A partner at Hickey Lawyers.
<b>Mr Chris Morgan</b>	Company Director of Mandra Pty Ltd, trading as Quadrant Advertising.
<b>Mr Constantine Nikiforides</b>	CEO of Niecon Developments. One of Niecon Developments' companies is Blue Sky Capital Pty Ltd.
<b>Cr Grant Pforr</b>	A new councillor of the GCCC, elected in March 2004 for Division 3.
<b>Mr Gregory Phillips</b>	A director of a number of companies under the Phillips Group banner.
<b>Cr David Power</b>	A sitting councillor of the GCCC, re-elected in March 2004 for Division 2. He is also an honorary member of the Nerang Chamber of Commerce.
<b>Mr James Raptis</b>	Managing Director of Rapcivic Contractors Pty Ltd.
<b>Mr Brian Ray (deceased)</b>	Gold Coast property developer; killed in a plane crash in July 2005. During 2004 Ray was the Managing Director of the Ray Group Pty Ltd. Tony Hickey was his solicitor.
<b>Mr Norman Rix</b>	Director of Family Assets Pty Ltd and a number of other companies trading under the name of Rix Developments. He is also a businessman, an ex-GCCC councillor, and involved with the chambers of commerce.
<b>Cr Sue Robbins (deceased)</b>	A sitting councillor of the GCCC, re-elected in March 2004 for Division 14. Robbins died suddenly in November 2004.
<b>Mr William (Bill) Roche</b>	A director of the Roche Group Pty Ltd.
<b>Mr Brian Rowe</b>	A candidate in the 2004 GCCC election for Division 5. He was also a committee member of the Coomera Chamber of Commerce.
<b>Cr Eddy Sarroff</b>	A sitting councillor of the GCCC re-elected in March 2004 for Division 10.
<b>Mr Anthony (Tony) Scott</b>	Director, CEO, and majority shareholder of Quadrant Advertising.
<b>Ms Roxanne Scott</b>	A candidate in the 2004 GCCC election for Division 6.
<b>Cr Edward (Ted) Shepherd</b>	A sitting councillor of the GCCC, re-elected in March 2004 for Division 9.
<b>Mr Ian Solomon</b>	President of the Southport Chamber of Commerce and a member of the Gold Coast Combined Chamber of Commerce.
<b>Mr Graham Staerk</b>	Runs a public relations firm. During the 2004 GCCC election, he worked as a consultant to mayoral candidate Ron Clarke. According to the Tweed Shire Council Public Inquiry (Daly 2005a, p. 297), he was also a 'master mind' in organising the operations of a group called Tweed Directions, which constructed a campaign funded by money primarily sourced from developers and intended to secure a pro-development majority in the Tweed Shire Council.
<b>Mr Philip Sullivan</b>	The Managing Director/CEO of City Pacific Ltd, and a director of Ronglan Pty Ltd trading as Sullivan Constructions.
<b>Mr Thomas (Tom) Tate</b>	CEO at the Islander Resort Group, President of the Surfers Paradise Chamber of Commerce, and a member of the Gold Coast Combined Chamber of Commerce.
<b>Mr Craig Treasure</b>	At the relevant time, a director and board officer of Sunland Group Ltd.
<b>Mr Joseph Welch</b>	A solicitor and partner at Hickey Lawyers.
<b>Ms Sandra Wild</b>	Personal assistant to Tony Hickey, Hickey Lawyers.
<b>Cr Peter Young</b>	A sitting councillor of the GCCC, re-elected in March 2004 for Division 5.

# GOLD COAST CITY COUNCIL ELECTION OF 2004

The Gold Coast City Council has 14 divisions. Residents in each division elect a councillor to represent their community's needs. All Gold Coast City residents elect the Mayor. The local government elections for the mayor and 14 divisional councillors of the Gold Coast City Council were held on Saturday 27 March 2004.



## NOMINEES AND ELECTION RESULTS

OFFICES	SITTING COUNCILLORS	CANDIDATES	RESULTS
Mayor	Gary Baidon	<ul style="list-style-type: none"> <li>• Gary Baidon</li> <li>• Ronald (Ron) Clarke</li> <li>• Ian Latto (Qld Greens)</li> <li>• Dean Vegas</li> </ul>	Ron Clarke 

OFFICES	SITTING COUNCILLORS	CANDIDATES	RESULTS	
Councillor for Division 1	Raymond (Ray) Hackwood	<ul style="list-style-type: none"> <li>• Ray Hackwood</li> <li>• Linda Mina</li> </ul>	Ray Hackwood	
Councillor for Division 2	David Power	<ul style="list-style-type: none"> <li>• David Power</li> <li>• John Wayne</li> </ul>	David Power	
Councillor for Division 3	Alan Rickard (did not contest the 2004 GCCC election)	<ul style="list-style-type: none"> <li>• Anne Bennett</li> <li>• David Childs</li> <li>• Grant J Pforr</li> <li>• Frederick (Fred) Woodley</li> </ul>	Grant Pforr	
Councillor for Division 4	Margaret Grummitt (did not contest the 2004 GCCC election)	<ul style="list-style-type: none"> <li>• Diane Brennan</li> <li>• Hans Heinrich</li> <li>• Peter (Pete) Keech</li> <li>• Robert (Rob) Molhoek</li> <li>• Wayne Skuthorpe</li> </ul>	Rob Molhoek	
Councillor for Division 5	Peter Young	<ul style="list-style-type: none"> <li>• Brian Rowe</li> <li>• Peter Young</li> </ul>	Peter Young	
Councillor for Division 6	Dawn Crichlow	<ul style="list-style-type: none"> <li>• Dawn Crichlow</li> <li>• Roxanne Scott</li> </ul>	Dawn Crichlow	
Councillor for Division 7	Noel (Max) Christmas	<ul style="list-style-type: none"> <li>• Max Christmas</li> <li>• Julie Devery</li> <li>• Susan (Susie) Douglas</li> <li>• James (Jim) MacAnally</li> <li>• Donald (Don) Magin</li> <li>• Terry Stollery</li> </ul>	Susie Douglas	
Councillor for Division 8	Robert (Bob) La Castra	<ul style="list-style-type: none"> <li>• Bob La Castra</li> <li>• Matthew Mackechnie</li> <li>• James Tayler</li> </ul>	Bob La Castra	

OFFICES	SITTING COUNCILLORS	CANDIDATES	RESULTS	
Councillor for Division 9	Edward (Ted) Shepherd	<ul style="list-style-type: none"> <li>• Guy Jones</li> <li>• Jill Pead</li> <li>• Ted Shepherd</li> </ul>	Ted Shepherd	
Councillor for Division 10	Eddy Sarroff	<ul style="list-style-type: none"> <li>• Steve Bryan</li> <li>• Niree-Anne Christison</li> <li>• Eddy Sarroff</li> </ul>	Eddy Sarroff	
Councillor for Division 11	Jan Grew	<ul style="list-style-type: none"> <li>• Linda Brown</li> <li>• Jan Grew</li> <li>• Barry Jeffriess</li> <li>• Bruce Simmonds</li> </ul>	Jan Grew	
Councillor for Division 12	Peter Drake	<ul style="list-style-type: none"> <li>• Greg Betts</li> <li>• Stephen Cameron</li> <li>• Peter Drake</li> <li>• David Dunk</li> <li>• Scott Eade</li> <li>• Kevin J Hinton</li> <li>• Grant O'Sullivan</li> <li>• Irene Wareing</li> </ul>	Greg Betts	
Councillor for Division 13	Daphne McDonald	<ul style="list-style-type: none"> <li>• Garry Ferrell</li> <li>• Daphne McDonald</li> <li>• Valentina (Val) Popova-Clark</li> <li>• Craig Waiwiri</li> </ul>	Daphne McDonald	
Councillor for Division 14	Susan (Sue) Robbins	<ul style="list-style-type: none"> <li>• Karen Coates</li> <li>• Kenneth (Ken) Hopgood</li> <li>• Sue Robbins</li> <li>• Bradley Stubbs</li> </ul>	Sue Robbins	
Councillor for Division 14 Residents of Division 14 went to the polls again on Saturday 22 January 2005 to elect a replacement for Cr Sue Robbins who died on 13 November 2004.	–	<ul style="list-style-type: none"> <li>• Linda Carmody</li> <li>• Jack Dunn</li> <li>• Warren James</li> <li>• James Kelly</li> <li>• Anja Light</li> <li>• Charlotte Marriott</li> <li>• Christine (Chris) Robbins</li> <li>• Lynn Scammell</li> <li>• Jim Seymour</li> <li>• Bradley Stubbs</li> <li>• Kellie Trigger</li> <li>• John Vanzino</li> <li>• Rex Waddington</li> <li>• Ian Wood</li> </ul>	Chris Robbins	

# SUMMARY

## *Findings and recommendations*

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### 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.

# INTRODUCTION

*Where there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind closed doors.*  
— Right Honourable Lord Justice Salmon

**Chapter 1 describes how this inquiry came about, sets out its terms of reference, explains the CMC's jurisdiction, and outlines the possible offences under the *Local Government Act 1993* that the Commission was required to consider.**

## EVENTS THAT LED TO THE INQUIRY

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

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

A number of newspaper articles — in particular articles in the *Gold Coast Bulletin*, the *Gold Coast Sun* and the *Courier-Mail* — had also raised concerns about the conduct of councillors and others before, during and after the March 2004 election. Some articles published before the election reported in general terms the existence of a developer-backed fund to support certain candidates, while two articles by Alice Jones, published on 25 and 26 March 2004 in the *Gold Coast Bulletin*, were more detailed and pointed. The Jones articles ('Ray Powers the bloc' and 'How a plot took shape') were largely based on information provided by Cr Rob Molhoek (then a candidate), Cr Sue Robbins, and a developer who had contributed to the fund — the late Brian Ray.

While these three individuals were, on the evidence now available, fairly forthright in their dealings with the media, there was a complete lack of frankness in public statements made by many others involved in the fund. This meant that, despite the best efforts of the media, the full truth about some issues did not emerge publicly until evidence was given about them during this inquiry.

Despite attracting criticism during the inquiry, the media reports on this issue were found to be generally accurate and, in the Commission's view, they concerned matters about which the public had a legitimate interest in knowing the truth.

Apart from issues raised by the minister and in the media, the CMC also received a number of 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 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. In the words of the Right Honourable Lord Justice Salmon:<sup>1</sup>

As we have already indicated it is, in our view, of the greatest importance that hearings before a Tribunal of Inquiry should be held in public. It is only when the public is present that the public will have complete confidence that everything possible had been done for the purpose of arriving at the truth.

Where there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind closed doors.

On 11 August 2005, the Commission gave approval for a misconduct operation called Operation Grand to commence. Notices to discover were issued to candidates, donors and financial intermediaries requiring them to provide information and documents relevant to the CMC's investigation. A significant amount of material was received and reviewed. Some witnesses were required to provide written statements of information to the CMC and others were interviewed by CMC officers.

On 26 August 2005, the Commission resolved to conduct public hearings.

The CMC is authorised to conduct a hearing in relation to any matter relevant to the performance of its functions (s. 176). Under section 177 of the *Crime and Misconduct Act 2001* ('the CM Act') a CMC hearing is generally not open to the public, but the Commission may approve either before or during a hearing that it be public if it considers that a closed hearing would be unfair to a person or contrary to the public interest.

## THE TERMS OF REFERENCE

The following terms of reference for the hearings were drawn up by the Commission on 9 September 2005:

- 1 To investigate:
  - (a) cases of alleged or suspected official misconduct by councillors of the Gold Coast City Council concerning:
    - (i) 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
    - (ii) electoral bribery with respect to the Gold Coast City Council election in March 2004
    - (iii) returns about election gifts with respect to the Gold Coast City Council election in March 2004
    - (iv) declaring and dealing with conflicts of interest or material personal interests since the Gold Coast City Council election in March 2004
    - (v) any criminal offence involving the performance of their functions since the Gold Coast City Council election in March 2004

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<sup>1</sup> *Report of the Royal Commission on Tribunals of Inquiry 1966* (Great Britain), established under the chairmanship of the Rt Hon. Lord Justice Salmon.

- (b) 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.

The hearings, which commenced on 10 October 2005 and concluded on 15 December 2005, were investigative in character. Fifty-one witnesses were called and 347 exhibits were tendered.

Issues relevant to the second and third term of reference (concerning the adequacy of existing legislation) were, on occasion, canvassed during witnesses' evidence, but the great majority of evidence during the hearing concerned the first term of reference.

## JURISDICTION OF THE CMC

The CMC is established under the CM Act, which prescribes its role and statutory obligations.

One of the main purposes of the CM Act is 'to continuously improve the integrity of, and to reduce the incidence of misconduct in the public sector' (s. 21). 'Misconduct' includes 'official misconduct or police misconduct', but only 'official misconduct' is relevant for the purposes of this investigation. 'Official misconduct' is defined in section 15 as:

conduct that could, if proved, be—

- (a) a criminal offence; or
- (b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.

'Conduct' is defined in section 14 as:

- (a) for a person, regardless of whether the person holds an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of—
  - (i) a unit of public administration; or
  - (ii) any person holding an appointment; or
- (b) for a person who holds or held an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves—
  - (i) the performance of the person's functions or the exercise of the person's powers, as the holder of the appointment, in a way that is not honest or is not impartial; or
  - (ii) a breach of the trust placed in the person as the holder of the appointment; or
  - (iii) a misuse of information or material acquired in or in connection with the performance of the person's functions as the holder of the appointment, whether the misuse is for the person's benefit or the benefit of someone else.

A person holds an appointment in a unit of public administration if they hold any office, place or position in that unit, whether the appointment is by way of election or selection (s. 21, CM Act).

A 'unit of public administration' is defined in the CM Act [s. 20(1)(e)] to include:

any corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act which, in either case, collects revenues or raises funds under the authority of an Act.

As the *Local Government Act 1993* ('the LGA') provides that a local government is a body corporate [s. 35(a)] and authorises local governments to collect revenues (Chapter 7, LGA), the Gold Coast City Council falls within this definition.

The LGA (Chapter 4 Part 3A) provides for a model code of conduct to be adopted for local government councillors, and provides for the disqualification and vacation of office of a councillor in certain circumstances, including being found guilty of certain offences against the Act (ss. 21 and 222). However, there is no prescribed disciplinary standard or disciplinary regime provided in the LGA for the removal of a councillor of local government for a disciplinary breach. In the absence of such a regime, the possibility of terminating an office holder's services on that basis cannot arise; accordingly, for the conduct of a local government councillor to constitute official misconduct it must be capable of amounting to a criminal offence. Therefore, the jurisdiction of the CMC to investigate suspected official misconduct by elected representatives, such as local government councillors, is limited to circumstances where the alleged conduct could, if proved, amount to a criminal offence. The term 'criminal offence' includes simple offences such as breaches of the offence provisions of the LGA.

It should also be noted that section 16(2) of the CM Act states:

Conduct engaged in by, or in relation to, a person at a time when the person is not the holder of an appointment may be official misconduct, if the person becomes the holder of an appointment.

The CMC has jurisdiction to investigate a matter if there is a reasonable suspicion of official misconduct. Section 33 of the CM Act provides that the CMC has the following functions:

- to raise the standards of integrity and conduct in units of public administration; and
- to ensure that a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way.

The CMC also has a function of helping to prevent misconduct, which it can perform in many ways, including by making recommendations to units of public administration and reporting on ways to prevent misconduct (s. 24, CM Act).

The CMC determined that it was in the public interest for it to exercise its power to investigate this matter itself (s. 46), having primary regard to the principles for performing misconduct functions as outlined in section 34 of the CM Act, namely:

- the capacity of, and the resources available to, a unit of public administration to effectively deal with the misconduct
- the nature and seriousness of the misconduct, particularly if there is reason to believe that misconduct is prevalent or systemic within a unit of public administration
- any likely increase in public confidence in having the misconduct dealt with by the commission directly.

For a criminal offence to be proven, a tribunal of fact must be satisfied to the requisite standard of proof. The criminal standard is proof beyond reasonable doubt.

Regarding possible criminal charges, the Commission agrees with the statements made in the Shepherdson report about the role a CMC inquiry should undertake:

The purpose of this Inquiry was not to determine guilt. Rather, it was to gather information regarding the allegations made that fell within the terms of reference. It then had to decide whether any of this information contained admissible evidence — that is, evidence that should be referred by the CJC to a prosecuting authority for consideration of charges against any particular people. The rule of thumb used in making this decision was whether the evidence could result in a conviction. In other words, if there was no possibility of a conviction, then no recommendation was made.

Section 64 of the CM Act provides that the CMC may report in performing its functions, and must include in its reports any appropriate recommendations and an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.

### **Privilege against self-incrimination**

In the context of misconduct investigations, a witness giving evidence at a CMC hearing — or a person required to produce an item to an identified CMC officer under a notice to discover or at a CMC hearing under an attendance notice — is not entitled to remain silent or refuse to answer a question put to them at the hearing by the presiding officer, or to fail to produce the item on the ground that to comply with the requirement would tend to incriminate them.<sup>2</sup>

The CM Act's abrogation of the privilege against self-incrimination is designed to enable the CMC to get to the truth of matters under investigation. Notwithstanding this, a witness who claims the privilege is protected by section 197 of the CM Act, which provides that an answer or written statement of information given under compulsion is not admissible as evidence against the person in any civil, criminal proceedings or administrative proceeding, except for proceedings for matters such as contempt of the CMC or perjury.

## **LOGISTICS OF THE INVESTIGATION**

The CMC's inquiries in Operation Grand were conducted by a multidisciplinary project team that included three financial analysts, an investigator, an intelligence officer, two legal officers, a misconduct prevention officer and support staff.

The public inquiry was held in the CMC's hearing room in Brisbane with the Chairperson, Mr Robert Needham, presiding. Because it was not feasible to conduct the hearing on the Gold Coast, arrangements were made with Channel 9 for a commercial-free broadcast of parts of the proceedings to be made each day.

Mr Robert Mulholland QC, Ms Theresa Hamilton and Mr Danny Boyle acted as counsel assisting. Other appearances by legal representatives are set out in the list of witnesses in Appendix A.

The inquiry sat on Friday 23 September 2005 to take appearances and deal with preliminary matters and began hearing evidence on Monday 10 October 2005. The public hearings were held over 27 days, between 10 October 2005 and 15 December 2005, with final submissions on 7 February 2006. The full transcripts of the hearing and the written submissions will continue to be available on the CMC's website <[www.cmc.qld.gov.au](http://www.cmc.qld.gov.au)> for one month after this report is tabled.

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<sup>2</sup> See s. 188 (Refusal to produce — self-incrimination) and s. 192 (Refusal to answer question) of the CM Act.

## POSSIBLE OFFENCES UNDER THE LGA

The inquiry was required to consider whether there had been any breaches of the offence provisions of the LGA. The relevant provisions of the LGA are as follows:

LGA PROVISIONS	DEFINITIONS
<p>Chapter 4 Part 3 sets out the entitlements and obligations of local government councillors, and in particular a councillor's duty to ensure that no conflict of interest arises between their private interest and the honest performance of their role.</p>	
<p>Section 244 provides that a councillor who has a <b>material personal interest</b> in an issue to be considered at a local government meeting (or a meeting of any of its committees) must disclose the interest to the meeting and must not be present at or take part in the meeting while the issue is being considered or voted on. A councillor barred from a meeting must not be in the chamber where the meeting is being conducted, including any area set apart for the public.</p> <p>The maximum penalty is 200 penalty units if the councillor voted on the issue with an intention to gain an advantage for themselves or anyone else and, in all other cases, 85 penalty units.</p>	<p>A person has a <b>material personal interest</b> in an issue if the person has, or should reasonably have, a realistic expectation that, whether directly or indirectly, the person or an associate stands to gain a benefit or suffer a loss, including a benefit or loss as a director of a significant business entity under Chapter 8 Part 7 that is, or is to become, an LGOC [local government-owned corporation], depending on the issue's outcome.</p>
<p>Chapter 5 Part 6 governs the conduct of local government elections, and includes the offences of bribery, providing false, misleading or incomplete statements or electoral documents, and misleading voters.</p>	
<p>Section 383 provides that a person must not state something under Chapter 5 ('Local government elections') that is false or misleading, or omit from a statement made under the chapter anything without which the statement is, to their knowledge, false or misleading in a material particular.</p> <p>The maximum penalty is 20 penalty units or six months' imprisonment.</p>	
<p>Section 384 provides that a person must not give a document under Chapter 5 that contains information that they know is false, misleading or incomplete in a material particular without indicating that the document is, and the respect in which it is, false, misleading or incomplete, and giving the correct information if they have it, or can reasonably obtain it.</p> <p>The maximum penalty is 20 penalty units or six months' imprisonment.</p>	
<p>Section 385(3) provides that a person must not influence or affect the election conduct of a person (that is, their nomination as candidate, or support of or opposition to a candidate or a political party at an election) with promises of, or in exchange for, or the receipt of, property or a benefit of any kind.</p> <p>The maximum penalty is 85 penalty units or two years' imprisonment. Furthermore, if the offender is a local government councillor, such conduct disqualifies them from being a councillor [s. 22(g)].</p>	

*continued*

LGA PROVISIONS	DEFINITIONS
<p>Section 394(2) provides 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.</p> <p>The maximum penalty is 40 penalty units.</p>	
<p>Chapter 5 Part 8 provides a detailed scheme for the disclosure of election <b>gifts</b> received by candidates, groups of candidates and third parties for a political purpose related to a local government election in Queensland, and includes obligations regarding disclosure, non-acceptance and returns.</p>	<p><b>'Gift'</b> means the disposition of property or the provision of a service, without consideration, or for a consideration less than the full consideration, but does not include transmission of property under a will; or provision of a service by volunteer labour.</p>
<p>Section 427 requires each candidate to give to the CEO of the local government to which the election relates, within three months after the conclusion of the election and in the approved form:</p> <ul style="list-style-type: none"> <li>• a return stating the total <b>value</b> of any and all election gifts received by the candidate during their disclosure period for the election (excluding gifts made in a private capacity to the candidate for their personal use that they have not used and do not intend to use, solely or substantially for a purpose related to any election)</li> <li>• how many persons made the gifts</li> <li>• the <b>relevant details</b> for each gift made by a person to the candidate where the total value of all gifts made by the particular donor is the prescribed amount of \$200 or more.</li> </ul> <p>A candidate is not required to comply with this provision if they give a return under s. 242(1)(a) stating that they do not expect to receive gifts and will give a return if gifts are received in the disclosure period for the election after giving the return; and they do not receive gifts in the disclosure period for the election after given the return.</p>	<p><b>'Value'</b>, for a gift, is defined in s. 414 to mean (a) if the gift is money — the amount of the money; or (b) if the gift is property other than money — the market value of the property, or if a regulation prescribes principles under which the value of the property is to be determined, then the value determined under the principles; or (c) if the gift is the provision of a service — the amount that would reasonably be charged for providing the service if the service were provided on a commercial basis, or if a regulation prescribes principles under which the amount that would reasonably be charged for providing the service is to be determined, then the amount determined under the principles.</p> <p><b>'Relevant details'</b>, for a gift, is defined in s. 414 to mean the value of the gift and when the gift was made and, (a) 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 (b) 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 persons responsible for the foundation's funds, and the title or other description of the trust fund or the name of the foundation; or (c) for all other gifts — the name and residential or business address of the person who made the gift.</p>
<p>Section 427A applies if a <b>group of candidates</b> or the group's campaign committee for the election receives election gifts during the disclosure period for the election and requires each candidate who is a member of the group to give to the chief executive officer of the local government to which the election relates, within three months after the conclusion of the election and in the approved form, a return stating:</p> <ul style="list-style-type: none"> <li>• the names of the candidates forming the group</li> <li>• the name, if any, of the group; the total value of all election gifts received</li> <li>• how many people made the gifts</li> <li>• the relevant details for each gift made by a person to the group where the total value of all gifts made by the particular donor is the prescribed amount of \$200 or more.</li> </ul> <p>A candidate is not required to comply with this provision if they give a return, under s. 242(1)(a), stating that they do not expect the group or the group's campaign committee for the election to receive further gifts and will give a return if further gifts are received in the disclosure period for the election after giving the return; and the group or the group's campaign committee for the election does not receive further gifts in the disclosure period for the election after given the return.</p>	<p>A <b>group of candidates</b> refers to a group formed to promote the election of the candidates for a particular local government election, but does not include a political party or an associated entity (controlled, or operated for the benefit of, one or more political parties).</p> <p style="text-align: right;"><i>continued</i></p>

LGA PROVISIONS	DEFINITIONS
<p>Section 428 ensures that candidates are able to comply with their disclosure obligations, by providing that it is unlawful for a candidate or person acting on behalf of the candidate to receive a gift the value of which is the prescribed amount of \$200 or more without knowing the relevant details of the gift. An amount equal to the value of any gift unlawfully received in contravention of this provision is payable by the candidate to the local government, recoverable by debt action in a court of competent jurisdiction.</p>	
<p>Section 430 covers gifts for third-party expenditure. It places an obligation on any <b>person</b> who, during the disclosure period for the relevant local government election:</p> <ul style="list-style-type: none"> <li>incurs or has incurred <b>expenditure</b> for a political purpose related to a local government election (includes expenditure for a political purpose relating to two or more local governments) totalling the prescribed amount of \$1000 or more, and receives a gift that is a <b>prescribed gift</b> in relation to the relevant local government</li> <li>to give to the CEO of the relevant local government, before the end of three months after the conclusion of the relevant election and in the approved form, a return stating the relevant details for all gifts that are prescribed gifts in relation to the relevant local government, and are received by the person during the disclosure period.</li> </ul>	<p>A <b>person</b> does not include a political party, an associated entity, a candidate for the election, persons appointed to form a committee to help the campaign in an election of a candidate who has been nominated for election by the registered officer of a political party if the campaign committee is recognised by the political party as being part of the party, or a person who is a member of a candidate's campaign committee or a group's campaign committee for an election of the candidate or members of a group of candidates.</p> <p><b>Expenditure</b> for a political purpose means expenditure for publication by any means, including radio or television, of election matter; public expression of views on an issue in an election; and/or a gift to a political party, to an election candidate, and/or to a person on the understanding that the recipient or someone else will apply, either directly or indirectly, the whole or a part of the gift for a purpose mentioned in the preceding subsections.</p> <p>Section 430(6) defines <b>prescribed gift</b>, in relation to a relevant government, to mean a gift intended by the giver to be used by the receiver, either wholly or in part, to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose, and used, either wholly or party, for a political purpose about one or more elections relating to the relevant local government, and the value of which is the prescribed amount or more.</p>
<p>Section 436 sets out offences about returns. Subsection (1) requires that a person must give a return they are required to give under Chapter 5 Part 8 Division 3 ('Disclosure of gifts') within the time required by the division. The maximum penalty for an offence against this provision is 20 penalty units, and a court may, as well as imposing a penalty, order the person to give the relevant return within a time stated in the order. Subsection (2) provides that a person must not give a return they are required to give under Chapter 5 Part 8 Division 3 containing particulars that are, to their knowledge, false or misleading in a material particular. The maximum penalty for an offence against this provision is 50 penalty units, or 100 penalty units if the offender is a candidate, and a court may, as well as imposing a penalty, order the person to pay, within a time stated in the order, 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.</p> <p>Subsection (3) prohibits a person (the first person) from giving to another person who is required to give a return under Chapter 5 Part 8 Division 3 or section 242 information to which the return relates that is, to the knowledge of the first person, false or misleading in a material particular. The maximum penalty for an offence against this provision is 20 penalty units. A prosecution for an offence against this section may be started at any time within four years after the offence was committed. Local government councillors convicted of an offence against this section must vacate their office, unless a court issues a direction otherwise (s. 222).</p>	<p style="text-align: right;"><i>continued</i></p>

LGA PROVISIONS	DEFINITIONS
<p>Section 437 requires a person to keep all <b>relevant records</b> made or received for an election for at least five years after the conclusion of the election unless the record, in the normal course of business or administration, is transferred to someone else.</p> <p>The maximum penalty for contravening this provision is 20 penalty units.</p>	<p>A <b>relevant record</b> is a document or other thing that is, or includes, a record about a matter particulars of which are, or could be, required to be stated in a return under Chapter 5 Part 8 Division 3; or evidence that the giver of a gift had an intention mentioned in s. 430(6), definition of prescribed gift, paragraph (a), namely that the gift be used by the receiver, either wholly or in part, to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose.</p>
<p>Section 438 requires a person to take all reasonable steps to obtain the particulars that are necessary to complete any and all returns required under Chapter 5 Part 8 Division 3 and to complete the return(s) to the extent that it is possible with the particulars obtained. Each return must state whether it is complete as required by Division 3 and, if not, the nature and type of particulars the person has not been able to obtain, the reasons they have not been able to obtain such particulars, and, where applicable, their belief based on reasonable grounds that another person whose name and address they know can give the particulars, including the reasons for such a belief and the name and address of the other person.</p> <p>The CEO of the local government must then give a written notice to the person named in the statement requesting the person give to the CEO the particulars that the person knows.</p> <p>Furthermore, if at any time within five years after an election, a person who has made a statement in a return about the election that the return is not complete, obtains information or particulars relevant to the return that they were not able to obtain before completing the return, the person must give to the CEO of the local government to whom the return was given a written notice of the information or particulars obtained. Maximum penalty for contravening any provision in this section is 20 penalty units.</p> <p>By operation of ss. 1077 and 1080 of the LGA, a prosecution for an offence against any of the preceding provisions of that Act will be by way of summary proceeding under the <i>Justices Act 1886</i> and accordingly must be started within 12 months from the commission of the offence or within six months after the offence comes to the complainant's knowledge, but within two years after the commission of the offence (with the exception of s. 436, which allows a four-year period in which to commence prosecution proceedings).</p>	

## AIM OF THIS REPORT

The aim of this report is twofold:

- 1 to report on the investigative findings of the CMC's inquiry, including whether, under section 49 of the CM Act, a report should be made to an appropriate prosecuting authority (see Chapters 2–11)
- 2 to examine and recommend necessary changes to existing policies, legislation and practices regarding the conduct of local government elections and local government business (see Chapters 12–23).

The report is based on:

- evidence and exhibits presented at the public inquiry into allegations of misconduct by councillors, candidates and others before, during and after the Gold Coast City Council election held in March 2004
- submissions made by all parties about issues raised at the public inquiry, including submissions received after the final sitting day on 7 February 2006
- submissions received and research conducted by the CMC concerning the adequacy of existing legislation.

# PART A

## *First term of reference*

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To investigate cases of alleged or suspected official misconduct by councillors of the Gold Coast City Council concerning:

- » 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.



## ORIGIN OF THE IDEA TO FUND A GROUP OF SELECTED CANDIDATES

*We have joined with major national and Queensland developers ... to put together a fund to mount a campaign to win various wards for a caucus of like-minded members with whom we can negotiate ...* — Brian Ray, Gold Coast developer

**Chapter 2 examines the roles of the Gold Coast chambers of commerce, sitting councillors David Power and the late Sue Robbins, and the late Brian Ray in the genesis of a scheme to create a central fund to support selected candidates in the Gold Coast City Council election of 2004.**

### CONCERNS ABOUT 'WILD-CARD' CANDIDATES

Before the March 2004 election, two sitting councillors, David Power and Sue Robbins, became concerned about the possibility of 'wild-card' candidates being elected. Power and Robbins already had problems with three of the Gold Coast's sitting councillors, Peter Young, Dawn Crichlow and Eddy Sarroff, with Power claiming that these councillors often used 'robust, aggressive and sometimes abusive language' to other councillors. It appears from the material provided to the CMC that these councillors were also considered by many to be 'anti-development' or 'green'.

Councillor Ted Shepherd was also concerned about the election, because he believed there was going to be a concerted effort by the 'green movement' to unseat him, and that groups were being put together to remove other councillors as well.

Councillor Bob La Castra had had problems with Crichlow — he believed she had actively and inappropriately campaigned against him during the 2000 election, even though his campaign had nothing to do with her division.

Power, Robbins, Shepherd and La Castra all played some part in the selection and/or mentoring of the candidates who were eventually chosen to receive financial support during the election (although Shepherd and La Castra played a less prominent role in the process than the other two councillors).

Evidence before the inquiry showed that the removal of Young, Crichlow and Sarroff was one of the strong motivating factors in the funding of selected candidates for the election. Two of the candidates who received financial support stood against Young and Crichlow (Brian Rowe and Roxanne Scott). A candidate who stood against Sarroff (Niree Christison) was also approached about the possibility of receiving funding or assistance, although she decided not to accept any. The candidates who stood against Young and Crichlow were not elected, while the other two candidates who received financial assistance (Grant Pforr and Greg Betts) were successful.

## THE CHAMBERS OF COMMERCE

The idea of supporting worthy candidates during the GCCC election in March 2004 was certainly the subject of discussion at chamber of commerce meetings in the last half of 2003, and some have suggested that the idea originated there. But it is clear on the evidence that the chambers of commerce played no active part in taking forward any plan to select a group of candidates to receive funding, or in raising funding.

Candidate Brian Rowe's campaign manager, John Lang, was then President of the Coomera Chamber of Commerce (and a member of the Gold Coast Combined Chamber of Commerce, as were all chamber presidents), but the Coomera chamber made no financial contribution to Rowe's election campaign. According to Lang, the chambers did not want to get directly involved in the 'political aspect' of the election campaign and the Coomera Chamber of Commerce did not, as a body, support Rowe.

The heads of the various Gold Coast chambers of commerce (including Lang, Ian Solomon and Tom Tate) met at the Islander Resort, Surfers Paradise, on 13 November 2003. Some of these people suggested that the purpose of the meeting was to discuss what progress had been made with the idea of supporting good candidates for the election. Whether or not that was the purpose of the meeting, the participants agree that Power was invited to attend the meeting and that he discussed a fund being made available for candidates with 'common sense'. At the meeting, the participants discussed, division by division, which councillors were pro-business and sensible, and which were 'dickheads' (according to Solomon).

However, Lang had already heard from Power that funding would be available at the time Rowe decided to stand. The evidence suggests, therefore, that the chambers were being informed about what was happening (with a view to obtaining their support), not that they were actively involved in or had instigated the plan.

Overall, the evidence supports the conclusion that members of the various 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.

The only former chamber member who became involved in the organised funding of the group of selected candidates was Gold Coast businessman Lionel Barden, and he was chosen for that role because he no longer had any formal connection to a chamber of commerce.

## COUNCILLORS POWER AND ROBBINS

Power's evidence made it clear that his decision to become involved in the funding of selected candidates was not the result of any actions taken by the chambers of commerce. In or about November 2003, he had had a number of discussions with Robbins about the 'looming problem' of 'wild-card' new councillors being elected. They decided to approach various industry and community leaders to discuss their concerns. Power explained in evidence that by 'wild-card' candidates he meant candidates that 'you weren't sure of how they were going to react', and said that he and Robbins had been discussing these issues for months before November 2003.

Power agreed that he was invited to attend the meeting at the Islander Resort on 13 November 2003 with various heads of chambers of commerce, and that he 'gave [his] feelings and [his] thoughts on the upcoming election and certainly

candidates to the group'. He told them that, if they wanted good candidates, they needed to 'put their money where their mouth was'. He also advised them that he was aware of some candidates who appeared to be good people with whom they could work, and said that '... we needed some people in there with common sense who would approach things on a professional basis and not personal'.

There is, however, no evidence that the chambers of commerce did 'put their money where their mouth was', nor evidence of any organised support by them for any of the candidates. By contrast, there is ample evidence that Power took an active role in the plan to support sensible candidates, and that the chambers of commerce were just one of his ports of call in seeking support and funding for selected candidates.

Power and Robbins also involved Brian Ray in the plan to support good candidates. Power says that he and Robbins decided to seek advice from Ray because of Ray's previous involvement in federal, state and local elections and that it was Ray's own decision to become more involved in the plan, about which he was enthusiastic.

Power, Robbins and Ray met in November 2003 at a coffee shop at Varsity Lakes to discuss support for 'worthy' candidates, and within a couple of weeks had a second meeting at the same venue. Solicitor Tony Hickey also attended this meeting. Hickey had acted for Ray for many years and had been asked by Ray to become involved in the proposal to raise funds for candidates.

An email from Ray to Hickey (copied to Power and Robbins) on 24 November 2003 rating various candidates and listing potential donors indicates some of the topics discussed at the Varsity Lakes meetings; Hickey believes he received this email the day after the second meeting.

According to Hickey, at the second meeting the participants discussed putting together funding for candidates. Ray offered to do more than just raise funds, but Power and Robbins made it clear that that was all that was required of him. Hickey recalls that there were several councillors who were considered to be not reasonable and rational, namely Eddy Sarroff, Peter Young and Dawn Crichlow. Power and Robbins had identified candidates for council, and the names of several candidates who would be supported were mentioned at that early stage, including Rob Molhoek, Roxanne Scott, Brian Rowe and Grant Pforr.

There is evidence that Power had early involvement in talking to and assessing prospective candidates, including advising them about the availability of funding.

The first meeting with selected candidates was held on 16 December 2003 at Quadrant Advertising (see next chapter). By the time of this meeting, Power had already met personally with Pforr, Molhoek, Scott and Rowe. Pforr had also sent Power his curriculum vitae and a draft campaign budget. Power discussed with all of these candidates (with the possible exception of Pforr) the possibility of funding being made available.

It appears that the only selected candidate Power did not personally meet before the meeting on 16 December 2003 was Greg Betts, who Power knew was being fostered as a candidate by Robbins.

Power also personally solicited funds for the selected candidates from several developers, including Soheil Abedian, Bill Roche, Graham Ingles, Col Dutton, Con Nikiforides and Brent Hailey.

According to Power, the idea of having a central fund to support the candidates came from Ray, but there is no doubt that Power embraced the idea enthusiastically and, with Ray, was largely responsible for its implementation.

Power agreed in evidence that he, along with Ray, was the dominating influence in terms of 'spreading the word', asking the business community for support and trying to collect funds to support candidates.

The Commission is satisfied that Power played a dominant role in the selection of a group of candidates to be funded, in soliciting funds for the selected candidates and in controlling the distribution of those funds.

These were unusual roles for a sitting councillor to play, and Power could point to no comparable instance of a common fund for candidates being used at the discretion of sitting councillors. In the Commission's view, it was inappropriate for Power and Robbins to play 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 (as detailed in later sections of this report).

## MR BRIAN RAY

Ray was asked by Power and Robbins to provide advice about a plan to get good candidates for council, and took an enthusiastic interest in the plan as it developed. However, his involvement was limited to soliciting funding, before and after the election. There is no evidence to suggest that he had any significant role in selecting candidates, and he did not control the distribution of the funds received.

As by the time of the inquiry Ray had died, it was left to his emails to provide an insight into his understanding of the project in which he had agreed to participate. In evidence, Power rejected the import of these emails, and suggested that Ray had a tendency to 'take a proposition beyond what was suggested and run with his own ideas at some stage'. In the Commission's view, however, it can be inferred that Ray's views were based on what was discussed at those meetings. As he took part at the request of Power and Robbins, the emails arguably reflect what he was told by them about what they hoped to achieve.

Ray had two meetings with Power and Robbins to discuss their plans (the Varsity Lakes meetings) in November 2003 and attended a meeting with Power, Robbins and Chris Morgan of Quadrant on 10 December 2003 to discuss the 'Common Sense Candidate Resource'.

An email from Ray on 5 February 2004 to potential donor Russell McCart discusses how the campaign would:

help rationalise the madder elements in the Council and make negotiations easier. The two drivers behind the camp [sic] are Sue Robbins and David Power, respectively chairman of the north and south planning groups ...

Ray's email of 3 March 2004 to Matthew Banks at Macquarie Bank sets out his understanding of what Power and Robbins wanted to achieve: to put together a fund for a campaign to win various wards for a caucus of like-minded candidates 'with whom we can negotiate in a similar way to the outcome achieved in the last [2000] Tweed Shire election' so as to result in predictable outcomes from the elected council.

In an email soliciting \$10 000 from Austcorp on 11 March 2004, Ray noted: 'We're flat out attempting to get a coherent group of Councillors so that we may be able to get a better outcome for the City as a whole and I know David Power particularly will appreciate your assistance'.

Although Ray helped solicit 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

*The reason we're talking to you people is because you appear to be sensible, rational, well behaved people and we're anxious to end up with a council that knows how to behave properly and professionally. — Councillor David Power*

**This chapter examines the role played by Quadrant Advertising in providing campaign services to the candidates who were chosen to receive assistance. It looks in particular at the meetings at Quadrant of 16 December 2003 and 8 January 2004, and then at the election campaigns themselves. The Commission considered the question of whether the actions of the selected candidates and their mentors created a 'group of candidates', as defined in the Local Government Act.**

### ROLE OF QUADRANT ADVERTISING

#### How Quadrant became involved

Tony Scott and Chris Morgan are directors of a company that trades as Quadrant Advertising. Scott had known developer Brian Ray for a number of years as a business associate, and was approached by Ray about Quadrant providing campaign services to the candidates who were chosen to receive assistance. Morgan did not know Ray before this time, but agreed to take on the role of assisting the candidates with their campaigns. Scott's involvement ended after the initial meetings, and only resumed after the election when Quadrant was still owed money and he became involved in trying to get the outstanding amounts paid.

Morgan produced notes of his meeting with Scott and Ray on 3 December 2003 that showed that sitting councillors Power and Robbins were nominated as the 'clients' for the election campaign work to be done by Quadrant. Morgan believed Ray gave him that information.

According to Morgan, Ray's brief to him at that meeting was that there was general dissatisfaction with the council under then Mayor Gary Baidon, and that Quadrant's involvement would be:

(T826) ... to assist in providing advertising services to individual candidates and to also basically try to achieve some sort of caucus within council so that the decision-making process that had been stalled could be moved forward.

Power said that he knew nothing until later in January about the fact that he and Robbins had been nominated as the clients at Quadrant. Morgan was obviously also unsure about this fact. Although he arranged to have an account opened at Quadrant on 10 December 2003 called the 'Power and Robbins Trust Account', he said in an email on 5 January 2004 to Power and Robbins that Quadrant still did not have a 'real client' at that time.

## Meeting of 10 December 2003

On 10 December 2003, Morgan met with Ray, Power and Robbins. His discussions with Power and Robbins about what they hoped to achieve formed the basis of the agenda/objectives document (see Appendix B) for the meeting with candidates on 16 December 2003.

Morgan's workbook contains notes about the 10 December meeting, headed 'Common Sense Candidate Resource', a term Morgan says he coined to describe the project being undertaken. He explained that the 'resource' consisted of the services, talent and expertise that Quadrant could provide to the common sense candidates. According to Morgan, the notes were made after the meeting as a 'summary' of what was discussed. They read as follows:

- Extent of support req'd
- Each candidate already aware?
- Suggested support components
  - door-knocking policy
  - door hangers
  - local issues v. GCCC regional issues
  - Research/Divisional issues GCB [Gold Coast Bulletin]
  - Corflutes — in bulk
  - Leaflet design/distribution
  - Agreement on key issues — joint promotion in press
  - Radio interviews
  - Pre-polling
  - Booth worker management/Set up on day
  - Signage location strategy/Management
  - Campaign audit support — checklist

Morgan said that the primary purpose of his workbook was to take briefs on clients' requirements, and these notes represented what he understood were the key components of the support to be offered to selected candidates. 'Each candidate already aware?' queried whether the proposed candidates were aware of what Quadrant could do for them. Each of the support components was something that Quadrant could suggest that candidates do, or that Quadrant could do for them.

According to Morgan, he left the meeting understanding that Power and Robbins were seeking to be involved in the provision of assistance to potential candidates, although he did not think he knew the names of any of the candidates at that time. He also understood that the purpose of the exercise was to have some new candidates elected who would help the council function better, and that to do that a majority on the council would be required.

All the notes in Morgan's workbook consist of suggested strategies for all the potential candidates, dealing with the group of candidates as though they had common goals and would employ common strategies. Morgan explained in evidence that his perception that there would be 'joint promotion' of the candidates in the media turned out not to be so, as things developed. However, in many respects the campaigns conducted for selected candidates did proceed with some common themes and strategies. In fact, the only suggested strategy on the list in Morgan's workbook that was definitely not employed by candidates was the 'joint promotion in press' of their 'agreement on key issues'.

Morgan also prepared an agenda for the meeting on 10 December 2003, and put some handwritten notes on it during the meeting. These notes included a reference to the fact that 'DP & SR [Power and Robbins] recognise the frustration of ratepayers and the business community'.

Next to the agenda item 'establish objectives', Morgan had written, 'Pride, respect in, agreement on key city issues, sensible majority, professional'.

Morgan agreed that 'agreement on key city issues' referred to an objective for the group of candidates, and that the 'sensible majority' indicated that one of the purposes of the exercise being undertaken was to have a group of candidates who could constitute a sensible majority on the council to be elected in March 2004.

Given that these notes were written by Morgan during the meeting with Power and Robbins, they support the view that 'agreement on key city issues' was something Power and Robbins agreed with, and the only part of the original proposed strategy in the workbook that was rejected was the idea of a joint promotion of this agreement.

After the meeting of 10 December 2003, Morgan arranged to have an account called the 'Power and Robbins Trust Account' opened at Quadrant.

On 11 December 2003, Morgan sent an email to Power and Robbins thanking them for their time on 10 December 2003, and indicating he would prepare 'a draft of objectives, proposed strategy and the nature and application of the resource that we discussed'. He also suggested that 'discussion prior to next Wednesday by email should be sufficient to ensure that there is consensus by all parties (including Ted & Bob I presume) on what is tabled on Wednesday evening'.

Power agreed in evidence that the reference to 'Ted & Bob' in this email was a reference to sitting councillors Ted Shepherd and Bob La Castra, and that it reflected Morgan's perception that they would be part of any consensus reached about objectives and strategy. Morgan said that he referred to Shepherd and La Castra in the email because they had been referred to by Power and Robbins during the meeting on 10 December 2003 as councillors who would have a shared interest in the project being discussed, and who would probably be at the next meeting.

Power reorganised the time for the meeting to be held with new candidates to the evening of Tuesday 16 December 2003, as a 'couple of people' had problems with the originally scheduled time of the afternoon of 17 December 2003, and gave Morgan a list of the attendees (including the names of the new candidates) for the meeting. Despite these emails, Power was reluctant to admit that he played a major role in organising the meeting on 16 December 2003, suggesting that Robbins may have assumed La Castra was going to be at the meeting, and may also have provided the information about the availability of others to attend.

### **Meeting of 16 December 2003 at Quadrant**

Sitting councillors Power, Robbins and Shepherd attended a meeting at Quadrant on 16 December 2003 with Morgan and five prospective candidates for the election: Grant Pforr (who brought his wife/campaign manager), Rob Molhoek, Greg Betts, Brian Rowe and Roxanne Scott. According to Morgan, the meeting went for about two hours.

#### ***'The agenda'***

Morgan had produced an untitled document ('the agenda' — see Appendix B) for the group's meeting on 16 December, outlining topics such as 'objectives', 'strategy', 'consensus on issues' and 'the resource'.

Power claims that there was no discussion at all about the agenda at the meeting, except for a private conversation between him and Morgan. The Commission rejects this claim, in view of the evidence summarised as follows.

- The version of the agenda that is Exhibit 14 has the words ‘common sense’ underlined on the first page and the ‘key city issues’ on page 2 have been numbered 1–7 in handwriting. Betts said in evidence that the handwriting was his, and that Morgan had asked the candidates at the meeting to focus their advertising campaigns by prioritising the issues.
- Another version of the agenda was attached to Morgan’s statement, with the ‘key city issues’ numbered 1–8, and ‘Civic focus Evandale Bldg’ handwritten under the list of key city issues.
- Morgan also had other copies of the agenda in his possession, and two of them also have handwritten comments beside the ‘key city issues’.
- Pforr’s copy of the agenda has handwriting beside the ‘key city issue’ of growth management, namely ‘Development. Min. 17–5m narrow street’.
- Scott said that she was given a copy of the agenda at the meeting, and issues raised in the agenda were discussed at the meeting, but not in any great detail.
- Shepherd gave evidence that the agenda was tabled at the meeting, that he glanced through it and saw it as a campaign strategy, but it was not discussed at length, if at all.
- Betts’s copy of the agenda ended up in the possession of solicitor Tony Hickey, on a file next to notes Hickey made of the meeting he had with Morgan and Ray on 17 December 2003 (see also page 29). Morgan gave Hickey that copy of the agenda during the meeting (17.12.03), and they discussed the key issues listed and what should be done to make sure candidates were aware of the issues.
- Morgan agrees that he took the document to the 17 December meeting, for the purpose of informing Brian Ray and Hickey about the topics that had been discussed the day before. This is inconsistent with any notion that the document was not discussed the previous day or was entirely discounted after the meeting on 16 December 2003.

In the Commission’s view, there is a substantial body of evidence showing that there was discussion about the contents of the agenda at the meeting of 16 December 2003, and, judging by the actions of the several candidates who numbered the key city issues and handwrote comments beside them, those issues at least were discussed in some detail.

The only part of the agenda that seems to have been specifically disavowed by Power was the suggestion that there would be any public promotion of the group as a ‘ticket’. According to Morgan, Power told him (T842), ‘Mate, no, that’s not the intent. We are not running a ticket here’.

But the agenda Morgan prepared for the 16 December 2003 meeting did not suggest running a ticket, nor did it refer to a ‘joint promotion in the press’, as his earlier proposal had. This suggests Morgan had been disabused of this idea by the time of the meeting of 16 December 2003.

There are two items on the agenda pointing to the conclusion that, by the time of the 16 December 2003 meeting, Morgan was well aware that there would be no public acknowledgment of the group. The first is the reference on page 2 to:

3. an agreed media position once awareness of this resource for ‘Campaign for Commonsense in Council’ (working title) becomes public ...

The second is the reference on page 3, under ‘Next Action’, to:

- Attitude to eventual media position

Both of these entries recognised that public comment might eventually be required, once the operations of the group became public, but there is no mention in the agenda of any intention to stage a 'joint promotion' by the group.

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'.

All of the meeting participants have denied that the items referring to an 'agreed media position' were discussed, but it can not reasonably be suggested that all of the funded candidates kept their connection with the group secret by coincidence.

The Commission is satisfied that Power and Robbins always intended that there should be no public acknowledgment of the group's funding arrangements, and that this was discussed at some stage with the group.

The agenda has been described by many participants, including Power, as a document that represented only Morgan's misinformed views about what was being proposed. But the agenda incorporates a number of the items from the handwritten notes made by Morgan at his meeting with Power and Robbins on 10 December 2003, including referring to 'pride and respect in these Councillors/candidates', 'professional conduct', 'consensus ... on key city issues' and the fact that 'these individual Councillors/candidates ... recognize/understand the frustrations of rate payers and business houses alike'. All of these items are contained in some form in Morgan's handwritten notes of the 10 December meeting. The seven 'key city issues' listed in the agenda are all taken directly from Morgan's handwritten notes of the meeting on 10 December 2003.

The Commission does not accept that Morgan was on a frolic of his own when he created the agenda for the meeting on 16 December; rather, the agenda accorded generally with the brief he was given by Power and Robbins when they met on 10 December 2003.

### ***General discussions***

According to Power's instructions to his legal counsel, he addressed the meeting with words to this effect:

(T1104) We've been hitting the headlines for the wrong reason. The reason we're talking to you people is because you appear to be sensible, rational, well-behaved people and we're anxious to end up with a council that knows how to behave properly and professionally. We want to be surrounded by councillors who behave with some dignity.

We're not looking at forming any sort of a ticket for alliance in council; people on the Gold Coast expect their councillors to be independent and so it's very important that you remain independent at all times.

But at the same time, you don't have to be discourteous or disruptive in the process. If you've got a different opinion to someone else, that's fine, nobody cares; but if you've got a different opinion, then you argue it logically and sensibly and politely — you don't just attack your fellow councillors and grand-stand in council for purely political reasons.

The participants at the meeting agreed 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 agreed 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. Each of the candidates spoke about what they had done to date, and some had brought examples of their draft campaign material to show others and discuss.

Shepherd said there was a discussion at the meeting about the fact that other groups were gathering candidates to target sitting councillors, including him.

According to Power the meeting was fairly informal, and there was a general discussion about the 'dos and don'ts' in campaigning. There was also some discussion about the important issues identified by the candidates during their campaigning to date.

Although none of this suggests that the candidates at the meeting intended to actively support each other's campaigns, and certainly not openly support each other's campaigns, it does suggest a collegiate atmosphere of shared interests and shared goals.

### ***Discussions about funding***

All candidates except Pforr agreed that funding for their campaigns was discussed on 16 December 2003, and that in fact the only reason they went to the meeting was the prospect of obtaining funding.

Pforr was unconvincing in his evidence on this topic. He suggested that he would have been happy to pay for the Quadrant work himself, and that fees were not discussed at the meeting of 16 December 2003, except that Morgan said he would be preparing a spreadsheet.

The Commission does not accept that Pforr was unaware that the whole concept behind the group meeting was that funds would be made available to 'suitable' candidates because of dissatisfaction with some sitting councillors, or that he was willing to commit to work being done by Quadrant without knowing the likely cost. All other participants (except Shepherd, who left early) agreed that at an early stage funding was discussed, and it was made clear that funds for Quadrant's work would be raised through the business community.

Morgan recalled that Power and Robbins told the meeting participants that Quadrant would be available to provide assistance to each candidate individually, and that the costs incurred would not necessarily be debited to them directly but would be funded from a trust fund or a campaign fund. It was also explained that the funds would be provided by the business community and would be 'anonymous'.

The Commission is satisfied that the candidates who attended the meeting at Quadrant on 16 December 2003 were largely motivated to do so by the prospect of campaign funding being organised through Power and Robbins or free campaign services being provided through Quadrant.

There are a number of references in the material to the view that Gold Coast politics make it undesirable for a candidate to present as anything other than 'independent', and that running a 'ticket' is seen as political suicide. When Power was asked about the comment attributed to him in a media article that 'the community would not accept a "ticket", preferring to look after themselves and

their division when casting a vote', he replied (T2496): 'Absolutely correct and I stand by that today and I stood by it right through'.

A number of candidates stressed that they were told at the meeting that they were to be 'independent' candidates. 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 a 'local independent candidate' would have rung very hollow in the community.

### **Meeting of 8 January 2004 at Quadrant**

Power and Robbins continued to play a coordinating role for the work being done by Quadrant. Morgan reported to them on at least two occasions between the Quadrant meetings of 16 December 2003 and 8 January 2004.

Morgan's workbook notes for 19 December 2003 are headed 'GCCC/Common Sense' and provide details about what was discussed with Power and Robbins on that date, including:

- Tuesday 8 Jan. 8.30 am
- Candidate get together
- Checklist of activity & data base
- Circulate prior to 8 Jan.

The last entry is followed by Power's and Robbins's names and home addresses.

On 22 December 2003, Morgan sent an email to Betts, Pforr, Rowe, Scott and Molhoek (copied to Power and Robbins) scheduling a meeting for 8 January 2004 'to evaluate your individual requirements, check planning notes and consider the extent of resources available ...'.

Those in attendance on 8 January were (on most accounts) Power, Robbins, Morgan, Betts, Rowe, Pforr and Scott. In evidence, Molhoek said he thought he had been present too.

Morgan asked each candidate for a 'wish list' of what they would want in the way of advertising, and there was a general discussion about campaigning to date.

According to Rowe, the candidates present on 8 January had by then had some campaign material prepared, and the meeting involved sharing material, 'pinching ideas from each other'. Morgan and Robbins did most of the talking, including Robbins giving helpful hints about door-knocking strategies and Morgan giving advice to particular candidates on their pamphlets and material.

Roxanne Scott sent an email to Morgan on 9 January 2004 about election issues, stating 'as David [Power] suggested yesterday, [her leaflet] needs to include [certain information].' Although Power and others suggested in evidence that his attendance at the meeting was casual and brief, this email suggests that he took at least some part in the meeting.

The events at the meeting on 8 January 2004 once 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, and that that common fund was being organised by Power and Robbins.

## **ELECTION CAMPAIGNS OF THE SELECTED CANDIDATES**

Regarding the campaigns of the three candidates for whom Quadrant did the most work, Morgan agreed that there was some 'cross-pollination of ideas between the campaigns:

(T854) ... only to the extent of layouts and brochures, for example. There was some commonality there in terms of design. They represented a template in some respects. But generally speaking, in terms of the thrust of what each individual candidate, those three individual candidates presented to their electorates, they all differed.

He agreed that Scott, Betts and Pforr all used a logo prepared by Quadrant Advertising that described them as 'your local independent candidate', and that the idea of a 'common sense' candidate was incorporated into their material in various ways. An example of the election material of the three candidates appears at the end of this chapter (pages 26–28).

Robbins continued to play a major mentoring role throughout the election for Betts. La Castra acted as a mentor for Scott, including attending meetings at Quadrant with her, advising her generally and arranging some personnel to assist her at the polling booths on election day.

After the meeting of 8 January, Morgan reported to Power and Robbins about issues of common interest to the candidates' campaigns. In an email from Morgan to Power (copied to Robbins) on 15 January 2004, Morgan reported that he had had further meetings with Rowe and had been proceeding with work for Pforr, Scott and Betts. Morgan also asked Power and Robbins for assistance on various issues of common interest to the candidates' campaign, including legals, divisional boundaries and timing of campaigning. In evidence, Morgan said that this email was sent to report to his 'clients', whom he still considered to be Power and Robbins at that time.

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.

## **WAS THERE A 'GROUP OF CANDIDATES'?**

The Commission was required to consider whether the actions of the selected candidates and their mentors created a 'group of candidates' for the purposes of section 427A of the LGA: 'Gifts to groups of candidates'.

Section 426 of the LGA defines a 'group of candidates' as being a group of candidates formed to promote the election of the candidates for a particular local government election, but not including a political party or an associated entity. A person who is a member of a group of candidates must declare not only their own gifts, but any gifts received by the group, and must also declare the names of all the members of the group.

Quadrant was paid a consultancy fee of \$33 000, including \$3000 GST, for the services it provided generally to Scott, Rowe, Betts and Pforr over a three-month period. Morgan said that he did not think it was necessary for him to inform candidates about the \$33 000 in consultancy fees. He also did not tell them about an amount of \$7011.51 that was spent by Quadrant on a negative campaign conducted against Crichlow, to assist Scott's campaign. The funds in the Hickey Lawyers Trust Account were also used to pay Robert Janssen (an unofficial member of Rowe's campaign committee) \$5200 for a negative campaign he conducted against Young, to assist Rowe's campaign.

The reconciliation statement produced by Quadrant showing how funds were allocated between candidates indicates that \$33 000 in consultancy fees and the expenses for the two negative campaigns were not allocated to any candidate. This resulted in these substantial amounts of funding provided by developer interests not being declared by any candidate.

One of the evident purposes of section 427A is to avoid situations where funds are received for the benefit of a group but no individual member of the group takes responsibility for declaring the funds. Along with section 427 (disclosure by a candidate), it also seeks to avoid the giving of anonymous gifts.

Of course, the purposes of section 427A were not uppermost in the minds of the selected candidates and their mentors. None of them was aware of the provisions in the LGA or the Department of Local Government and Planning handbook on the duties of 'groups of candidates' (*Disclosure of election gifts — guidelines for candidates and councillors for local government elections*). This lack of awareness is consistent with their inattention to their statutory obligations generally.

In the Commission's view, while the definition of 'group of candidates' is general and broad, it is unlikely that the commonality of interests required by the section existed in this case. On one view, the group was formed to assist each other get elected, and they certainly benefited from a common fund, services provided through a consultancy fee paid generally to assist all of them and through negative campaigns paid for from the fund. However, one is left with the impression that each of the candidates in the group was mainly interested in securing his or her own election. They shared Quadrant's services, and election tips and strategies, but some said that they supported candidates running against other members of the group. Roxanne Scott, for example, said she was supporting a candidate running against Molhoek, and La Castra told the inquiry that he had provided advice to a candidate running against Betts.

In fact, the loyalty of the selected candidates was not to each other; it was rather more to the people who were raising the funds and providing them with those funds: Power and Robbins. Power and Robbins were certainly supporting the election of all members of the group, but that is not to say that all members of the group were necessarily supporting each other's election.

In the circumstances, it is doubtful that the group of selected candidates was a 'group of candidates' within the meaning of section 427A of the LGA. However, 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 funds used for the group.

Detailed recommendations in relation to this issue are made in Chapter 17 of this report.

# VOTE 1 GRANT PFORR

He's working FOR you!

Your Local **INDEPENDENT** Council Candidate

## DIVISION 3

### GOLD COAST CITY COUNCIL

Voting from 8am to 6pm, Saturday 27 March, 2004

**Your Local INDEPENDENT Council Candidate**

**Polling Booths:**  
 Hope Island: Banksia Hall, 78 Boykambil Esplanade  
 Coombabah: Marj Shipman Community Hall, 91 Hansford Rd  
 Coombabah State Primary School: Oxley Drive  
 Coombabah State High School: Pine Ridge Rd  
 Paradise Point Community Centre: Community Lane off Falkinder St  
 Runaway Bay Community Centre: Lae Drive

**South STRADBROKE**

**Boykambil**  
**Coombabah**  
**Hollywell**  
**Hope Island**  
**Oyster Cove**  
**Paradise Point**  
**Runaway Bay**  
**Sanctuary Cove**  
**Santa Barbara**  
**South Stradbroke Island**  
**Sovereign Islands**

**Includes :**  
 Oyster Cove Prom – west to Calmwater Cres  
 Calmwater Cres  
 Sabrina Av  
 Windchimes Way  
 Prosperity Dr  
 Champagne Blvd  
 Tranquility Ct  
 Serenity Blvd  
 Kim Ct  
 Tay Ct  
 Wiseman Ct

**Contact Grant Pforr**  
 Mobile: 0419 701 942  
 Email: lgpforr@hotmail.com  
 Web: www.grantpforr.com  
**Phone/Fax: 5530 8660**  
 PO Box 1244, Paradise Point  
 Queensland 4216

# VOTE 1 GRANT PFORR

He's working FOR you!

Your Local **INDEPENDENT** Council Candidate

## DIVISION 3

### GOLD COAST CITY COUNCIL

Voting from 8am to 6pm, Saturday 27 March, 2004

# ISSUES

**Extra storage still needed**

*The Hinze Dam, current level is 80%.*

- Proven Track Record
- Integrity & Energy
- Fresh Outlook
- Raised Locally
- Common Sense
- Representative of the people

**Respect for the environment**  
 It is important to effectively manage and conserve the Broadwater, South Stradbroke Island and the Coomera River. These areas are landmarks of the Gold Coast and crucial to our tourism and marine industries.

**Jabiru Island**  
 We need to find an alternative solution to the proposed ferry terminal at Jabiru Island in the best interests of Couran Cove. Grant Pforr agrees that the current Runaway Bay Marina is under huge pressure, but does not agree with a terminal at Jabiru Island. Grant is currently communicating with all parties regarding several alternative locations.

**Road Improvements**  
 Grant Pforr will continue to work with all parties for the upgrades of Hope Island Road and Oxley Drive. Grant also plans to eliminate rat running by slowing down through-traffic along residential streets. More parking will be added with public consultation at Broadwater and Paradise Point Shopping Centre under Grant's initiative. He also plans to address the issue of whether the current public transport system can sufficiently support the high level of infrastructure.

**Sensible Water Management – without raising rates!**  
 • Current Hinze Dam level is now 80%+  
 • Grant Pforr supports the push for raising the dam wall to Stage 3.  
 • Stage 3 of the dam raising proposal would result in an increase that would more than double the current water capacity of the Hinze Dam and improve flood mitigation.  
 • The dam has been built for 14 years and has overflowed 12 times.  
 • Raising the dam wall by 4m for flood mitigation only, will cost \$34 million.  
 • Stage 3 however, would see the dam raised by 16m at a cost of \$80 million, providing both increased storage and flood mitigation.  
 • In the event of a flood, this action could save a reported \$114 million in flood damage costs.  
 • There is currently over \$55 million in Gold Coast City Council trust accounts from development contributions for water supply Capital Works.  
 • Council also has the ability to attract a 40% subsidy (estimated \$32 million) on water storage capital works under current State Government Funding policy.  
 • Grant supports the proposal to combine these two funding sources to commit to Stage 3 construction without raising Gold Coast rates.

**VILLAGEVOCES**  
**Digging in for Jabiru fight**

\*Current at time of press.

ELECTION MATERIAL DISTRIBUTED BY CANDIDATE ROXANNE SCOTT

# better...

- ...better water management
- ...better local solutions to rat running
- ...better financial management of ratepayer funds
- ...better local traffic solutions
- ...better footpaths
- ...better attention to our parks
- ...better working relationships with State Government e.g. improving facilities for Southport police
- ...better foreshore management
- ...better working relationships among City Councillors
- ...better local facilities and amenities

It's time for a change:

## ROXANNE SCOTT

B.Bus, MBA



Want to help?

Contact  
Roxanne Scott

PO Box 10383  
Southport Mail Centre 4215  
**Telephone: 5594 3926**  
Mobile: 0400 076 926 (0400 0 ROXAN)  
Email: roxanne\_sco@hotmail.com  
www.roxannescott.com

Authorised by Stuart Hill, 18 Egerton Street, Southport 4215, QLD.

Your Local  
**INDEPENDENT**  
Council Candidate

It's time for a change:

## ROXANNE SCOTT

B.Bus, MBA



**Independent Candidate for Division 6  
GOLD COAST CITY COUNCIL**  
Southport, Molendinar, Labrador to Central St.

# VOTE 1 SCOTT

VOTE 1 SCOTT, ROXANNE

# We deserve better...

**Personal Profile**

Roxanne Scott, her husband and two boys ages 16 and 13 have lived on the Gold Coast for a decade, residing in Brisbane prior to moving to the Coast.

**Does she have the right skills?**

Passionate about gaining a fair deal for Gold Coast residents, Roxanne is dedicated to the employment programs she has managed in recent years. Under the "Breaking the Unemployment Cycle" initiative from the Southport office of the Department of Employment Training, Roxanne managed employment projects to the value of over \$10.5 million.

**Experience**

Roxanne's strong financial management background is attributed to her education, having both a Bachelor of Business and a Masters of Business Administration. With more than 20 years experience in State Government in several departments, including Employment and Training, TAFE, Families, Emergency Services and Education, Roxanne has a sound understanding of government processes.

**Support for Division 6**

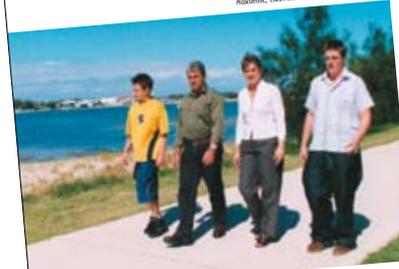
**Roxanne has assisted community organisations in Division 6 to apply for State Government funding for construction/refurbishment:**

- Amateur Fishing Club on the Broadwater
- Owen Park's Historical Bulletin Building
- The Caretaker's Cottage
- Scout Hall, North Street
- Multicultural Gardens at Musgrave Park
- Landscaping around Silver Bridle Neighbourhood Centre.

**Community Focus**

**Roxanne has demonstrated a strong personal commitment to:**

- The Migrant Centre
- Gold Coast International Women's Day Committee
- Gold Coast Youth Commitment
- StreetCo
- Schizophrenia Fellowship
- Crossroads Recovery
- Women at Work Leadership Awards
- Gold Coast Training Awards.



Roxanne, husband Mark and their two sons



"This is ridiculous. I'll find a solution to re-opening these Angus Park toilets during daylight hours." Roxanne Scott

It's time for a change  
**I'LL WORK TO DELIVER**

The current Division 6 councillor has been in office since 1991 and unopposed since 1997. During that time, important decisions relating to water supply, traffic, transport, financial management of ratepayer funds and infrastructure have been neglected. In fact, a number of councillors seem more devoted to creating discord and grabbing media headlines than actually tackling critical divisional and city-wide issues.

ELECTION MATERIAL DISTRIBUTED BY CANDIDATE GREG BETTS

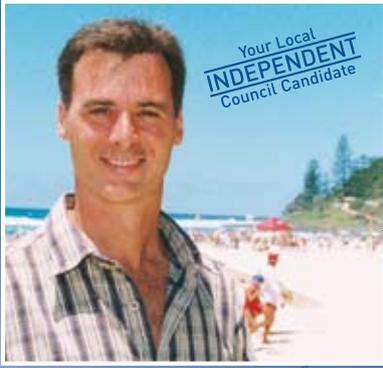
*ndidate*  
**r the Better**

- ...better** water supply management
- ...better** local traffic options
- ...better** communication with residents
- ...better** footpaths
- ...better** financial management of ratepayer funds
- ...better** working relationships with State & Federal Government
- ...better** better foreshore management
- ...better** professional standards of conduct among City Councillors
- ...better** local facilities and amenities





**DIVISION 12...**  
***Greg Betts***



**VOTE 1 BETTS, Greg**

Give Greg a hand - contact:  
**Email:** greg.betts@division12.org **Fax:** 5576 2129  
**Web:** www.division12.org **Mobile:** 0416 080 557

Authorised by G. Betts 4 Avocat Ave Burleigh, 4220 QLD.

*...a vision for a*  
**better city**

**VOTE 1 BETTS**

BURLEIGH HEADS • BURLEIGH WATERS • VARSITY LAKES • REEDY CREEK

*A message from your Division 12 candidate*  
**A Change for the Better**

I have been a resident of the Gold Coast for seven years, after a transfer from Brisbane through my work with Qantas Airways. My wife Susan and I live in Division 12 like yourself, with our two sons, aged 7 and 10.

I have a strong interest in the future of our area and a passion for serving the needs of our local community and its people. It has always been my ambition to enter Local Government as an independent candidate in order to achieve this goal.

During my near 15 years with Qantas, I have developed very strong interpersonal skills, and the qualities of integrity, responsibility, fairness, diligence and reliability, making me the best person to represent you in Council.



Greg and wife Susan with their two sons.

*Greg has been personally doorknocking extensively in Division 12, and found the following 6 issues to be of a high importance to local residents.*



An extra lane, not extra blue metal is needed at this busy intersection.

- 1) Transportation and road congestion**  
As the Gold Coast grows at unprecedented levels, commuters are feeling the squeeze on a daily basis. Our road system is reaching critical point and now is the time for action. We need immediate solutions not more talk.
- 2) Water supply**  
With the city growing at its current pace, Hinze Dam is unable to cope with the demand of water, even if it fills from Summer storm weather. Serious solutions or alternative, long-term water sources need to be carefully investigated, in order to provide sufficient water for the future growth of our residents and our tourist visitors. Decisions need to be made now.
- 3) Town planning and development**  
A major concern for all Gold Coast residents is the growth of development of high density living, that is not supported by sufficient road systems. The result is serious traffic congestion for local resident and visitors alike. We need a council that is prepared to take action.
- 4) Communication from Council**  
Greg Betts will be a voice for the people. By keeping the local residents informed about relevant issues, Greg will listen to your opinions and respond promptly.
- 5) Neighbourhood security**  
The increasing level of crime and vandalism in our area, especially graffiti, is unacceptable. Greg will develop a closer working relationship with local Police so that we can solve problems in a supportive manner.
- 6) Youth development**  
Having two young children of his own, Greg understands the need for safe public play areas, as well as the future development of our children.

Not only will I strive to achieve the best outcomes for Division 12, but the Gold Coast as a whole, as many community issues are city wide, such as the water crisis.

My involvement in the community includes membership of local groups such as the Varsity College P & C Association, the Friends of Burleigh Association and Honorary Treasurer of the Burleigh Cub Scouts. I look forward to taking on this role as your representative in Council in a full time capacity, so you can be assured of my total commitment in working towards the best outcomes for our area.

**I encourage you to make the change for a better Council when you go to the polls on March 27.**

## FUNDRAISING AND PAYMENTS TO CANDIDATES AND QUADRANT

*... you need to have somebody in control of it because I'm not going to be responsible for who gets what and where and I said that those people would have to be Sue and David. — Tony Hickey, Hickey Lawyers*

**Chapter 4 details the source of funds and the operation of a trust account at Hickey Lawyers with Power and Robbins as clients. It also describes how and why the client name at Hickey Lawyers and Quadrant was changed.**

### MEETING OF 17 DECEMBER 2003

Having spoken to the group of selected candidates on 16 December 2003 about the funds that would be raised for them, Chris Morgan of Quadrant met with solicitor Tony Hickey (of Hickey Lawyers) and developer Brian Ray at Ray's office the next day (17 December) to discuss how the funds would be raised, and from whom.

Hickey made some handwritten notes of the meeting on an email that had been sent to him; the email rated candidates and listed potential donors. His notes on the email refer to 'supporting 8 councillors which will give a majority vote' and 'Trust a/c authority by Sue and David — make them the client'.

Hickey says that Ray wanted to have another meeting with Morgan and asked him to come. He described the meeting as follows:

(T611) Okay. Brian asked me to come along to the meeting. I assumed the purpose of the meeting was to confirm how we were going to raise funds, who we were going to approach, and who was going to approach who. Chris Morgan was definitely at the meeting and was in Brian's office. I think there was some discussion between Chris and Brian about, you know, the candidates as such and what it had — might have been discussion about Chris having met with the candidates and, you know, what was his opinion of the quality of the candidates.

Might have been some general discussion like that. I really didn't pay a lot of attention to that because I wasn't interested in it and I wasn't to be involved in it. This document [a copy of 'the agenda'] was tabled and then there was a discussion between Chris and Brian about, you know, the appropriate key issues that affected the Gold Coast City community and how they should be identified and views on making sure the candidates were aware of, you know, generally what — the candidates were aware of the need to understand what is important to the people who would be voting to them, what were the important issues, and to make sure that they researched that — that is, the candidates did it. General discussion like that and then, really, all — we talked about — I'm pretty sure that's when we went back to that email and that list of candidates and we talked about fundamentally, well, who's going to ring who and what responses are we going to get. That was it.

When asked what his note 'supporting 8 councillors which will give a majority vote' referred to, this exchange took place:

(T612–3)

Hickey: The discussion was that to be successful in bringing a common sense group of people to the Gold Coast City Council you obviously had to be in a position to know that you would cover a majority position so that, hopefully, when matters were debated and they went to a vote, the common sense would prevail by a majority decision.

Mulholland: Right. So in order to do that one would need to identify who these eight councillors were?

Hickey: Yes, yes.

Mulholland: And who were the eight? Look at the list if you need to refresh your memory, on the attachment?

Hickey: Okay. Hackwood, Power, Pforr, Mulhoek, Rowe, Scott, La Castra, Shepherd — yeah. I can't — I was really making a diary note of what they were saying there. But there was at least eight that they thought that they would cover, depending on who got in and who didn't get in.

In relation to his note 'Trust a/c authority by Sue and David — make them the client':

(T614)

Mulholland: Yes. Well, the next note that you have there is 'Trust Account'.

Hickey: Mmm.

Mulholland: And alongside it 'authority by Sue and David, make them the client'?

Hickey: Correct.

Mulholland: Well, explain that to us.

Hickey: I explained that to operate the trust account we needed the name — it to be in somebody's name, a client's name, and that that client would then be responsible, would be the person in charge of that account to direct us as the lawyers simply to distribute funds in accordance with their written directions.

Mulholland: Right, so that was your suggestion to make them the client?

Hickey: Well, it was my direction. I mean, the discussions had been previously and was then can we put the money in your trust account? Yes, you can but you need to have somebody in control of it because I'm not going to be responsible for who gets what and where and I said that those people would have to be Sue and David.

Morgan agreed that the purpose of the meeting on 17 December 2003 was to clarify the extent of the budget that would be available for campaign expenditure by candidates and to formalise the arrangements for Quadrant to provide services. At that time, the indication given to Morgan was that there would be about \$300,000 in total available through funds raised and Ray had originally thought that the figure could be even higher. Morgan recalls that the meeting's primary focus was on the list of potential donors that had been compiled. Both copies of this list provided to the CMC have had additional prospective donors added in handwriting to the original typewritten list of 30 donors.

## SOURCE OF FUNDS

Most of the developers who were approached for funds were contacted by Power or on behalf of Power and Robbins. Hickey said that 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, as 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. In an email of 5 February 2004 to a potential donor, seeking his help in chasing up a donation to the fund, Ray made specific reference to their roles: 'The two drivers behind the camp [*sic*] are Sue Robbins and David Power, respectively chairman of the north and south planning groups ...'.

The evidence of each of the donors about who approached them to donate is summarised below.

### **Blue Sky Capital**

Constantine Nikiforides, the CEO of the Niecon Group (Blue Sky Capital Pty Ltd is one of its companies) was telephoned by Ray, who said he was organising a fund to assist councillors and candidates who were prepared to get things done on the Gold Coast. Ray said he wanted to generate democratic debate about what should be occurring on the Gold Coast and he thought that a fund would assist councillors and candidates who 'would be supportive and positive of this approach'. Ray arranged a meeting for Nikiforides with Power, who said that contributing to a campaign fund was one way towards assisting those who would make a positive contribution towards developing the infrastructure necessary on the Gold Coast. Nikiforides thought the fund would be controlled by Ray. After a couple of reminders from Ray, he authorised a cheque payment of \$10000 to Hickey Lawyers Trust Account on 23 March 2004. Although the receipt that was issued for the payment referred to 'Mr L Barden' as the client, Nikiforides said he knew nothing at all about Barden at that time.

### **Devine Ltd**

David Devine, the Managing Director of Devine Ltd, was contacted by Ray in late January/early February 2004. Ray said that a group of developers were contributing to a fund to assist a group of councillors who can 'bring some sense to the process of development application'. Ray said:

There are a number of councillors who are all anti-development and the fund will support councillors who understand development.

Devine was told that \$10000 was the amount being contributed by other developers, specifically Villa World, Raptis, Sunland and the Ray Group. Devine agreed to contribute, because his company was having problems with Cr Robbins, and Ray said he would arrange a meeting for Devine with Robbins after the election (this meeting did not eventuate). The amount of \$10000 was paid into Hickey Lawyers Trust Account on 5 February 2004.

### **Fish Group**

John Fish, Director of the Fish Group of companies, was approached by Hickey and told that 24 other business people were also being approached to donate \$10000 each to fund a campaign that would be 'pro-business'. Hickey said the money would be paid into his trust account and would be controlled by Power and Robbins. Power told Fish at a later meeting the names of at least two of the candidates to whom money had been given from the 'fund', but Fish gave no direction about how his donation should be used. Fish donated \$10000 to the

fund on 13 February 2004. Later, on 9 and 10 March 2004, he donated a further \$10 000 to Grant Pforr and \$24 000 to Brian Rowe, respectively.

### **Great Southern GMBH**

Hickey held a power of attorney on behalf of this company. He contacted a representative of the company in Germany and asked whether they would make a donation to assist with campaign funding for the council elections. He was then instructed to make a payment from the company to Hickey Lawyers Trust Account in the amount of \$10 000, and paid that amount into the account on 23 December 2003.

### **Ingles Group**

Graeme Ingles, Managing Director of the Ingles Group, was approached by Hickey, acting on behalf of Ray. Ingles was told that Ray had set up a fund to assist some sensible candidates who were running against existing councillors. Ingles's understanding was that the fund would support common sense candidates who were not 'radical greens or environmentalists'. He was told who the existing councillors to be opposed were, including Young and Crichlow. He did not want to support a candidate against Crichlow, and when he gave a donation made it a condition that the funds should not be used against Crichlow. (This direction was ignored, although the funds were allocated in a way that makes it difficult to identify particular donations against disbursements from the fund.) Ingles thought Ray or Hickey would be controlling who got the funds. He was told the names of the candidates the fund would support, but as he did not know them he had no opinion of them. Therefore, apart from not wanting funds to be used against Crichlow, he left it entirely to the discretion of those controlling the funds. Ingles donated \$10 000 on 17 March 2004.

### **Phillips Group**

Gregory Phillips, a director with a number of companies in the Phillips Group, was contacted on two occasions by Hickey in January and March 2004. He made a donation of \$10 000 on 27 January 2004, and \$20 000 on 11 March 2004. He understood that the funds were to be used to promote the election of a number of candidates, to break the 'stupid deadlock' that existed in the council, where the council was 'deadlocked 8/8'. He did not know of the involvement of Power or Robbins in the fundraising, and knew nothing about any particular candidates the money would go to.

### **Rapcivic**

James Raptis, the Managing Director of Rapcivic Contractors Pty Ltd (part of the Raptis Group), was contacted by Hickey before the election. Hickey said he was seeking donations to be placed into a trust fund that were to be allocated to candidates standing in the election. An amount of \$10 000 was sought. Rapcivic agreed to provide funds, and there was no discussion about the manner in which the funds would be distributed from the trust or any discussion about which candidates would be beneficiaries of the funds. A cheque for \$10 000 was drawn payable to Hickey Lawyers Trust Account on 18 February 2004.

### **Ray Group**

The Ray Group donated \$10 000 to the campaign through Hickey Lawyers Trust Account on 15 January 2003. According to a statement provided by Ray's son, Mr Tom Ray, the candidates ultimately intended to benefit from the gift were Power and Robbins and/or such other candidates determined by them in their unfettered

discretion. The money was to be disbursed only on the instructions of Power and Robbins.

### **Roche Group**

William Roche, a director of the Roche Group Pty Ltd, had a telephone conversation with Power on or about 26 February 2004 in relation to a donation to the elections. He did not know which candidates his money was going to, but later had a conversation with Hickey about the details of where to send the donation. He knew that Power wanted to back progressive candidates, and thought that Power was probably leading a group of candidates that his company would have wanted to back. The Roche Group paid \$10 000 into Hickey Lawyers Trust Account on 2 March 2004.

### **Stockland**

Col Dutton, Regional Manager for Stockland Development Pty Ltd, was contacted by Power about making a donation to some 'good candidates'. He trusted Power's judgment and was happy for him to distribute the money donated; he was never told the names of any of the candidates to whom it was going. On 5 April 2004, he paid \$10 000 to 'Mr David Power c/- Mr Tony Hickey' for the 'Lionel Barden Common Sense Campaign Fund', having been given that name by Hickey. The letter enclosing the cheque described it as a donation to 'a community fund'.

### **Sullivan**

Philip Sullivan, CEO of City Pacific Ltd, was approached by Ray on 18 December 2003, to donate to 'a group of candidates [who] needed support'. Ray said it was important to have a balanced council in power. No specific councillors were mentioned, and Sullivan left it to Ray's discretion as to how candidates were to be selected. Ray said others were donating \$10 000, and Sullivan agreed to donate that amount. Although the cheque butt, internal cheque entries and the receipt all refer to the names of David Power and Sue Robbins, Sullivan does not recall Ray referring to these councillors. The cheque dated 28 January 2004 was drawn from an account in the name of Ronglen Pty Ltd, trading as Sullivan Constructions, and made payable to Hickey Lawyers Trust Account.

### **Sunland Group Ltd**

Craig Treasure, Director of Property Assets for Sunland, was contacted by Brian Ray about making a general donation in favour of candidates standing for election to the Gold Coast City Council. A cheque for \$10 000 was drawn in favour of Hickey Lawyers Trust Account as requested by Ray, and paid on 28 January 2004. The payment was not in support of any particular candidate and Sunland had no information about the identity of any candidate or candidates who might ultimately benefit from the donation. Treasure said that he and Managing Director Soheil Abedian had confidence in Ray, and knew that the donation would be going to candidates whom Sunland would be happy to support. Abedian agreed in his evidence that he had no idea which candidates his donation would support, but assumed Ray would decide. After the election, Sunland made a further donation of \$7700 directly to Quadrant Advertising in response to a request from David Power.

### **Villa World Ltd**

Brent Hailey, the CEO of Villa World Ltd, was asked by Power at a meeting in February 2004 to donate \$10 000 to the election campaign. Power indicated that he was establishing a fund to assist candidates who would stand against

councillors who were 'not sensible' in decision-making within council. Hailey agreed to make a donation because he considered that the election of Power and other candidates with a similar progressive approach towards the development of the Gold Coast was something the company should support, because of its involvement in land development on the Gold Coast. Power told Hailey he was canvassing other developers for donations, as well as the marine industry. Hailey understood Power would be supporting a number of candidates, but did not know their names. The donation was made on 12 March 2004.

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 existing councillors. Most were not told the names of the candidates to be supported. The donors (apart from Ingles) 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 of the donors seem to have been aware that their money would be placed in Hickey Lawyers Trust Account and distributed to candidates.

## **THE OPERATION OF HICKEY LAWYERS TRUST ACCOUNT WITH POWER AND ROBBINS AS CLIENTS**

In a statement provided to the CMC before the hearing, Power said he was never involved in the actual receipt of funds, and did not recall ever being notified by Hickey Lawyers of the actual receipt of funds or the quantum of specific contributions made to the trust, or what amounts were paid to support various individuals.

Concerning the trust account that operated under the control of Power and Robbins, Hickey had this to say when questioned by Mulholland:

(T631)

Mulholland: Now so far as this account was concerned, you've explained how the account was created within your trust account. Did you ever understand this as a trust fund?

Hickey: In what sense?

Mulholland: Well, did you ever understand that there was any trust document in relation to this campaign funding?

Hickey: No, there wasn't. It was a trust account.

Mulholland: It was a trust account?

Hickey: Mmm.

Mulholland: And you understood that ... ?

Hickey: Correct.

Mulholland: ... throughout?

Hickey: Correct.

Mulholland: Did anyone ever suggest to you that they understood it in any different way?

Hickey: No-one ever suggested that to me but there's been plenty of suggestions in the media.

Mulholland: Yes. All right. So it was just a separate account that had been created within your trust account?

Hickey: Correct.

Mulholland: And the purpose of it related to the Gold Coast City Council campaign?

Hickey: Correct.

On 23 December 2003, a file was created at Hickey Lawyers in the name of 'Sue Robbins Councillor & David Power Councillor' with the matter specified as 'Gold Coast City Council — Election Campaign Fund'.

From 24 December 2003, Power and Robbins signed authorities for payments from the trust account directly to candidates.

They first authorised \$7500 to be paid to Rowe, and, on 23 January 2004, authorised \$29 000 to be paid directly to four candidates: Rowe and Pforr were each allocated \$7500 and Scott and Betts \$7000 each.

There is evidence that Power exercised control over budget allocations for candidates, not just individual draws. In an email from Roxanne Scott to Morgan of 27 January 2004, Scott stated: 'David [Power] has given me a tentative figure for a campaign budget — have you heard anything definite yet?'

On 28 January 2004, Hickey sent an email to Ray, indicating that Power and Robbins were 'getting a little bit frustrated in waiting for their money'. In this email, Hickey stressed that the only role his firm had played was to 'arrange for people to commit funds which are presently held in my trust account in the name of Robbins and Power and which are only distributed in accordance with their directions'.

On 6 February 2004, Quadrant's internal records were changed to record that their client was now the Lionel Barden Trust Account, instead of the Power and Robbins Trust Account. Regarding this name change, Power gave evidence that, late in January 2004, he and Robbins became concerned about their names being used, in particular about their being responsible for distributing funds. They discussed the issue that there might be a perception that the recipients were beholden to them, and that it was a mistake on their part in view of their desire to keep the candidates independent. As detailed later in this chapter, Power's way of dealing with this perception was to attempt to conceal his and Robbins's involvement in the fund by arranging for Barden to put his name to it.

Despite the change of name at Quadrant, Power and Robbins continued to control the funds held in the Hickey Lawyers Trust Account. Power could not explain why Barden was not also put in charge of the trust account at this time, except to say that he had been very busy with his own campaign, got distracted and did not get back to the issue for a couple of weeks.

Whatever the reason, Power and Robbins continued until 3 March 2004 to control the substantial sums of money that were being processed through the Hickey Lawyers Trust Account.

Despite his own campaign commitments, Power also continued to be involved in fundraising for new candidates during February 2004. In an email to Morgan on 12 February 2004, Ray notes that Power was 'chasing \$60 000 in contributions', and on the same date Morgan emailed Ray to advise that Power was following up Villa World, as Power had been talking to Brent Hailey from Villa World earlier that day. Hailey discussed donating to the fund at a meeting with Power on 23 February 2004, and says Power told him he was 'openly canvassing all development companies who had interests on the Gold Coast and that he was campaigning on the basis of his reputation as a common sense and approachable councillor'.

On 13 February 2004 Ray responded to an email from Morgan chasing funds, saying that he had spoken to Power who had promised to ring Ray that day to confirm where he was with \$80 000 worth of commitments. Ray noted that he and Morgan had a meeting scheduled on 17 February 2004 with Power and noted: 'we should attempt to resolve everything by that date'. Ray, Hickey and Power met on that day to discuss how much they had and where else they could get money from, as more funds were needed.

Also on 17 February 2004, Pforr emailed Power requesting a \$5000 draw down, and said that he would have to discuss the 'issue of preferences' with Power.

On 18 February 2004, Barbara Christoffel, a Rowe campaign worker, emailed Sandra Wild at Hickey Lawyers saying 'Cr David Power has confirmed with us \$27 000 will be made available today for the [Rowe] campaign fund', evidencing Power's continued control over the allocation of funds to candidates.

On 19 February 2004, Power and Robbins signed an authority to Hickey Lawyers to pay \$33 000 directly to four candidates, and also authorised \$20 000 to be 'held and paid as invoiced by Quadrant'.

On the fundraising front, on 26 February 2004 Power wrote to developer Bill Roche about contributing to a 'community-based fund' that had been established to bring back 'dignity to the Gold Coast' and 'certainty in the decision-making process'. On the same date, Power also wrote to developer Col Dutton of Stockland in similar terms requesting a donation for a 'community fund'.

## **MEETING WITH FISH, PFORR AND ROWE — 23 FEBRUARY 2004**

A meeting held between developer John Fish, Power, and candidates Pforr and Rowe was canvassed in some detail at the hearing. It was relevant as another example of Power's assistance to new candidates before the election, and also because a serious allegation against sitting councillor Young was raised during the meeting.

On 17 February 2004, Power's secretary emailed Pforr about a meeting Power had arranged with Fish. The meeting took place on 23 February 2004.

According to Pforr, Power suggested he should meet Fish, and Fish offered him funding and support in kind. He did not know that Rowe was also going to be at the meeting. Hickey said he had told Power that Fish might be interested in giving further funding.

Rowe agreed that he and Pforr attended the meeting and were offered support, although in his original statement he made no mention of Power's involvement.

Fish said that the meeting came about because Hickey rang him and said Power would like to meet to introduce him to Pforr and for him to meet Rowe again, whom he already knew. Fish said he made no commitment at the meeting to provide further funds to Rowe or Pforr, but left it on the basis that they could contact him if they required further funding. Fish assumed that Rowe and Pforr had already received money indirectly from him through disbursements from the fund, to which he had contributed.

Fish was later contacted directly by Pforr and Rowe seeking funds and, on 9 and 10 March 2004, he donated \$10 000 to Pforr and \$24 000 to Rowe, respectively.

According to Power, funds were not discussed at the meeting on 23 February 2004. He agreed that his reference in an email of 9 March 2004 to the fact that a donor would be assisting Pforr and Rowe directly was a reference to Fish, but denied

knowing that Fish donated \$10,000 to Pforr on 9 March 2004 and \$24,000 to Rowe on 10 March 2004.

In view of the pressure that Power was under to raise funds, and his subsequent knowledge of Fish's intention to fund Pforr and Rowe directly, his evidence that he did not arrange this meeting with Fish to obtain funding for Pforr and Rowe is rejected.

At the meeting on 23 February 2004, Fish spent some time telling the participants about problems he had had with Cr Young. Fish claimed that in 1998, Young (before he was elected) 'tried to extort a million dollars from our company' (T1935).

He alleged that Young said he would withdraw his appeal to the Planning and Environment Court against a development by Fish's company if Fish bought a property owned by Young for one million dollars. Fish said that the offer was tape-recorded, and repeated this allegation at the hearing.

A CMC officer travelled with Fish to his office and to a storage facility where he said he thought the tape was stored, but he could not find it. The tape has never been produced. The allegation made by Fish was categorically denied by Young.

In the Commission's view, this allegation lacks substance and does not warrant further investigation. Fish's unsatisfactory evidence in relation to the tape, his admitted personal animosity towards Young and his failure to produce the tape despite extensive searches, all cast substantial doubt on the tape's existence.

## CHANGE OF NAME

### At Quadrant

On 5 January 2004, Morgan sent an email to Power and Robbins headed 'Subject Power & Robbins 2004 GCCC Election Trust Fund?', reporting on work done with the 'five new candidates'. Morgan said that Quadrant still did not have a 'real client', and that he was still unaware of the name of the trust fund (as his question mark in the title appears to indicate).

Morgan said he was later told by Power that the name of the account held in Quadrant's office would change and, on 30 January 2004, he was advised that Lionel Barden had agreed to allow his name to be used. Morgan said he was not sure why the name was changed, but agreed he told CMC investigators that the name was changed because it was bound to become public at some stage.

As mentioned earlier, Power said that he and Robbins became concerned in late January 2004 about their names being used, and the possible perception that the recipients of funding were beholden to them.

There are emails between Morgan and Power on 4 and 5 February 2004 concerning a draft letter of appointment for Barden. Power advised Morgan that Barden had agreed to act as 'primary client'.

The letter of appointment from Barden to Quadrant produced as a result of this exercise was backdated to 10 December 2003, the day Morgan had originally opened an account at Quadrant in the name of the 'Power and Robbins Trust Account'. Morgan explained that he was told by Power that the name of the account was to change to Barden's, and that he had prepared the backdated letter of authority because it was 'standard operating procedure with an advertising agency ... to have a letter of authority relevant to the period of your contract'.

Barden said Power approached him in late January to put his name to a trust. He did not know that the trust had previously been held in the names of Power and Robbins; Power did not tell him. Barden said he was approached because he was then independent of council business and the chambers of commerce. Power met with Barden on 4 February 2004.

Morgan sent an internal email on 6 February 2004 directing a change of name at Quadrant to the 'Lionel Barden Trust Account' instead of 'Power and Robbins Trust Account'. This email was also sent to Robbins, and she responded on 8 February 2004 noting she was 'pleased' with the email and that 'the change of name is essential'. These messages were included in a response from Morgan that was forwarded to Power on 9 February 2004.

In the Commission's view, it can be concluded from the evidence that the change of name at both Hickey Lawyers and Quadrant was prompted by a desire on the part of Power and Robbins to distance themselves from the receipt and distribution of donations from developers on behalf of selected candidates. Barden was persuaded to take on the role so that it would look as though he had been in charge, but there are many factors that show that he was only regarded as a figurehead:

- Barden was never told by Power about the previous operation of the trust account at Hickey Lawyers in Power's and Robbins's names, or that funds had already been raised and paid out of the fund, or that funds had already been paid directly to the candidates being supported.
- Barden had no involvement in the Quadrant account until 30 January 2004 at the earliest, and no involvement in the Hickey Lawyers Trust Account until after 3 March 2004.
- Unlike Power and Robbins, Barden did not authorise any payments directly to candidates. He authorised \$5200 to be paid to Robert Janssen (an unofficial member of Rowe's campaign committee) for a negative campaign against Young, and \$75 300 to be paid to Quadrant for their services. Of these total Quadrant costs, \$60 654.34 had already been incurred by the time Barden was appointed (including the \$33 000 consultancy fee), and his role was simply to authorise the invoices for these costs for payment when funds were available.
- Barden's involvement was limited to checking Quadrant invoices to see that the amounts being charged were reasonable. As at the date of the election, Barden's only role had been to authorise an invoice (the Janssen invoice) on 9 March 2004 and authorise Quadrant invoices totalling \$45 000 on 18 March 2004.
- Barden never knew the names of donors to the fund until June 2004, when he put in a third-party return. His only knowledge before that time was through media articles published in late March 2004 about Ray's and Abedian's involvement.
- Despite Barden's appointment on 6 February 2004, Morgan continued to liaise with Power about payment and other issues. On 18 February 2004, Morgan emailed Power about a prospective investor to fund, and ended:

Must talk to you tomorrow re confirmation of funds x candidate as I am pushing buttons on a range of printed material and need to ensure that we both agree on whom is getting what. Could you call me when convenient please.

Morgan also emailed Power on 1 March 2004: 'Just a quick note and a very concerned one to boot ...' and on 3 March 2004: 'Really appreciate your efforts to move some funds our way today'. The second email also said that Quadrant was going to provide Power with a spreadsheet showing an overall summary

analysis of actual campaign commitments and proposed expenditure to date per candidate. On 9 March 2004, Morgan emailed Ray on the 'state of the nation' as far as funding went, noting that he had emailed the same information to Power and Robbins, copy to Barden.

There are also emails in Power's material from Morgan as late as 15 March 2004 about approving funding and the booth captains' session that, while addressed to Barden, were also copied to Power. Emails on 18 March 2004 about chasing up payments and the proposed 'meet the candidates' session are either addressed to or copied to Power.

Submissions made on behalf of Power claimed that he and Robbins had done no more than Barden, who similarly authorised payments out of the trust fund. However, this submission must be rejected for the reasons detailed above about the substantial differences between the roles played by Power and Robbins, on the one hand, and Barden on the other.

### **At Hickey Lawyers**

On 3 March 2004, Power and Robbins faxed a written authority to Hickey Lawyers to transfer all funds then held to the credit of matter number 245821/1 (which was the Power and Robbins file) to the 'Lionel Barden Common Sense Campaign Fund'.

According to Hickey, he received advice from Power by telephone that Power and Robbins wanted to appoint someone other than themselves to manage the trust account. Hickey did not ask for an explanation, but assumed Power wanted somebody else to manage the account so he could concentrate on his own campaign.

Power told Barden that the fund was being handled through Hickey, and that he would let Hickey know to put Barden's name to it. Hickey confirmed that he was told by Power that Barden would be the new client, and said that he never even spoke to Barden before changing the account to his name. Barden thought that he did have a very brief telephone conversation with Hickey about what he would have to do with the trust.

Hickey's trust statement for his new client, Lionel Barden, headed 'Common Sense Campaign Fund', started with a trust journal transfer of \$20 500 from 'Sue Robbins & David Power — GCCC Election Campaign Fund' on 4 March 2004.

During the period — from 23 December 2003 to 4 March 2004 — that Power and Robbins controlled the funds held at Hickey Lawyers, 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.

## **AFTER 4 MARCH 2004**

Power continued to be heavily involved in fundraising after Lionel Barden took over as the client at Hickey Lawyers on 4 March 2004.

There is an email from Power's personal assistant on 5 March 2004 providing what is referred to in another email as 'David Power's/Sue Robbins's guest list' for the proposed 'meet the donors' function that Morgan was trying to organise, listing their potential invitees for the function, including developers Roche, Ingles and Dutton.

On 9 March 2004, Power emailed Morgan to say he would 'follow some people up' and to give him the good news that 'another donor has pledged to assist

Pforr and Rowe direct so that may take them out of the equation all together' (a reference to Fish).

On 10 March 2004, Hickey reported to Power (referring to a telephone discussion they had had that morning) providing details about which funds Power was supposed to be following up personally. Hickey said he continued to report to Power, as opposed to Barden, because Power would ring up and make inquiries and he assumed Power still had involvement in the process because of his involvement from the beginning.

On 17 March 2004, Hickey reported to Power and Ray about the balance of the funds available, and the condition imposed on a donation by Ingles that it not be used against Crichlow. When asked why he did not report these matters to Barden, the person supposedly in charge of the fund, Hickey said: 'Perhaps I should have'.

On 18 March 2004, Morgan emailed Power about a request from donors to meet the candidates, particularly those donors who had yet to contribute, and the proposed meeting the following Thursday, asking if they were comfortable with the concept of such a meeting. Power responded: 'Chris go ahead. This is too important to let run off the rails now'.

Power continued to show a sustained interest in the funds being raised for the supported candidates, leaving Barden to the narrow task of approving Quadrant invoices.

In the Commission's view, the appointment of Barden as the client for Hickey Lawyers and Quadrant was a cynical exercise designed to make it appear that he had exercised control where, 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, and was intended to disguise the involvement of Power and Robbins in the funding arrangements for selected candidates. As detailed in the next chapter, the secrecy of those funding arrangements became a priority for Power and the selected candidates who received funds through Hickey Lawyers Trust Account.

## SECRECY

*I had an interesting conversation with Max Christmas [sitting councillor] yesterday where he was aware that I was involved with the 'David Power group of eight'. I denied it but you need to be aware that somebody is talking already. — Cr Ted Shepherd*

**Chapter 5 explores the strategies employed to conceal the connections between selected candidates and the involvement of sitting councillors Power and Robbins in the funding arrangements for them.**

### SECRECY OF THE GROUP

While all of the candidates deny that there was ever any plan to keep the operations of the selected group of candidates secret, there seems to have been a marked reluctance on the part of sitting councillors and candidates to speak frankly about them.

Referring to the fact that they had met as a group, Roxanne Scott said in her evidence that there was 'no overt decision to keep it secret, but likely no overt decision to make it public either ...'.

There are several emails between Cr Ted Shepherd and Quadrant director Chris Morgan that are important on this issue, as they clearly suggest that they thought it was necessary to preserve secrecy about the 'group'. An email from Shepherd to Morgan on 8 January 2004 about his 'Election Programme' contained the following:

Additionally, by spreading the work around, I can disassociate myself from the other campaigns. I am nervous [*sic*] that too many people know who is involved. Probably I am just paranoid.

Concerning Shepherd's statement that 'too many people know who is involved', Morgan took Shepherd to be saying:

(T980–91) 'Let's look out for the *Bulletin*' if they — any information that comes out with respect to the candidates would be treated as — or treated in a negative form as had been our experience in the past.

Shepherd did not accept that his comments indicated that he was concerned that the media would find out what was happening. Unfortunately, it is difficult to understand exactly what Shepherd said he was trying to convey. His explanation for his statements in the email seems to be that he was concerned about other campaigns using his promotional material:

(T2078)

Mulholland: Now, you are indicating there that you want to dissociate yourself from the other campaigns. What other campaigns?

Shepherd: That's precisely what I was alluding to just before. I am very concerned that other campaigns would use my promotional material that I put together with my campaign committee to be used by them. It's very

important that anything that you use — any ideas that you come up with, you keep to yourself so that it benefits your own campaign and not others. Specifically, what I'm associating — dissociating myself from is any of these prospective candidates that Chris may be working for preparing a campaign strategy. Well, I wanted to be dissociated from it.

Mulholland: But it's more than that, Mr Shepherd. The next sentence is, 'I am nervous that too many people know who is involved'.

Shepherd: Yes.

Mulholland: What's that mean?

Shepherd: There are — there were candidates there that I indicated I distrusted.

Mulholland: Now, with — 'Too many people know who is involved'?

Shepherd: Yes. Do you want me to finish?

Mulholland: Yes.

Shepherd: Thank you. What I have here is a situation where if I could draw you to the level of animosity in the community generated by a select minority group against me, I am extremely nervous about any of these people getting information about my campaign that would affect its outcome.

Mulholland: That's not what it says.

Shepherd: It is exactly what it says.

Mulholland: Read it. Read it. It says ...

Shepherd: It is exactly what it says, and you've got to take this into context. This is my words, not yours.

Mulholland: I am ... ?

Shepherd: These are my words.

Mulholland: Well, yes ... ?

Shepherd: And I am nervous that too many people know who is involved. I am nervous that too many of these candidates that Chris Morgan is talking to are involved in his connection with me.

And later:

(T2079–80)

Chairperson: Could you explain that again? I'm not following it. I think what you said was a little bit different from what Mr Mulholland has just said.

Shepherd: Well, Mr Mulholland is making an accusation that he'd like me to agree with.

Chairperson: Just explain to me again what it is you say that was said.

Shepherd: With Mr Morgan working campaign strategies for a number of candidates — and I don't know ...

Chairperson: That's the people who were there on the 16th ... ?

Shepherd: Well, it may be that, but it may be a bit more. I am unaware of who Mr Morgan is actually talking to in regard to being a candidate.

Chairperson: Well, wouldn't you just ask him?

Shepherd: No.

- Chairperson: But did you think he might have been acting for some of these people who were campaigning in your electorate against you?
- Shepherd: That is a possibility.
- Chairperson: Goodness me, you would ask him that, wouldn't you ... ?
- Shepherd: No.
- Chairperson: ... before you'd allow him to do your work?
- Shepherd: Because this is the way I write my emails, Mr Chair. This is the way I would say to Chris, 'I don't want you to be heavily involved in my campaign because of the people that you are talking to.' Now, Mr Molhoek, I already said that I had some concerns about him. Now, I don't know who Mr Molhoek would talk to. I hadn't met Pforr and Betts and Roxanne Scott and Rowe until that night. I don't know who they were aligned with, who they — what organisations they were in or who they were talking to, and ...
- Chairperson: But who's the — sorry, who's the 'too many people' who know who is involved?
- Shepherd: That's them.
- Chairman: Then who is involved?
- Shepherd: Them, again. What I'm trying — I'm sorry, Mr Chairman, what I'm trying to say there is: I personally do not know the network of people that these are connected with, that these candidates are connected with. For all intents and purposes any one of those could be members of — and if I can use the organisation, Gecko, which has far-reaching tentacles right across the Gold Coast. Any one of those people could be a member of Gecko and reporting back to Gecko on my campaign strategies. That's my paranoia. And if I can, I have numerous newspaper articles and emails from these people who've set up, as you've tried to investigate, pseudo organisations, Division 9 Civic Action, Residents Rally, these are all organisations that this Gecko people have put in place and I don't know who these candidates are that Chris Morgan was talking to, but I don't know his network. That's my paranoia.
- Mulholland: Let me just put this interpretation to you and you tell me how wrong it is, that what is referred to by you here is the 'too many people' is a reference to the public, too many of the public know who is involved and is a reference to the identity of the people present at the meeting on 16th December?
- Shepherd: No, I reject that totally.
- Mulholland: That is that this is a reference to a group of selected candidates being supported by funding and what you are saying that you're nervous that too many people are involved and you want to disassociate yourself from it?
- Shepherd: No, no, no. Totally no.

The Commission does not accept Shepherd's explanations about the meaning of this email, as they make no sense, and go against the clear meaning of the statements he made.

In the context of the evidence in this matter, his statements can only mean that he was concerned about a number of people knowing that he and others were

involved in the new candidates' campaigns, through mentoring and organising funds for them.

This is obviously the meaning Morgan placed on the email, as his response to Shepherd on 10 January 2004 said, in part:

Although we had set up your Campaign as a completely separate account here at Quadrant it is obvious that you are quite concerned with a possible association with other candidates. The absence of any work through Quadrant should, I hope, eliminate this possibility although continued involvement on your campaign committee could possibly be equally compromising. We possibly need to discuss that aspect as well soon.

In Shepherd's response to Morgan on 11 January 2004, he said:

With regard the other campaigns and my connection with them through Quadrant and funding; firstly, our Campaign should be fully funded by the end of next week (for what we want to do) so there is no need to source any other funds ... additionally, I had an interesting conversation with Max Christmas [sitting councillor] yesterday where he was aware that I was involved with the 'David Power group of eight'. I denied it but you need to be aware that somebody is talking already. I hate to think what will happen closer to the election. I am available for advice to the candidates but DO NOT want to be linked financially or politically with the other campaigns.

Shepherd said that the 'other campaigns' was a reference to the fact that he was aware that Morgan was talking to the other candidates and putting together a strategy for them. The reference to Shepherd's 'connection with them' meant only that Morgan was coordinating the other candidates' campaigns and he did not want to be associated with Morgan as the coordinator, only as a friend.

He referred to his connection to the other campaigns through 'Quadrant and funding' because he had become aware through comments by others that funding had started to come through for other candidates, and he wanted nothing to do with obtaining funding through Quadrant.

Shepherd explained the comment, 'I denied it but you need to be aware that somebody is talking already', in the following way:

(T2054) Basically, that's a reference to the candidates. My concern was if you're going to be assisting people in campaigns, you have to keep campaigns close to your chest and that you have to keep your strategies close to your chest. Now, I said to Chris, I think, at an early stage, 'I don't want to be involved in anyone else's campaigns because my ideas might be used by them. They might try and use my ideas to foster themselves but bring me into an awkward position where my own campaign needs to run its own course. So that — sorry, lost my train of thought ...

So basically, as I understand it, even my 10 out of 10 leaflet ... that we had produced through Quadrant was actually used by some of the other candidates and that's what I didn't want to see — was anything that I'm preparing, which we set in place over a period of time to be used at the right time, I didn't want any of my literature or anything that was linked to my literature in colour or size or appearance getting out before I was ready for it and I didn't want it to be used by any other campaigns. So it's very important that people don't talk about campaigns. They should be personal and kept to oneself or to one's committee. So what I was saying there, quite clearly, is — I denied any involvement in a group of eight but Chris needed to be aware that somebody, obviously in his group, was talking about it because Max Christmas heard it from somewhere and Max was out there trying to get assistance and funding. And I just said to Chris, 'You need to be aware of it because someone in your group is openly talking about campaigns.

It is not surprising that Shepherd 'lost his train of thought' during this response. His apparent suggestion that he was only concerned that candidates were discussing their, or his, campaign tactics goes against the ordinary and unambiguous meaning of the comments made.

The Commission is satisfied that the reference to the fact that 'somebody is talking already' could only relate to Shepherd's concern that Christmas had heard that there was a Power 'group of eight' and that Shepherd was involved with it. It should be recalled that Hickey's notes of the meeting he had with Morgan and Ray on 17 December 2003 referred to an objective of 'supporting eight councillors which will give a majority vote'. It was not fanciful for there to be talk in political circles about a 'Power group of eight'.

The Commission is also satisfied that Shepherd was expressing his concern in this email about talk linking him to the group of candidates who were being assisted by sitting councillors with a view to obtaining a majority of eight on the council. The underlying concern being expressed is the likely adverse public reaction if details of his involvement in the group's campaign became public before the election.

Shepherd explained the final sentence of his email of 11 January 2004 ('I am available for advice to the candidates but DO NOT want to be linked financially or politically with the other campaigns') as follows:

(T2054–55) Yes. And again, I'd ask the Commission to look at the way I write my emails — and this is to a personal friend. For me to do a highlight of 'do not' in capital letters is — that's the message that I'm trying to give him, not as has been inferred, that I was trying to hide or keep under cover any linkage financially or politically. What I am saying to him in very simple terms is, I'm available for advice to the candidates, that's fine. If you want to ring me up and ask for advice on how to run my previous election campaign, that's fine, happy to do that but I do not — I do not want to be linked in any way financially or politically with any other campaigns. I run my own campaign. My campaign committee, my wife, we run our own campaign. We don't want to be associated with, we don't want to have connections with other campaigns. Leave us alone. We've got enough to worry about in Division 9. We don't want to be involved in the others.

In the Commission's view, Shepherd's email demonstrates a clear desire to distance himself from the campaigns being conducted for the new candidates who were being given financial and other assistance. He continued this stance in his evidence before the Commission, denying that he knew anything about the candidates he met on 16 December 2003 being funded through a trust account, denying that he was the 'Ted' referred to in Exhibit 139 as someone who might approach a potential donor, Nifsan Pty Ltd, for a donation, and denying that he knew anything at all about what Power and Robbins were doing except through what occurred at the meeting on 16 December 2003. The Commission is satisfied that Shepherd has underplayed his role in the plan to assist new candidates to be elected.

## SECURITY OF THE FUND

There has been a substantial amount of evidence presented to the CMC that shows a concerted effort to conceal both the existence of the fund for selected candidates and the involvement in that fund of Power and Robbins.

Morgan agreed that the only four invoices that Quadrant issued in the name of the 'Power and Robbins Trust', initialled for payment by Power, were provided to

the CMC in April 2005 by his partner, Tony Scott, while Morgan was overseas. They were not included in the material that Morgan subsequently provided to the CMC in response to a notice to produce in August 2005. That notice did not require Quadrant to produce material that had already been provided in April, but Morgan's covering letter with the material indicated that he was sending the CMC 'copies of all invoices, receipts, remittances advices or similar documents' previously provided by Scott. In fact, the material sent by Morgan contained only the replacement invoices made out in the name of Lionel Barden, and Morgan could not satisfactorily explain why the earlier invoices were not included.

Morgan agreed that he said in a media interview for an article on 15 April 2004 that 'Lionel Barden had to give the sign-off on everything, approved everything. He was the trustee'. Morgan said that he had made no mention at all of the 'Power and Robbins Trust' because he was not asked about the fund or make-up of it, and it 'wasn't relevant to the interview at the time'.

Robert Janssen (unofficial member of Rowe's campaign committee) said that the fund was something:

(T758) ... we felt should not be discussed simply because of the fact that the Bulletin was certainly backing the other side so to speak, yes. There was no word 'keep it secret' there was just no point in discussing it.

As many other witnesses claimed when asked about their public statements in this matter, Janssen said he was not going to volunteer information, but if somebody had asked 'the right question' he would have 'owned up' to what he knew.

John Lang (Rowe's campaign manager) agreed that it was untrue to say, as he did in a media article, that 'no money from developers' had been paid into Rowe's campaign account. He said that they had been getting 'bad publicity' from the papers, and he was not going to give them any information at that stage.

It is obvious from this comment that Lang, like many others involved in the fund, seems to have been unable to distinguish between giving no information to the media and giving patently false or misleading information. Lang also admitted understating the amounts received by Rowe, saying: 'Well, they kept referring to developers' money, developers' money, all the way through and that's what they — the papers seemed to be concentrating on'.

Power and Robbins were not referred to at all in the third-party return that Hickey prepared for Barden after the election, or in the trust statement about the operation of Hickey Lawyers Trust Account that was provided to the CMC in April 2005.

Acting on Power's advice, Barden drafted a letter of 28 June 2004, asking Hickey Lawyers to put in a return as trustees for the account, but not to reveal the names of the donors or the candidates who received funding.

In early February and early March 2004 respectively, the names of the accounts at Quadrant and Hickey Lawyers were changed from Power and Robbins to Lionel Barden. According to Morgan the change at Quadrant was effected because the names of the account holders were 'always going to become public'.

All of this 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. Such a conclusion is also supported by the false or misleading statements that were made to the media by those involved in the fund before the election.

## FALSE OR MISLEADING STATEMENTS TO THE MEDIA

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.

Some examples of the more serious misrepresentations by Power, Lang, Pfforr, Scott and Rowe are summarised below.

### David Power

**GOLD COAST BULLETIN — Friday 20 February 2004:**

***Planning boss forms faction with plan to rule civic roost  
Power play to control council***

... The Bulletin has been told Cr Power has attracted as much as \$500,000 in funding from developers to spend on candidates sympathetic to the incumbent councillors' policy views. But Cr Power yesterday dismissed the claims as 'conspiracy theories' and said he would welcome any funding to help his own campaign ... "I have got enough trouble paying for my own campaign without worrying about other people's ... Trying to help candidates in other areas never goes down well with the community, that's why I don't get involved in campaigning for other candidates ..."

Power said the quotes were accurate but that he was quoted out of the context of the question posed. He took objection to the question referring to a 'slush fund', which he took to mean political bribery. He said he answered the question truthfully and directly, stating:

(T2474) I would have answered a question if they had said, 'Are you providing funds from a trust fund?' Then I would have answered it directly, then they would have got the answer they were after.

Power was asked by the media about a suggestion that as much as \$500,000 had been raised to support candidates, which he said was wrong. Asked why he did not say the amount that had been raised, he said, 'They didn't ask me'.

**GOLD COAST BULLETIN — Monday 23 February 2004:**

***It's a Power backout (by Joanne Gibbons)***

... Cr Power said many people were making many assumptions about the campaign. "I wonder how it has been assumed that I have encouraged them in any kind of organised support," he said.

Power said that he was answering in the context of his taking control of council and he was not referring to support for candidates as individuals.

**GOLD COAST SUN — Wednesday 24 March 2004:**

***To the polls (by Murray Hubbard)***

... Rumours persist of a 'ticket' put together by Cr David Power, along with a developer/business — white-shoe brigade — slush fund to run the campaigns. Cr Power said the rumours are just that. "I can say that I am paying my own campaign funding and there are no slush funds that I know about," he said. "I will say the business community have asked my opinion on candidates and I have told them who are okay and who are not. Some candidates I know are getting significant support, but that is nothing to do with me. That is their choice."

Power maintained he had responded in this way because he was being asked about a 'slush fund which had corrupt connotations', and said:

(T2522) If they don't ask the right question that is the responsibility of the media, not of the councillor.

**GOLD COAST BULLETIN — Thursday 25 March 2004:**

***Ray powers the bloc* (by Alice Jones)**

... "I have no idea what he (Brian Ray) was planning to do ... I have simply given them my opinion, that's it. What they have done from there is their own business ... All I know is that the business community — and I'm not talking about developers — the combined chamber of commerce have a resolution on the books that they're going to get political and assist people. That's all I know. I'm aware that some candidates have significant support. You'd have to be blind not to see it."

Power said that the quotes were rearranged to give a different meaning. He also said that the reference was to the Gold Coast Combined Chamber of Commerce, not to arranging or distributing funding.

**GOLD COAST BULLETIN — Friday 26 March 2004:**

***How a plot took shape* (by Alice Jones)**

When he was contacted by The Bulletin yesterday morning Cr Power also was vague about whether he had attended the meeting at Quadrant ... He could not remember the details of all the meetings he attended... "I'm not denying it. The simple fact is I'm not getting any assistance. You seem to want to make it out we're running it. We're not, we have been giving advice. The candidates have from day one handled their own campaigns."

Power said that the article was an exaggeration by the journalist and at no time was he vague about a meeting at Quadrant. He said the reference to 'it' related to the individuals' own campaigns.

**GOLD COAST SUN — Wednesday 7 April 2004:**

***More Crs needed on Coast: Power* (by Murray Hubbard)**

... On other issues Cr Power said: ...

- He did not know who was behind the so called-develop [sic] slush fund, other than what he had read in newspapers ...

In evidence, Power said:

(T2498) There was no question or no request to answer information about a centralised fund other than a slush fund if he had asked — if any of the reporters had asked me, 'Are you responsible or involved in a centralised fund,' words to that effect, I would have said yes.

**GOLD COAST BULLETIN — Thursday 15 April 2004:**

***I confess: the bloc really does exist*  
*We had to stop those greenies* (by Alice Jones)**

... Cr Power said he did not actively recruit councillors to contest the election, nor did he seek funding on their behalf.

Power said the article was 'completely, utterly out of context' with the interview and he complained to the managing director of the *Gold Coast Bulletin*. He also said when asked if he had at any time before the election told the electorate of this trust fund:

(T2517–2518) I was never asked any questions about a trust fund and therefore did not make any comment about it.

However Power might try to justify his statements to the media about his involvement in the fund to support new candidates, they were, on any reasonable analysis, false or misleading. His explanations were unconvincing.

In the Commission's view, the import of Power's evidence is that he would have answered the questions posed truthfully only if the reporters had already known the precise amounts involved and the details of the structure and operations of the trust fund.

## John Lang

Real estate agent John Lang was the campaign manager for the unsuccessful candidate Brian Rowe.

**GOLD COAST SUN — Wednesday 18 February 2004:**

***Squaring up: councillors lock horns as battle reaches climax* (by Murray Hubbard)**

... John Lang, his financial campaign manager, said no money from developers had been paid into a specific account for Mr Rowe's campaign.

Lang has admitted that he made this statement. He said:

(T1517) It wasn't true but as I said, we were getting bad publicity from the papers and I wasn't going to give them any information at that stage.

**GOLD COAST BULLETIN — Saturday 27 March 2004:**

***Three admit to fund* (by Alice Jones)**

... His campaign director, Coomera real estate agent John Lang, said Mr Rowe's campaign had received three cheques from the fund for a total of \$20,000.00. The other \$40,000.00 had come from a range of sources, including publicans, business people and developers.

Lang has admitted that the Rowe campaign had received \$35 000 from the fund at this time, and that his statements were untrue.

## Grant Pforr

**GOLD COAST SUN — Wednesday 18 February 2004:**

***Squaring up: councillors lock horns as battle reaches climax* (by Murray Hubbard)**

... Grant Pforr, who is contesting division three, to be vacated by retiring deputy mayor Cr Alan Rickard, said he was funding his campaign. "I am strongly of the belief that campaign funds should be open and accountable, and the public should know before the election where campaign funds have come from," he said.

Pforr admitted making these statements and said that he did not trust the paper. He agreed that at the time he made the statements he had in fact received money from Hickey Lawyers:

(T271) It was money that I received. I did not say I was solely funded. I said I was — I had been funding my own campaign.

Surprisingly, Pforr did not view this statement as misleading.

**GOLD COAST BULLETIN — Thursday 26 February 2004:**

***No bloc here, say election hopefuls (by Peter Gleeson)***

... Runaway Bay candidate Grant Pforr said he was an independent funding his own campaign ... Mr Pforr said his association with Cr Power was through the Coomera Sports Club. "I'm an individual. They won't be swaying my thoughts (but) I will be making decisions for the good of the Gold Coast," he said. "Being part of a 'ticket' doesn't sit comfortably. I can work with all councillors."

Pforr has said that he was uncertain of the date he made this statement and that in referring to 'ticket' he was referring to a political ticket such as political interference or political parties in local government. He gave evidence that on 25 March 2004 he told journalist Peter Gleeson that he had been receiving money from developers.

**16 March 2004 letter to Peter Gleeson of the *Gold Coast Bulletin* from Grant Pforr:**

In response to it [letter] I have funded my own campaign as I have publicly stated. I have received great in kind support from good friends and family, utilising all resources and experience available to me.

This letter was emailed and faxed to the journalist on 25 March 2004. In evidence, Pforr accepted that it was 'not completely accurate', and added:

(T302) I was quite sarcastic in my letter of the 16th. There was a huge sarcasm in my response to them. I was basically telling them to go jump.

It is hard to see how Pforr's response can be categorised as an example of 'sarcasm' in the ordinary meaning of that word ('harsh or bitter derision or irony'), or indeed how it can be categorised as anything other than dishonest.

## **Roxanne Scott**

**GOLD COAST BULLETIN — Thursday 26 February 2004:**

***No bloc here, say election hopefuls (by Peter Gleeson)***

City Council election candidates allegedly linked to a so-called David Power 'ticket' have rejected claims they are part of a voting bloc ... Southport candidate Roxanne Scott said she was unaware of such a ticket. "If they want to give me some money, they'd better hurry up," she said.

In evidence, Scott said she was frustrated at the time because money was not coming through to pay the Quadrant accounts. She stated:

(T401) I didn't think she [Alice Jones, a *Bulletin* reporter] would publish it because it was said so flippantly, 'I wish they'd give me some money'.

Scott accepted that, at the time of speaking to the media, she had received money from the fund. She added:

(T402) However, I don't believe I told Alice Jones that I hadn't received any money to date. I don't believe I used those words. So I don't know that I was misleading in saying I wish they would give me some money.

Scott acknowledged that it was a 'stupid comment'.

## Brian Rowe

**GOLD COAST BULLETIN — Friday 20 February 2004:**

***Planning boss forms faction with plan to rule civic roost: Power play to control council***

... Mr Rowe, who is running an expensive and high-profile campaign said he was totally independent and was funding his efforts from generous community donations.

About this article, Rowe said in evidence:

(T1097) I would be surprised if that's all I said because I was careful to say all the way through, 'family, friends and business'.

**GOLD COAST BULLETIN — Monday 22 March 2004:**

***Pair driven by passion***

Although he maintains he has had no funding from developers and is running as an independent ("you don't have the experience I've got and hang on to someone's coat-tails"), Mr Rowe does have substantial financial backing.

At the time of making this statement, Rowe had received substantial sums of money from developers, including a payment of \$24 000 from Fish Developments. He stated:

(T1098) Those donations that you're talking about with regards to the four companies and Fish Developments, I had no difficulty in placing that under the — under the topic of friends giving support.

Rowe said that he thought the statement was accurate, as the money was given to him by Mr Fish as a friend and not as a developer.

## COULD THE FALSE OR MISLEADING STATEMENTS CONSTITUTE OFFENCES?

The relevant offence provision is section 394 of the LGA:

### **394 Misleading voters**

- (1) During an election period, a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the way of voting at the election.
- (2) 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.

Section 394(1) and similar provisions under the *Electoral Act 1992* (Qld) and the *Commonwealth Electoral Act 1918* have been judicially considered, and their ambit is quite limited. It has been held that the provision in the Commonwealth Act was:

concerned with misleading or incorrect statements which are intended or likely to affect an elector when he seeks to record and give effect to the judgment which he has formed as to the candidate for whom he intends to vote, rather than with statements which might affect the formation of that judgment.<sup>3</sup>

<sup>3</sup> See *Evans v. Crichton-Browne* (1981) 147 CLR 169, p. 204; later cited or applied in *Goss v. Swan* [1994] 1 Qd R 40; *Robertson v. Knuth* [1997] 1 Qd R 95; and *Carroll v. Electoral Commission of Queensland* (No 1) [2001] 1 Qd R 117.

In the Commission's view, the media statements quoted above were clearly designed to protect the campaigns of the candidates from adverse public reaction if the facts were known. However, they were not statements that could affect an elector in deciding how to record their vote. Accordingly, the statements could not amount to offences under subsection 1.

Concerning section 394(2), in *Robertson v. Knuth* the Court of Appeal decided that a statement that a candidate for election advocated a policy of no direct tax did not reflect on his 'personal character and conduct'. The Commission considers that false statements made to conceal the existence of a group and a developer-backed fund would similarly be held not to amount to statements about the 'personal character or conduct' of a candidate. Accordingly, the statements could not amount to an offence under subsection 2.

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 currently 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.

Instead, the comments quoted above conveyed (deliberately, in the Commission's view) the false impression that the candidates were not receiving any donations from developers.

The question of whether section 394 of the LGA should be broadened to cover false or misleading statements made in these circumstances has been the subject of submissions to the Commission, and is considered in detail in Chapter 20 of this report.

## NEGATIVE CAMPAIGNS, CANDIDATES' RETURNS AND THIRD-PARTY RETURNS

*Should we disclose the different name on the return? At the moment I have shown the donations but included them in the new name. Should we take the risk of a \$1500 fine?*

— Anne Cunningham, Legal Manager, Hickey Lawyers

**Chapter 6 examines the arguably false or misleading statements and omissions in returns lodged after the election; and looks at negative campaigns run against some sitting councillors in support of certain candidates.**

### OVERVIEW

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 Lionel 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.

It is not the Commission's role to express any concluded view of these topics, as the proper course for it to take where it decides that prosecution proceedings should be considered is to refer matters to an appropriate prosecuting authority for consideration under section 49 of the CM Act.

However, 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.

The aura of secrecy surrounding the funding arrangements led to an unwillingness on the part of candidates and third parties to make any appropriate or reasonable inquiries about the true source of the funds they were receiving and their legal obligations and responsibilities.

False or misleading information in returns, like false or misleading statements to the media (as canvassed in the preceding chapter), have the potential to corrupt the electoral process. This is because the electoral system proceeds on the basis that those elected will provide full and frank disclosure after the election about the gifts they received, so that the electorate can judge their conduct as elected officials with the benefit of that information.

### NEGATIVE CAMPAIGNS

Although evidence was given that negative campaigns were conducted against sitting councillors Peter Young and Dawn Crichlow, no candidate included the costs of these negative campaigns in their returns.

Robert Janssen (President of the Nerang Chamber of Commerce) conducted a negative campaign against sitting councillor Peter Young, to support Brian Rowe's ultimately unsuccessful campaign.

Janssen, who was, by his own account, 'unofficially' on Rowe's campaign committee, said that he discussed the negative campaign with Cr Robbins and with Rowe's campaign manager, John Lang. Robbins told him funding was available, and he was paid \$5200 from the Hickey Lawyers Trust Account for the costs of the negative campaign. Janssen said that Rowe knew generally that he was conducting the negative campaign, but not the details of it. He wanted Rowe to have 'credible deniability' about the negative campaign.

Hickey said that he received the authority to pay for the negative campaign from Barden without ever having spoken to him, and had no idea what Janssen was being paid for. In respect of Janssen's evidence that he had the negative campaign material checked by Hickey Lawyers to make sure it was not defamatory, inquiries made by Hickey showed that Janssen had spoken to a lawyer in his office, but Hickey said he had no personal knowledge of it.

Rowe denied having had any conversation with Janssen about the negative campaign, and said he knew nothing at all about it until he saw one of the negative 'drop mailers' in a letterbox. He then spoke to Michael Yarwood, a lawyer who was assisting his campaign, and told him to stop the negative campaign.

Lang also denied knowing anything about Janssen's negative campaign, or the receipt by Janssen of \$5200 from the Hickey Lawyers Trust Account. By contrast, Janssen said he discussed the campaign with Lang, and they jointly decided to use the name 'Community Electoral Alliance' on material for the campaign.

Janssen was listed as a member of Rowe's campaign committee in material provided to the CMC, and Lang agreed that Janssen had come to some campaign committee meetings, but said he did not take an active role.

Janssen gave evidence that he had obtained information for use in the negative campaign against Young from sitting councillors Ted Shepherd and Bob La Castra, or checked the veracity of information he wanted to use with them. He said he might or might not have told Shepherd and La Castra why he wanted the information. He also believes he obtained information from Power, but said that he never discussed the negative campaign with him.

A negative campaign was also conducted against Crichlow, to support Roxanne Scott's ultimately unsuccessful campaign. That campaign was authorised by Stuart Hill, who was described by Scott as someone who gave her assistance with her campaign because he wanted to see a change in her division, although she did not have a campaign committee as such. Scott said that Hill was enthusiastic in his support of her and did letterbox drops for her, but was limited in what he could do by a lack of resources. Chris Morgan of Quadrant suggested to Scott that material should be put out about 'unusual occurrences' in Division 6 over the years (presumably about Crichlow who had been the sitting councillor in the division for a number of years). Scott guessed that the material proposed to be put out could be construed as negative, and said she did not really want a lot to do with it. She saw the material once it was distributed around the area, but not before. Hill had earlier been the person who authorised Scott's own election material. Scott had then picked someone else to authorise her material, and when asked why said:

(T342) Because I told Chris Morgan I didn't really want to be involved in the negative side of it and then when he and — when they put it out anyway I felt I wanted to distance myself a little bit from it.

Stuart Hill supposedly released the negative material on behalf of a group called the 'Southport Citizens for Change'. Scott said she suspected that the group was started up solely for the purposes of the negative campaign.

Hill prepared the negative material, and the accounts for this work (totalling \$7011.51) were paid through Quadrant invoices addressed to Hill, care of Southport Citizens for Change. Hill said he never received any invoices, and Morgan agreed that Hill would not have been sent invoices, as they were paid from the Hickey Lawyers Trust Account.

Morgan did not think that Scott would have to declare the negative campaign costs, as she did not authorise them. Morgan conceded that he had no specific authority to expend the money that was paid for the Hill negative campaign, but said that Quadrant 'were just acting within the terms of the brief as we understood it'.

Section 427 of the LGA requires candidates to disclose, in the approved form, the total value of all gifts received, the total number of people who made the gifts, and the name and residential or business address of each person who made a gift to the value of the prescribed amount of \$200 or more, either to the candidate or to their campaign committee. The term 'gift' is defined in section 414 of the LGA as follows:

**gift** means the disposition of property or the provision of a service, without consideration or for a consideration less than the full consideration, but does not include—

- (a) transmission of property under a will; or
- (b) provision of a service by volunteer labour.

The Commission considers that the provision of the services involved in producing a negative campaign (with the exception of any volunteer labour) could, in some circumstances, qualify as a gift to a candidate that should be declared by that candidate.

In this case, both Scott and Rowe have denied knowing anything except the vaguest details about the negative campaigns conducted in their divisions, and neither admits giving authorisation for the campaigns.

In each case the negative campaign was conducted by 'unofficial' members of the candidate's campaign committee, and in each case the person against whom the campaign was directed was the only other candidate running in the division.

In these circumstances, the Commission is satisfied that the negative campaigns were undertaken for the benefit of Rowe and Scott. However, it can not be concluded that the services were gifts to the candidates that they were required to declare, because they claim that they did not authorise the campaigns or even know of them.

## THIRD-PARTY RETURNS

The only person connected with the fund for selected candidates who lodged a third-party return after the March 2004 election was Lionel Barden.

Gifts for third-party expenditure are covered by section 430 of the LGA. That section places disclosure obligations on a person (not associated with a political party registered under the Electoral Act) who receives a 'prescribed gift' of \$1000 or more **and** incurs expenditure for a political purpose related to a local government election of \$1000 or more.

## Consideration of a third-party return at Hickey Lawyers

Hickey prepared the third-party return that Barden lodged, and explained how he came to do so:

(T670)

Chairperson: ... can I ask: did you ever feel that you, as the 'trustee', if I can use that term in quotes, that you were under any obligation to put in an election gifts return as the trustee of a trust fund?

Hickey: As the holder of a trust account?

Chairperson: Mmm?

Hickey: Yeah, we considered that and I sought some advice from lawyers in my office, asking them to research that, and the view was no; but there seemed to be some doubt as to who should put a return in relating to it, and I made the decision that I wanted to make sure that a return was put in relating to all the transactions in the trust account, and I prepared a document and I sent it to Lionel Barden saying, 'Look, I've prepared this information for you. I'm not giving you any advice in respect of the matter, but if you believe it's correct, I believe, you know, you should put in a return including this information.

Chairperson: All right.

Mulholland: So you prepared that return which Mr Barden put in?

Hickey: I took all of the information that was necessary. Well, I don't know, I didn't see the return that was put in. I prepared a return document and completed with all the information that I had.

Mulholland: Right?

Hickey: And forwarded it to him. I didn't see him or talk to him about it, when it was actually put in.

Regarding the reference to advice that Hickey sought from lawyers in his office, this resulted from a 'courtesy' telephone call from David Montgomery, the GCCC's city solicitor, on 14 April 2004. Montgomery spoke to Joseph Welch, a lawyer at Hickey Lawyers, and Welch recorded the details of that conversation in an email of 15 April to Steven Hodgson, Tony Hickey and Bradley Scale.

In the email, Welch said that Montgomery had suggested that Hickey Lawyers turn their minds to the obligations under the LGA for third parties to file a return.

Surprisingly, it appears that Montgomery did not express an opinion as to whether the provision applied to Hickey Lawyers, but merely said that it might be prudent for them to have a look at it.

Submissions made on behalf of the GCCC's Chief Executive Officer, Dale Dickson, objected to the suggestion by counsel assisting that Montgomery's actions were indicative of a 'casual attitude' on the council's part to any role in monitoring compliance with the LGA. The submissions made the unusual suggestion that Montgomery could not do any more than he did because Hickey was higher on the seniority list of solicitors than he was. No sensible basis for such a suggestion was advanced.

Montgomery's guarded stance is, however, consistent with the stance taken by Dickson. Although Dickson accepted that the obligation placed upon him to keep a register of electoral gifts involved an obligation to keep the register in compliance with the LGA, he took a fairly limited view of what that entailed:

(T2305) From a — from a practical perspective, I take the view that the officers should be diligent in ensuring that the — that the returns are complete, that there are no obvious omissions or errors, that at the end of the day the disclosure obligation rests with the individual or the third party, not the officers concerned. They have a practical delegated responsibility to administer my responsibilities under the Act but the actual disclosure obligation rests with the other party.

After the discussion with Montgomery, a lawyer at Hickey Lawyers — Anne Cunningham — was asked by another lawyer there (David Monaghan) to look at the issue. Cunningham produced two memoranda to file (a draft and a final version), the effect of which was that Barden (along with Robbins and Power) was required to lodge a return disclosing the names of donors. Noting the change of name that had occurred, she commented in the first memorandum:

Should we disclose the different name on the return? At the moment I have shown the donations but included them in the new name. Should we take the risk of a \$1500 fine? The reason I am hesitant is because the 2 councillors were the trustees and they would have to disclose the names of the donors. There was no buffer between the councillors and the donors until we changed the structure.

Cunningham agreed that the two councillors she was referring to in this passage were Power and Robbins, although their names for some reason were never mentioned throughout her memoranda. Of the reference to her having included donations ‘in the new name’, she said that this was a reference to Lionel Barden, and she recalls that she had at the time begun to prepare a handwritten draft third-party return in Barden’s name.

In the second memorandum, dated 20 April 2004, Cunningham said that it might be wise to inform Power and Robbins (once again referred to only as ‘the councillors’) of their obligation to lodge a return, although she noted that ‘they should be aware of it’.

Hickey has given evidence that he did not see Cunningham’s written advice until he read through the Hickey Lawyers file prior to his second appearance at the CMC. He did, however, discuss the issue of who should put in a third-party return with Monaghan, the lawyer to whom Cunningham had provided the advice. Hickey does not recall their having a detailed discussion about the obligations of Barden, Power or Robbins because he was not asked to advise them, and did not want to have to give them advice on the matters raised at all.

Hickey conceded that, in retrospect, he perhaps should have contacted Power and Robbins about a third-party return:

(T672)

Mulholland: Now, having regard to the fact that your clients, up until early March in relation to this fund or account, were Power and Robbins, did you contact them to tell them that they should put in a return?

Hickey: No.

Mulholland: Well, if in one case you were suggesting to Lionel Barden that he put in a return, why not Power and Robbins?

Hickey: I didn’t consider it.

Mulholland: You didn’t consider it?

Hickey: No.

Mulholland: But I'm just trying to understand why you didn't consider it, because Power and Robbins are closer to you.

Hickey: I simply didn't — I simply didn't think of you.

Mulholland: Didn't think of it?

Hickey: No.

Mulholland: Well, on the same basis that you'd contacted Lionel Barden, wouldn't you or shouldn't you, in retrospect, have contacted Power and Robbins?

Hickey: Perhaps.

### **Consideration of a third-party return by Lionel Barden**

Barden received a letter from Hickey dated 10 June 2004, enclosing a third-party return 'incorporating details of funds received in our trust account'. According to Hickey, Barden had contacted Hickey Lawyers a couple of days before to ask if he had to put in a return, was advised that he did, and authorised Hickey Lawyers to prepare one.

Barden drafted a letter of 28 June 2004, asking Hickey Lawyers to put in a return as trustees for the account, and asked them not to reveal the names of the donors or the candidates who received funding. Barden says he did this on the advice of Power and unnamed others, but within 24 hours Power rang to inform him that the proposed course of action could not be taken.

There is no evidence that Barden's letter was ever sent, and Hickey said that records at his office showed no evidence of it having been received. Power gave evidence that the only discussion he could recall having with Barden was to advise him that, in Power's view, Barden would have to put in a third-party return.

In the end, Barden signed the return provided to him by Hickey that included amounts totalling \$90 000 donated into the Hickey Lawyers Trust Account before 4 March 2004: that is, before Barden was named as the client in control of the trust account and at a time when the trust account was controlled by Power and Robbins. Barden says he trusted Hickey and the people involved, and accepted the situation. He knew that the Quadrant account had been operating before he became involved, and he took it for granted that the Hickey account had been operating before he put his name to the trust.

Hickey was questioned about the failure of the third-party return to refer to any involvement of Power and Robbins and conceded that the return could have misled an interested member of the public examining it:

(T698–9)

Chairperson: Mr Hickey, did I understand you correctly when — my belief was that it's this page that sets out the schedules of gifts, the name of the donor, the address of the donor, the date of the gift and the amount of the gift, that that was the schedule that you provided to Mr Barden?

Hickey: Yes, that's our typing, yes.

Chairperson: Right. To assist him then in putting the return in?

Hickey: Yes. Yes.

Chairperson: And after the research was done within your office the conclusion was reached that it shouldn't be your firm that put the return in ...

Hickey: Yes.

Chairperson: ... but that it should be Mr Barden?

Hickey: Yeah, we reached the conclusion that it certainly wasn't our responsibility, or Hickey Lawyers Trust Account's, to put a return in. I'm not sure if we specifically concluded that he must put a return in either but it seemed that he should and I was concerned to make sure that a return was put in with that disclosure.

Chairperson: And that being on the basis that he was the person who had control of the fund ...

Hickey: Yes.

Chairperson: ... who indicated where money should go?

Hickey: Yes, yes.

Chairperson: Well, on that basis, why did you send him a schedule that showed monies that were received at a time when he wasn't the person who had any control over it? Why didn't you send two schedules, namely one that would take it up to the 19th of February, which would be during the time when David Power and Susan Robbins had control, and a second one from the — you might have had to work out the 3rd of March as to whether that was Power and Robbins or Barden, but you understand what I mean?

Hickey: Yes, I do. Look, I just didn't consider it. I just didn't consider it. I was concerned to just make sure there was a disclosure. I didn't go back and think about when the — there being a change of trustee or client in charge of accounts. I just didn't turn my mind to it.

Chairperson: All right. But then that means that any interested member of the public who looked at these returns would conclude that throughout the entire period of the receipt of these donations Mr Barden was the person who had control of the disposition of these monies?

Hickey: Yes, yes. Possibly, yes. I didn't consider that. I thought the relevance of the return was where the money came from or where it went to.

Chairperson: And, of course, that again would be misleading to that interested member of the public?

Hickey: Possibly, yes.

Power was questioned about the third-party returns:

(T2494–5)

Mulholland: Yes. Now, can I ask you this. Do you accept that in the period the 23rd of December 2003 to the 3rd of March 2004 with your knowledge and authorisation payments were made into and out of an account in the name of yourself and Sue Robbins within the trust account of Hickey Lawyers?

Power: Yes.

Mulholland: Do you also accept that such payments were made to Brian Rowe, Greg Betts, Grant Pforr and Roxanne Scott who were candidates in the elections of the 27th of March 2004?

Power: Yes.

Mulholland: Do you also accept that in total such payments in amounted to \$90 000 and such payments out amounted to \$69 500?

- Power: If that's what the evidence shows then I accept that.
- Mulholland: Then why didn't you lodge a third-party return under section 430 of the Local Government Act in relation to such payments?
- Power: Until recently I was not aware that a return should be lodged specifically within our names. I'm still not entirely certain as I believe there's some dispute between opinions anyway. My understanding of the situation was a third-party return needed to be submitted. That third-party return was Mr Barden's and as I understand it Mr Barden's return indicated all funds in and out, which is clearly the objective of the Act anyway, to indicate where the funds had come from. As to whether or not it should have been in Sue's and my name, the best that I can tell this Commission is that I spoke to Cr Robbins about two or three days before close of — of the declaration period asking her if things were being dealt with in accordance with the Act and she assured me it was. I didn't take the matter any further.
- Mulholland: Mr Barden has told us that he knew nothing about direct payments to candidates.
- Power: I can't answer what Mr Barden said or did not say.
- Mulholland: And Mr Barden was not at all involved, even in relation to Quadrant, until the end of January 2004, was he?
- Power: That's correct.
- Mulholland: Yesterday, and you've said it again, that you believed that Mr Barden may have to put in a third-party return. Well, if you had that opinion in relation to Mr Barden, surely that applied to you?
- Power: Well, it — it was something that occurred after the election, as I said, and I — as far as I was aware, Mr Barden's third-party return could take care of all the funds in and funds out. Now, I may have been mistaken on that. If I was ...
- Mulholland: Did you take any advice?
- Power: ... No, I did not. As I said, I spoke to Cr Robbins as to whether she was satisfied. She told me that she was. I did not take advice on the matter. If I am incorrect in that I will stand corrected.
- Mulholland: Mr Power, you did not put in a third-party return because you did not want it to be publicly known?
- Power: Not correct.

The requirement for third parties who receive gifts and incur expenditure for a political purpose relating to a local government election is contained in section 430 of the LGA, which provides:

**430 Gifts for third party expenditure for political purposes**

- (1) This section applies if, during the disclosure period for this section for an election (the relevant election) relating to a local government (the relevant local government)—
- (a) a person (other than a political party, an associated entity or a candidate for the election) incurs or has incurred expenditure for a political purpose about an election or elections relating to the relevant local government; and
  - (b) the total amount of all the expenditure mentioned in paragraph (a) is the prescribed amount or more; and

- (c) the person receives a gift that is a prescribed gift in relation to the relevant local government.
- (2) The person must, before the end of 3 months after the conclusion of the relevant election, give to the CEO of the relevant local government a return, in the approved form, stating the relevant details for all gifts that—
  - (a) are prescribed gifts in relation to the relevant local government; and
  - (b) are received by the person during the disclosure period.
- (3) For subsection (1), a person does not include persons appointed to form a committee to help the campaign in an election of a candidate who has been nominated for election by the registered officer of a political party if the campaign committee is recognised by the political party as being part of the political party.
 

(3A) Also, for subsection (1), a person does not include a person who is a member of a candidate’s campaign committee or a group’s campaign committee for an election of the candidate or members of a group of candidates.
- (4) Expenditure for a political purpose relating to 2 or more local governments is taken to have been incurred for a political purpose about an election relating to each local government.
- (5) In this section, 2 or more gifts made, during the disclosure period for this section for an election, by the 1 person to another person are to be treated as 1 gift.
- (6) In this section—
 

expenditure, for a political purpose, means expenditure for more of the following—

  - (a) publication by any means (including radio or television) of election matter;
  - (b) public expression of views on an issue in an election;
  - (c) a gift to a political party;
  - (d) a gift to a candidate in an election;
  - (e) a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift for a purpose mentioned in paragraph (a), (b), (c) or (d).

prescribed gift, in relation to a relevant local government, means a gift—

  - (a) intended by the giver to be used by the receiver, either wholly or in part, to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose; and
  - (b) used, either wholly or partly, for a political purpose about 1 or more elections relating to the relevant local government; and
  - (c) the value of which is the prescribed amount or more.

For the purposes of section 430, the ‘prescribed amount’ is \$1000 and the disclosure period for the section is defined in section 424. The latter section provides:

**424 Disclosure period for s 430**

For section 430, the disclosure period for an election—

- (a) starts at the end of the prescribed period after the date of the immediately preceding quadrennial elections for the relevant local government under the section; and
- (b) ends at the end of the prescribed period after the polling day for the election.

For the Gold Coast City Council March 2004 election, the disclosure period for third-party returns finished on 26 April 2004.

Under section 436 of the LGA, it is an offence to give a return under Division 3 of the Act that contains particulars that are, to the knowledge of the person required to give the return, false or misleading in a material particular. A third-party return is a return given under Division 3 of the Act, and it therefore comes within the scope of section 436, which provides:

**436 Offences about returns**

- (1) A person must give a return the person is required to give under division 3 within the time required by the division.  
Maximum penalty — 20 penalty units.
- (2) A person must not give a return the person is required to give under division 3 containing particulars that are, to the knowledge of the person, false or misleading in a material particular.  
Maximum penalty —
  - (a) if the person is required to give the return as a candidate — 100 penalty units;
  - (b) if paragraph (a) does not apply—50 penalty units.
- (3) A person (the first person) must not give to another person who is required to give a return under division 3 or section 242 information to which the return relates that is, to the knowledge of the first person, false or misleading in a material particular.  
Maximum penalty — 20 penalty units.
- (4) A prosecution for an offence against a provision of this section may be started at any time within 4 years after the offence was committed.
- (5) If a person is found guilty of an offence under subsection (1), a court may, as well as imposing a penalty under the subsection, order the person to give the relevant return within a time stated in the order.
- (6) If a person is found guilty of an offence under subsection (2), a court may, as well as imposing a penalty under the subsection, order the person to pay, within a time stated in the order, 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.

In these circumstances, the Commission has been required to consider the following issues:

- 1 Was Power a person required to give a third-party return under section 436(1), and, if so, did he fail to do so within the time required by the division?
- 2 Did Barden give a return under Division 3 that contained particulars that were, to his knowledge, false or misleading in a material particular?
- 3 Did Hickey give to a person who was required to give a return under Division 3, namely Barden, information to which the return related that was, to Hickey's knowledge, false or misleading in a material particular?

In considering these issues, regard must be had to the fact that Power claimed privilege against self-incrimination under section 197 of the CM Act for all of his evidence, which means that none of the answers given by him is admissible in evidence in any civil, criminal or administrative proceeding.

See Chapter 10 of this report for the Commission's views on these matters.

## CANDIDATES' RETURNS

All candidates for local government elections are required to put in a return declaring gifts received by the candidate during the disclosure period. Section 427 of the LGA provides:

### 427 Gifts to candidates

- (1) This section applies to gifts received by a candidate for an election during the candidate's disclosure period for the election but not to a gift made in a private capacity to the candidate, for the candidate's personal use, that the candidate has not used, and does not intend to use, solely or substantially for a purpose related to any election.
- (2) Each candidate for the election must, within 3 months after the conclusion of the election, give to the chief executive officer of the local government to which the election relates a return, in the approved form, stating—
  - (a) whether the candidate received any gifts to which this section applies; and
  - (b) if so—
    - (i) the total value of all of the gifts; and
    - (ii) how many persons made the gifts; and
    - (iii) the relevant details for each gift made by a person to the candidate, if the total value of all gifts made by the person to the candidate during the disclosure period is the prescribed amount or more.
- (3) A candidate need not comply with subsection (2) if—
  - (a) the candidate gives a return under section 242(1)(a)92 and the return states the candidate—
    - (i) does not expect to receive gifts in the disclosure period for the election after giving the return; and
    - (ii) will give a return under the section if gifts are received in the disclosure period for the election after giving the return; and
  - (b) the candidate does not receive gifts in the disclosure period for the election after giving the return.

Gifts to 'groups of candidates' are covered by section 427A of the LGA, which provides:

### 427A Gifts to groups of candidates

- (1) This section applies if—
  - (a) a candidate for an election is a member of a group of candidates; and
  - (b) the group, or the group's campaign committee for the election, receives gifts for the election during the disclosure period for this section for the election.
- (2) Within 3 months after the conclusion of the election, the candidate must give to the chief executive officer of the local government to which the election relates a return, in the approved form, stating the following—
  - (a) the names of the candidates forming the group;
  - (b) the name, if any, of the group;
  - (c) the total value of all of the gifts;
  - (d) how many persons made the gifts;
  - (e) the relevant details for each gift made by a person to the group if the total value of all gifts made by the person to the group during the disclosure period is the prescribed amount or more.

- (3) A candidate need not comply with subsection (2) if—
  - (a) the candidate gives a return under section 242(1)(a) and the return states the candidate—
    - (i) does not expect the group or the group’s campaign committee for the election to receive further gifts in the disclosure period for the election after giving the return; and
    - (ii) will give a return under the section if further gifts are received in the disclosure period for the election after giving the return; and
  - (b) the group or the group’s campaign committee for the election does not receive further gifts in the disclosure period for the election after giving the return.

Under section 428 it is unlawful for a candidate to receive a gift the value of which is the prescribed amount or more without knowing the ‘relevant details’ for the gift.

The ‘prescribed amount’ for gifts for the purposes of all of these provisions is \$200.

‘Relevant details’ for a gift is defined in section 414, as follows:

relevant details, for a gift, means the value of the gift and when the gift was made and—

- (a) for a gift purportedly made on behalf of the members of an unincorporated association—
  - (i) the association’s name; and
  - (ii) 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
- (b) for a gift purportedly made out of a trust fund or out of the funds of a foundation—
  - (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
  - (ii) the title or other description of the trust fund or the name of the foundation; or
- (c) for a gift not mentioned in paragraph (a) or (b)—the name and residential or business address of the person who made the gift.

It was suggested by lawyers for some parties during the hearing that the trust account operated by Hickey Lawyers under the control of Power and Robbins and Lionel Barden was a ‘trust fund’ for the purposes of the definition of ‘relevant details’ in section 414, and that Tony Hickey, or Hickey Lawyers, was the trustee of such fund.

In its final submission, the LGAQ stated that a trust fund within the meaning of the use of the term in section 414 of the LGA was created because:

Those who donated funds did so on the specific basis that both legal and beneficial ownership of the funds would be transferred to others, and that the funds would be expended by others to support selected candidates. The donors sought no ongoing power of direction or control as to the expenditure of the monies, and there is no suggestion that any person had any expectation or anticipation that the donors would be consulted or even advised about the subsequent expenditure of the funds.

The Commission agrees generally with this summary of the factual situation (except that it is not entirely accurate to say that none of the donors sought any ongoing

power of direction or control, as one of them gave a donation on condition that it would not be used against a named candidate).

On the basis of these facts, the LGAQ suggested that the partners at Hickey Lawyers became the trustees of the trust fund created, and were therefore the persons who were required to put in a third-party return, and the persons who should have been named in candidates' election returns as the trustees of the trust fund from which they received donations.

The Commission has sought and accepted the advice of an experienced senior counsel in this area, Mr David Jackson QC, who came to a different conclusion. Mr Jackson advised:

Neither 'trust fund' nor 'foundation' is a defined expression. The legal character of a trust in equity is well known. The same cannot be said of a 'foundation', but that may not be of any significance in the end result.

As it happens, in the present case, whether the arrangements are characterised as a trust fund or a foundation would not affect the answer to the next question to be considered, namely who are the relevant trustees or who are the relevant persons responsible for the funds?

In either case, the answer could be the members of Hickey Lawyers on the one hand or (until 4 March 2005) Crs Power and Robbins or (after 4 March 2004) Mr Barden, on the other hand, or both.

In my opinion, Hickey Lawyers are not the trustees of the trust fund or the persons responsible for the funds of a foundation. They were a mere conduit. The trust obligation that they owed in relation to the funds in their trust account did not constitute them a trustee of the relevant trust fund for the purposes of section 414. Nor did it make them the persons responsible for the funds, should the arrangements be held to constitute a foundation within the meaning of the section.

The distinction I draw as to their position may be illustrated by an example. If it is assumed that a person decides to make a gift to a candidate and then directs his or her solicitor to make the payment from funds held on the person's behalf in the solicitor's trust account, that does not constitute a gift from a trust fund within the meaning of section 414. It is a gift by the person. A candidate who receives the funds is required to take steps to ascertain who was the person making the gift. It is not enough to simply say that the payer was the solicitor as trustee. The contrary view may be arguable. And it may be regrettable that the operation of the definition is not clearer by including an example, at least. But I do not have a great deal of doubt about the conclusion.

Accordingly, in my view, the relevant choice in the application of section 414 to the circumstances in the present case is between the possibility that the gifts were made by Crs Power and Robbins to other candidates before 4 March 2004 and by Mr Barden after that date or that gifts were made out of a trust fund or out of the funds of a foundation, of which those persons were the relevant trustees or persons responsible for the funds. In either case, it is the names and residential or business addresses of those persons which were required to be known and disclosed.

It is necessary to determine whether there was a relevant trust fund or foundation, because if there was, the title or other description of the trust fund or the name of the foundation was required to be ascertained and disclosed. In the circumstances, if there was a trust fund, depending of the time of the gift, its title was either:

- a. 'Sue Robbins and David Power — Gold Coast Council — Election Campaign Fund'; or
- b. 'Lionel Barden Common Sense Campaign Fund'.

In my opinion, there was a relevant trust fund. That follows from the conclusion that, as constituted by the arrangements, Crs Power and Robbins were not entitled to treat the funds as their own for all purposes. Impliedly, they were not entitled to treat the money as their own by either spending it

for other purposes or keeping it when the purposes of supporting the relevant candidates in the election was ended or exhausted. They were given power as to where, when and how much of the money was to be spent, but the circumstances under which they received it obliged them to use it for the stipulated purpose, vague as it may have been, among the chosen members of the class of candidates for the election. The obligations which they and, by his subsequent acceptance of responsibility, Mr Barden assumed do fit the model of an express trust or implied trust well enough to be characterised as a trust.<sup>4</sup>

The class of beneficiaries is readily ascertainable, being the candidates for the election. Crs Power and Robbins had the power to distribute among those in the class they saw fit to include. That was a trust power, in my view. The arrangements were recognisable as a purpose 'trust' for the election of those candidates who were of the chosen character as determined by Crs Power and Robbins.

For the purposes of section 414, in my view those arrangements constituted a 'trust fund' for the purposes of paragraph (b) of the definition of 'relevant details'. In my view, compliance with section 414 by individual candidates required that the title of the trust fund be ascertained and disclosed, to the extent required.

The view that the operation of the trust account at Hickey Lawyers created a trust fund of which Hickey was the trustee for the purposes of the LGA was also rejected by Hickey.

It is also rejected in relevant sections of both the local government and the state government handbooks.

Concerning donations received through a solicitor's trust account, the handbook published for the use of candidates by the Department of Local Government and Planning (*Disclosure of election gifts – guidelines for candidates and councillors for local government elections*) expresses the view that such donations are not received from a 'trust fund', and the name of the actual donor must be ascertained and declared by the recipient of the gift.

On page 16, the handbook states:

#### **2.5.15 Gifts via solicitors' or accountants' trust accounts**

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.

There are similar provisions regarding declaration of donations from 'trust funds' in both the Commonwealth and state government electoral provisions, as there has been a concerted effort over recent years to ensure that the Commonwealth, state and local government election provisions are as consistent as possible. The *Election funding and financial disclosure handbook* published by the Electoral Commission of Queensland (ECQ 2005) deals with the issue of solicitors' trust accounts in the following terms (p. 11):

#### **Identification of real donor**

Care needs to be taken when you receive gifts to establish who is the real donor, especially upon receipt of a gift from a firm of solicitors or accountants.

Where the relationship between solicitor and client is that of agent and principal, then money received by the 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

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<sup>4</sup> *Jessup v. Queensland Housing Commission* (2002) 2 Qd R 270, at [12]; *Associated Alloys Pty Ltd v. CN 452 106 Pty Ltd* (2000) 202 CLR 588 at [34].

client's directions in relation to the money. The solicitor does not, therefore, have the usual powers and 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 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 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 are forfeited to the State under section 306(5).

In cases where a one-off donation is made by a donor through a solicitor's trust account, the Commission agrees with the views expressed in the handbooks: namely, that the solicitor is acting as an agent for the donor, and that the recipient of the donation must declare the name of the donor, not the name of the solicitor. This would apply, for example, in the case of the donation from developer Norman Rix to candidate Roxanne Scott through the trust account of solicitor Mal Chalmers.

In the case of the donations paid into the Hickey Lawyers Trust Account, the situation is more complex because the clients, namely Power and Robbins and then Barden, were not the people making the donations. They sought the donations and, at their direction, the donations were held and paid to selected candidates.

In these circumstances, the Commission has accepted the advice provided by Mr Jackson QC that a trust was created within the general meaning of 'trust fund' in section 414, and the trustees of that fund were Power and Robbins until 4 March 2004, and Barden after that date. These are the details that candidates were required to put in their returns.

Under section 242 of the LGA, a person elected as a councillor must not act in office until they have given the CEO a return in an approved form. The return must state the information required under section 427 'to the extent that the person states the information is readily available when giving the return'.

In this case, the successful candidates funded through Hickey Lawyers Trust Account (Betts and Pforr) gave an interim return before being sworn in, as required under section 242, and then provided a final return to comply with section 427.

The final return must be given within three months after the 'conclusion of the election', which for the March 2004 election was 5 August 2004.

The disclosure period to be covered in the election gift returns was from 6 May 2000 to 5 May 2004 (inclusive) for sitting councillors and from the announcement of candidacy or nomination as a candidate (whichever is the earlier) to 5 May 2004 (inclusive) for new councillors.

### **Greg Betts's return**

Betts claimed privilege against self-incrimination in relation to answers he gave concerning his election gift return, which means that none of the answers given by him on that topic is admissible in evidence in any civil, criminal or administrative proceeding.

Betts lodged an interim return on 6 April 2004. In it, he explained that there were 'still some details outstanding from the advertising firm that did work on my campaign'. He listed Hickey Lawyers as the donor of the following donations:

28.1.04	\$7000
20.2.04	\$5000

Before lodging his final return, Betts received a letter from Quadrant dated 21 June 2004 advising that Quadrant had expended \$24 978.97 on his campaign. It also advised that \$16 978.97 was paid directly to Quadrant from the Lionel Barden Trust, and that a further \$8000 was paid to Quadrant from Betts's campaign account.

The letter also enclosed copies of statements and invoices detailing expenditure and receipts by Quadrant on Betts's behalf. Each of the statements and invoices listed the client as:

Lionel Barden Trust Account  
G Betts  
c/- Hickey Lawyers  
6th Floor, Corporate Centre  
Bundall Qld 4217

The Quadrant letter did not, of course, refer to the payments of \$7000 and \$5000 that had been made directly to Betts by Hickey Lawyers (part of which was used by Betts to pay \$8000 to Quadrant). This had been discussed earlier in emails between Betts and Morgan, where Morgan explained to Betts that the amounts he had provided Betts to declare were 'additional to the \$8000 payment made by you to Quadrant, drawn against the \$12 000 you received directly from the L.B. Trust'.

Betts lodged his final return on 1 July 2004, stating that the disclosure period covered by the form was 1.10.03 to 5.5.04.

His return listed the following donors and amounts:

The Lionel Barden Trust Fund	28.1.04	\$7000
The Lionel Barden Trust Fund	20.2.04	\$5000
The Lionel Barden Trust Fund	Between 29.2.04– 31.3.2004	\$16 978.97

In each case, Betts listed the address of the donor as 'c/- Hickey Lawyers, Corporate Centre, 6th Floor, Cnr Bundall Rd and Slayter Ave, Bundall'.

Lionel Barden was not named as the client for Hickey Lawyers Trust Account until 4 March 2004, and had not authorised the payments of \$7000 and \$5000 made to Betts.

Hickey Lawyers wrote to Susan Betts (Betts's wife and campaign manager) on 28 January 2004, advising that a cheque for \$7000 was enclosed 'as directed by Councillor Robbins and Councillor Power'. They wrote in identical terms to Susan Betts on 20 February 2004, enclosing a cheque for \$5000.

There was no reference in either letter to a trust fund, the only reference to any kind of trust account being a description of the cheque as a 'trust account cheque'.

Betts said that he was told by Robbins that he would receive funding through a 'trust fund' and that he would have to put the name of the trust fund in his return but not the names of the donors, whom he would not know.

Betts said that he took no legal advice about his obligations to lodge a return, but had received a booklet (Exhibit 9) that contained some details about it when he nominated. Betts knew there was going to be some kind of trust fund, but did not hear about Barden's involvement until some time later. He said that he trusted Robbins to handle the matter.

Robbins had told him something about Lionel Barden putting his name to the trust fund, but he thought he first heard about the 'Lionel Barden Common Sense Campaign Fund' when he read about it in the newspaper after the election.

Betts was questioned about the steps he had taken to understand his legal obligations of disclosure:

(T483–6)

Mulholland: Did you ever consider getting any other advice apart from Sue [Robbins] telling you what your obligations were? Actually, did you realise that there were — that these obligations were statutory obligations?

Betts: I did when I got the form from the council.

Mulholland: Right. So you would have carefully gone through the statutory provisions, did you?

Betts: Well, I don't know if 'carefully' is a good word, but I went through it.

Mulholland: Did you get any greater understanding after your official nomination of your legal obligations, apart from what you had which you've told us about from Sue?

Betts: I don't believe there was anything different in that form than what I assumed was the case, that I had to fill out the details as far as the trust fund goes and put a trustee, and I believe that that was what was in the form that I got from council.

Mulholland: Did you ever read anything to suggest that you shouldn't receive anonymous donations?

Betts: Yes, but that wasn't an anonymous donation. That was a donation from the trust fund.

Mulholland: From the trust fund?

Betts: Yeah.

Mulholland: This is a trust fund that you had heard about in the way in which you've described; is that right?

Betts: Is that a question?

Mulholland: Yeah. So you never at any stage asked even if there was a written document in relation to this trust fund; is that correct?

Betts: No, I never asked for a written document.

Mulholland: You believed, from what you've told us, that the person who controlled this trust fund was Mr Barden; is that correct?

Betts: I don't think I said that.

Mulholland: Well who controlled it?

Betts: I don't know. I mean, I — well look, there was a conversation I had with Sue about after Max Duncan had thrown his hat in the ring to run for council.

Mulholland: I'm asking you a question directed at who was controlling this trust fund?

Betts: Yeah, okay — sorry, that's what I was getting at. So we were talking about Max Duncan running and she said to me something along the lines of 'The people who are controlling the money — we may have a

problem with me getting money because the people who are controlling the money want to give it to Max Duncan.'

Mulholland: Who's the 'me'? You?

Betts: Yeah, me. Because I was assuming I was getting this money from the trust fund.

Mulholland: So who's saying this to you?

Betts: This is Sue. She's telling me that when Max Duncan put his hand up that the people who were controlling the money wanted to give it to him. So she had to fight to get the money for me.

Mulholland: So the people controlling the money may have had a problem?

Betts: With me, because they wanted Max Duncan.

Mulholland: Right. Well who were the people controlling ... ?

Betts: I don't know.

Mulholland: Well didn't you want to know who the people were who were controlling the money?

Betts: I've got ... [interruption]

Mulholland: The question is, what did you believe as to who controlled the fund?

Betts: I didn't know who controlled the fund and I think I told you that.

In relation to the issue of why he had put 'Lionel Barden Trust Fund' as the source of the two cheques he received from Hickey Lawyers in January and February 2004, this exchange occurred:

(T501)

Mulholland: I just wanted to mention that. Yes, now, the point that you are ... ?

Betts: So are you saying to me that my final return only had the Lionel Barden Trust Fund?

Mulholland: That's right, as a donor?

Betts: Even for the two cheques?

Mulholland: Yes?

Betts: Okay, well, I must have decided that since that was the name of the trust fund, I had to put that in.

Mulholland: Well, for some reason you have put Hickey Lawyers in the interim return.

Betts: Yes, because that's all I knew.

Mulholland: That's all you knew?

Betts: Yes.

Mulholland: But didn't you think that you had some obligation to investigate where it came from? After all, you didn't think that it was coming from Hickey Lawyers. You must have known there was a source?

Betts: Well, I — I didn't know who the donors were so my understanding was that it was going through Hickey Lawyers so that was my obligation to supply the name of Hickey Lawyers.

Mulholland: So you do agree with me that you knew that you weren't actually getting the donation from Hickey Lawyers ... ?

Betts: Correct.

Mulholland: ... the donation was coming from someone via Hickey Lawyers?

Betts: Correct.

Mulholland: And via Hickey Lawyers Trust Account ... ?

Betts: Correct.

Mulholland: ... you would have known that?

Betts: Yes.

Mulholland: So you were content to do that without investigating it?

Betts: Well, my investigation was that I put down the details as per what was on the cheque.

Mulholland: Now, did you first hear of the name Lionel Barden Trust in the newspapers or when the invoices came to you?

Betts: Oh, in the newspapers before the invoices definitely. I don't think I received the invoices until May or June.

In relation to the letters sent by Hickey Lawyers that enclosed cheques for Betts 'as directed by Councillor Robbins and Councillor Power', Betts said that he was not sure that he had seen the letters, although he recalled receiving the cheques.

Betts was the only candidate who referred in his return to the Lionel Barden Trust Fund. He was provided with information (referred to above) from Quadrant that suggested that the 'L.B. Fund' was the source of the direct payments he had received under the authority of Power and Robbins. It is arguable that Betts's return provided information that was false or misleading in a material particular in putting the Lionel Barden Trust Fund as the source of these earlier payments. However, taking into account the submissions Betts made on this topic and the facts outlined here, the Commission does not consider that a report should be made under section 49 of the CM Act in respect of Betts's return.

### **Brian Rowe's return**

Rowe lodged a final election gift return on 21 April 2004, stating that the disclosure period covered by his return was 11 February 2004 to 6 May 2004.

In respect of funding he had received through Hickey Lawyers, Rowe's return listed the following donors and amounts:

Common Sense Trust	5.1.2004	\$7500
Common Sense Trust	30.1.2004	\$7500
Common Sense Trust	20.2.2004	\$20 000

In each case, the address of the donor was given as 'c/- Hickey Lawyers, PO Box 5559, GCMC 9726'.

Regarding Quadrant, Rowe listed \$1000 as a gift in kind.

Rowe explained why 'Common Sense Trust' was put as the donor on his return:

(T1078–80)

Mulholland: Well, the name of the donor in relation to these amounts we've just been discussing is shown as Common Sense Trust. That's all it says. Common Sense Trust, seven and a half thousand dollars in each case. Do you see that?

Rowe: Yes.

Mulholland: And then the 20th of — sorry — yes, 20th of February — Common Sense Trust, \$20 000. Well, was that accurate to describe it as a Common Sense Trust?

Rowe: I think on the first one you showed me that came through with a letter it had the term 'Common Sense Trust'.

Mulholland: But why would that not — why would that not be the donor? Why wouldn't that at the very least be the name of the account that it came from? Did you believe that there was a Common Sense Trust?

Rowe: Mr Chairman, can I — that very first one that was shown to me with I think ...

Mulholland: Your — yes, I just quickly looked at that, that's — it is the mention on the letter from Crs Power and Robbins to Mr Tony Hickey. We authorise the draw up to seven and a half thousand for campaign assistance for Division 5 candidate Brian Rowe from the 'Common Sense Trust'. Did you ever see that letter?

Rowe: I didn't see that letter, but I can see why Barb [Barbara Christoffel of Lang Realty] would have listed it as the Common Sense Trust.

Mulholland: You're right, the word 'Common Sense Trust' is on that letter from the councillors to Mr Hickey?

Rowe: Yes. And I — I would have no difficulty with the fact that Barb [Christoffel] — and probably putting it in inverted commas she's probably taken it from there and she's duplicated it twice more. I think that's ...

Mulholland: She wouldn't have seen that letter because it went to Mr Hickey?

Rowe: I don't know ...

Mulholland: I mean the Common Sense Trust doesn't tell one looking at the document too much about the identity of the donor, does it?

Rowe: It's come from that trust.

Mulholland: What trust?

Rowe: The Common Sense Trust at Hickey Lawyers.

Mulholland: Well, what — you say from a trust, what trust? Was there ever any instrument of trust that was suggested as being in existence in relation to this money?

Rowe: Not that was discussed, no.

Mulholland: I mean, you knew, didn't you, that the money at some stage — and you would certainly have known it by this time — that the money had gone into the trust account of Hickey Lawyers?

Rowe: At the time I ...

- Mulholland: Prepared this return?
- Rowe: Yes.
- Mulholland: So you knew that the money that had come to you had come from Hickey Lawyers?
- Rowe: Yes, as — yes.
- Mulholland: Did it occur to you whether or not you ought to include the name of the account?
- Rowe: No, I thought I wasn't unhappy with 'Common Sense Trust'.
- Mulholland: Can you tell us this, Mr Rowe, did you understand that there was some trust that had been set up, some document, which had been prepared, some instrument of trust, in relation to these funds from which you were going to benefit?
- Rowe: Not at the early stage, no.
- Mulholland: No, no, at any stage. I mean, you know, you speak about a trust, I'm just interested to know what sort of trust did you understand it to be? You mentioned Mr Baildon or someone else, you see, there might be an instrument of trust prepared, a deed of trust — do you follow what I mean — with beneficiaries and settlor and so on, trustee. Now, is that the sort of trust that you understood was involved here or was it some other kind of trust and if so what?
- Rowe: I don't know. I just understood that through Hickey Lawyers there was a trust fund as indicated here on the form.
- Mulholland: Did you understand anything more than the fact that the monies had come out of the trust account of Hickeys?
- Rowe: No.
- Mulholland: So when you speak of a trust fund, you mean it in the sense of the monies having come out of the trust account at Hickey Lawyers?
- Rowe: That would've been my understanding, yes.
- Mulholland: Yet you never asked anyone, 'Well, is there any — can I have a look at the' — or at least ask, 'Is there any trust instrument ...' ?
- Rowe: No, I didn't ask.
- Mulholland: ... in relation to this. Where did you pick up first the mention of a trust fund? Who first mentioned a trust fund to you? Was it Mr Power?
- Rowe: I couldn't — I wouldn't know.

In the records at Hickey Lawyers about payments to Rowe there is no covering letter or memorandum about the first payment made to Rowe. There is a written authority from Power and Robbins authorising 'up to \$7500.00' to be paid to Rowe, and a photocopy of a cheque for \$75 000 to Rowe dated 24.12.03.

Regarding the second payment, there is an email from Hickey to Barbara Christoffel at Lang Realty, who was handling Rowe's campaign account, that advises:

In accordance with your request and as directed by Councillor Power and Councillor Robbins, the sum of \$7500.00 has been deposited to [Rowe's bank account].

Perhaps because of this mention of Crs Power and Robbins, Christoffel issued all of the receipts for funds received from Hickey Lawyers by Rowe as having come from the 'Gold Coast City Council'.

Regarding the final payment of \$20 000 to Rowe, the only record on the Hickey file of its having been paid is a handwritten notation on an email from Christoffel requesting the payment that says 'left message to confirm funds were deposited to above account — \$20 000' and a photocopy of a deposit slip in that amount to Rowe's account.

Rowe said that he had largely relied on his campaign manager (John Lang) and Michael Yarwood (a lawyer helping with his campaign) for knowledge of his legal obligations regarding disclosure. He said that he had read the booklet provided to candidates (Exhibit 9) but not the handbook prepared by the Department of Local Government and Planning (Exhibit 10). He was not aware of the provisions in relation to a 'group of candidates'.

### **Roxanne Scott's return**

Scott claimed privilege against self-incrimination in relation to answers she gave concerning her election gift return, which means that none of the answers given by her on that topic is admissible in evidence in any civil, criminal or administrative proceeding.

Scott lodged a return on 16 April 2004, which stated the disclosure period covered by the return as 20.10.2003 to 28.4.2004.

Scott's return listed the following donors and amounts for the funds she had received through Hickey Lawyers:

Tony Hickey	3.2.04	\$7000
Tony Hickey	24.2.04	\$3000
Chris Morgan Quadrant	Feb.–Mar. 2004	\$18 673.72

She had also received gifts through the trust account of another solicitor, Mal Chalmers. For these amounts, totalling \$5000, she put the donor as 'Mal Chalmers'.

On 15 June 2004, Scott wrote to the CEO of the council to advise that it had been drawn to her attention that she had made an error on her form by listing Chalmers and Hickey as the donors. She wrote:

In relation to the funds from the two law firms, these funds were, of course, provided via a trust account and were not personal donations from the person's [*sic*] named.

She attached a replacement page for her return that changed the two entries for 'Tony Hickey' to 'Hickey Lawyers Trust Account', and the entries for Chalmers to 'Mal Chalmers and Co. Solicitors Trust Account'. She also changed the entry for 'Chris Morgan, Quadrant' to 'Quadrant'.

Scott received her first payment from Hickey Lawyers under cover of a letter dated 2 February 2004 (marked 'to be collected') that advised her that a cheque for \$7000 was enclosed 'as directed by Councillor Robbins and Councillor Power'.

She received a second payment of \$3000 under cover of a letter in identical terms from Hickey Lawyers dated 20 February 2004.

Scott was questioned in relation to the letter from Hickey Lawyers that accompanied her first cheque:

(T362–3)

Boyle: Did you get a copy of that letter?

Scott: Well, I may — it may have been in the envelope. I probably just — I didn't know that I was required to keep it so I didn't keep it. I can't — don't remember it.

Boyle: You can't remember that letter at all?

Scott: No. I just banked the cheque.

Boyle: Well, upon reading that letter now would that have stuck in your mind, the contents of that letter?

Scott: It refers to 'our trust account cheque'.

Boyle: No, but it says, 'as directed by Councillor Robbins and Councillor Power'?

Scott: Oh, okay. Well, they were certainly at the meeting in December, I wasn't surprised by that.

Boyle: Well, would you have been surprised at the fact that Cr Robbins and Cr Power were directing that a cheque for \$7000 be given to you?

Scott: No, because they were at the meeting. Cr Power was really running that meeting, so I understood that he was involved in — in the trust account and sourcing the funds. I don't know to what extent but he was certainly involved.

Boyle: Well, at any stage did you think that Hickey Lawyers — well, just to get this straight, Hickey Lawyers weren't giving donations, were they?

Scott: No.

Boyle: To your mind?

Scott: No.

Boyle: They were getting instructions from somebody?

Scott: Mmm-hmm.

Boyle: And according to this letter it says the direction came from Robbins and Power. Correct?

Scott: Mmm-hmm.

Boyle: And was that your understanding that that's who they were getting their instructions from?

Scott: As I said at the meeting, they were at the meeting, Cr Power primarily was running that meeting so I knew that he was integrally involved in sourcing the funds. So I wouldn't have been surprised by that.

In explaining why she had originally put 'Tony Hickey' as the donor in her return, Scott said:

(T362) Well, it was a misunderstanding. When it said in the Act I had to declare the relevant details for each gift made by a person to the candidate, that was in 427, so by saying 'name' there I thought they were looking for the name of a person, and I thought the main point of contention would be the amount that I declared, whether I declared the right amount, and I thought the council would then verify with that person the amount that I'd received. But I did amend that later on when Tony Hickey himself

pointed it out to me that I had been in error there, and I amended it straight away. Tony Hickey advised me that it should have read Hickey Lawyers Trust Account.

As to why she had put 'Chris Morgan, Quadrant' as a donor in her return:

(T367)

Boyle: Now, they [Quadrant] did a significant amount of other or — well, it seems as if they would have done about \$26 000/\$26 672 worth of work for you; is that right?

Scott: Well, I declared \$18 673.72 which I believe — and then there was the \$8000 on top of that that I paid them.

Boyle: Right, okay. But, you see ... ?

Scott: Which is from their own invoice when you look at it. There was \$18 001.03 and if you add on the 672.69, it should be the amount that I declared on my return.

Boyle: Well, yes, that's correct. But can I ask you this: do you know who paid that amount to Quadrant?

Scott: Which amount, the remaining ...

Boyle: The eighteen thousand ... ?

Scott: ... 18 600?

Boyle: Yes?

Scott: No, I don't. I thought I had said that.

Boyle: Right. Well, I'm asking you because on your return, you listed Chris Morgan, Quadrant, as having given you a gift of 18 000, and the gift in kind you've described is artwork, copywriting, web page, signage, printing, materials etc. Why did you put Chris Morgan down there when it's obvious he wasn't the person who was giving the gift? He was paid for that work?

Scott: Because I didn't know anyone else to put down there. That was where I had received those in-kind services from.

Boyle: Right?

Scott: I didn't know who ...

Boyle: But you never understood them to be doing work free of charge for you?

Scott: No.

Boyle: You understood that that was to be paid by somebody else?

Scott: Yes. And I wasn't particularly trying to hide that but I didn't feel it was my responsibility to try and grill them as to the source of the funds.

Scott said that she had relied on Power and Robbins, as experts in the field, to advise her. They had told her that she would have to declare the trust fund, but 'in the end I didn't receive the money from the trust fund so I could only declare what I knew'.

Scott received a statement from Quadrant in relation to the work done for her that was headed:

Lionel Barden Trust Account  
R. Scott  
c/- Hickey Lawyers.

Scott said she must not have looked at the statement very clearly, and that was why she originally put 'Tony Hickey' on her return. As a result, Hickey had contacted her and told her that she should not put him personally as the donor, and to put Hickey Lawyers Trust Account. Scott said that she believed she had only heard about Barden's involvement through a media article after Christmas 2003.

In relation to her putting 'Mal Chalmers' as a donor:

(T372)

Boyle: Okay. Mal Chalmers, you've got him down there as ... ?

Scott: That was the same situation; he was also a solicitor and again I thought they wanted the name of the person they could verify the funding with, so when Tony Hickey contacted me I said I had incorrectly put his name down on the form. I realised, well, yes, and I've done the same thing with Mal Chalmers, so I altered that one as well, because that was a trust account as well.

In fact, the real donor in the case of the Chalmers Trust Account was a developer named Rix, who provided the funds to Chalmers to be used for Scott's campaign, through a company called Family Assets Pty Ltd.

The Commission is satisfied that Scott knew that Rix was the source of the donation to her, although she was evasive about it in her evidence. Scott said that Chalmers contacted her and said that funds were available, but she did not ask him who the donor was. She conceded that she had 'an inkling' that the donor was Norm Rix, because she had spoken to him about problems he was having with Crichlow in the area. She agreed that Rix may have mentioned the sum of \$5000 being donated during this discussion, but denied knowing that he was a developer, despite the fact that the shop where she spoke to him had a large sign on it saying 'Rix Developments'. On 25 August 2005, Chalmers wrote to Scott to confirm that Family Assets Pty Ltd was the principal donor to her campaign of the sum of \$5000, and Scott then faxed this letter to Tony Davis at the council.

Rix said that Scott approached him and he agreed to donate \$5000 to her campaign because she was running against Crichlow. He was not sure that he mentioned a trust account, but he told her that he did not want 'every Tom, Dick and Harry' to know that he had made the donation to her. Rix put the money into Mal Chalmers's trust account, and told Chalmers that he would have Scott contact him. Rix agreed that he probably told Scott to contact Chalmers, and told her that he had deposited \$5000 into the trust account.

Scott's evidence that she did not read either of the letters Hickey Lawyers provided with her cheques, or notice the reference on the statement Quadrant gave her to the 'Lionel Barden Trust', is unconvincing and is rejected.

The Commission is satisfied that Scott was aware that the donors to her campaign were not Hickey, Chalmers and Morgan personally and that she made no reasonable effort to find out who the real donors were.

## Grant Pforr's return

Pforr claimed privilege against self-incrimination in relation to answers he gave concerning any false statements made by him in his election returns, which means that none of the answers given by him on that topic is admissible in evidence in any civil, criminal or administrative proceeding.

Pforr lodged an interim return on 5 April 2004, which stated that the disclosure period for the return was 29.10.03 to 15.5.04.

Pforr's return listed the following donors and amounts for the funds he received through the Hickey Lawyers Trust Account:

Hickey Lawyers	29.1.04	\$7500.00
Hickey Lawyers	20.2.04	\$5000.00

In his final return, lodged on 30 June 2004, Pforr included these entries in the same terms and added:

Hickey Lawyers	21.6.04	\$22 414.69
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Hickey's file shows that Pforr received the first payment of \$7500 under cover of a letter from Hickey Lawyers dated 29 January 2004 addressed to G Pforr at PO Box 1244, Paradise Point. A file note preceding the letter on the file states that Pforr had telephoned on 29 January 2004 to ask that his cheque be sent to that address. The letter advised Pforr that a cheque for \$7500 was enclosed 'as directed by Councillor Robbins and Councillor Power'. On 20 February 2004, a letter in identical terms was sent to Pforr from Hickey Lawyers, enclosing a cheque for \$5000.

Pforr agreed that, as a result of these letters, he knew that Power and Robbins were giving directions to the solicitors about who should receive payments from the trust account.

On 20 May 2004, Morgan sent an email to Pforr advising him of the balance of contributions to his campaign drawn specifically from the Lionel Barden Trust Fund, in order to assist Pforr with his election return.

On 21 June 2004, Morgan sent Pforr a letter enclosing invoices and statements in relation to expenditure by Quadrant debited to the Lionel Barden Trust Fund. The invoices and statement are all headed:

Lionel Barden Trust Account  
G Pforr  
c/- Hickey Lawyers.

Despite this, Pforr's final return on 30 June 2004 makes no mention of Lionel Barden, or of a trust fund of any kind. Instead, he lists 'Hickey Lawyers' as the donor of the \$22 414.69 that Morgan's letter advised was debited to the Lionel Barden Trust Fund.

Pforr described his state of knowledge about the source of funds at the time he received the first payment from Hickey Lawyers as follows:

(T252)

Mulholland: ... but you are being given an indication that there is a fund of some kind that you could perhaps draw upon and you indicated that you'd like seven and a half thousand dollars. Now surely at that point, Mr Pforr, it occurred to you, with your background, well hang on, I'd just better find out more about this fund, who set it up, who holds it, where's the money coming from, who's involved? And then you'd go and ask some questions of someone, perhaps Mr Morgan would be a good

starting point, particularly since you'd had these contacts with him. Did any of this go through your mind?

Pfarr: It would have.

Mulholland: It would have?

Pfarr: Whether I asked the question of Mr Morgan or not, I'm not aware. But I was certainly aware of at other political levels of such funding arrangements being made and I assumed that it was a good way of keeping things at arm's length.

Mulholland: What, not to ask?

Pfarr: Not to know if there was a trust fund. I wasn't aware that it was called the 'Campaign for Commonsense Trust Fund'.

Mulholland: So did you, not what you would have done, but did you adopt a deliberate approach of not wanting to know where the money was coming from?

Pfarr: Oh, it wasn't ...

Mulholland: Until you received it?

Pfarr: It wasn't a deliberate approach. I received, I believe late in January, some money. I think it was to the value of seven and a half thousand. And it had Hickey Lawyers Trust Fund on it.

Mulholland: Right. Well, yes, and what did you do?

Pfarr: I banked it.

Mulholland: You banked it?

Pfarr: That's correct.

Mulholland: So where did it come from?

Pfarr: I don't know.

Mulholland: Well it didn't come from — the money — there was no reason that you knew of why Hickey Lawyers would want to give seven and a half thousand dollars to your campaign fund, was there?

Pfarr: It was Hickey Lawyers Trust Fund. I think I've included a copy of the attached cheque with the remittance notice on it.

Mulholland: Yes. Trust fund?

Pfarr: Yes.

Mulholland: All right. It was a trust fund?

Pfarr: That's correct. And other political parties and other levels of government, I believe, have trust funds, on my understanding.

Mulholland: So who was in control of this trust fund? Who ... ?

Pfarr: I believe Hickey Lawyers, so to me that was a reputable person, a solicitor, or lawyers, who were dealing with a trust fund. To me that was legitimate. It means it was above board.

Mulholland: It was a ... well, where did the money come from though? You had responsibilities as well, didn't you? You couldn't just receive a gift and not know who was providing the gift, could you?

Pfarr: I put in my return, 'Hickey Lawyers Trust Fund'.

Mulholland: I know ...

Pfarr: I believe under the Act that was — and I'm not an expert at it and I've told you that before — that that was my requirement under the Act, to deal with it after the campaign.

Pfarr sought no advice about his reporting obligations before the election, because he knew he would consult with his accountant after the election to prepare a return. He also relied to some extent on advice from Morgan about what he would have to declare in his return.

### **Ron Clarke's return**

Clarke certified a gifts return on 31 March 2004 and did not declare any gifts. Following a newspaper article on 7 July 2004, Clarke sent a memorandum to the CEO of the GCCC seeking to amend his return in two respects: first, to disclose that the proprietors of Darlington Park Raceway offered to provide free days to anyone who volunteered to assist Clarke's campaign at polling booths on voting day (it is unknown whether anyone had in fact taken up that offer); secondly, to disclose that a person had driven him around to the various polling booths on a motorcycle. The Commission does not consider that these items were gifts under the LGA requiring disclosure by Clarke.

On 11 April 2005, following another newspaper article, Clarke wrote two letters to the CEO of the GCCC. The first declared that he had received a gift in kind to the value of between \$20 000 and \$40 000 for a large mobile sign and for the time spent towing the sign. In the second letter Clarke clarified that he paid Tony Stephens (now deceased), one of the proprietors of Darlington Park Raceway, to have the mobile sign repainted. Clarke had arranged an independent driver to drive the sign around the Gold Coast, but said in the letter that Stephens also 'took it upon himself to drive the sign around the Gold Coast'. Clarke said in the letter that he was unaware of the extent of the support provided by Stephens.

In his response to a CMC notice to discover, Clarke disputed that the level of support given would have been worth \$20 000–\$40 000. In evidence, he said he saw Stephens towing the sign on election day, but that Stephens was not doing so at his request. As Stephens is deceased, that issue cannot be further investigated.

A second issue in relation to Clarke concerned campaigning done by the Licensed Venues Association (LVA). Clarke had stated in a meeting early in March 2004 with representatives of the LVA that he would support the extension of licences for the sale of alcohol from 3.00 am to 5.00 am.

On 16 March 2004, Clarke sent an email to a representative of the LVA stating that he favoured a 6.00 am closing and giving his views on other related policy issues. The email did not request any support from the LVA. The LVA embarked on a negative campaign against then Mayor Gary Baildon through advertisements and SMS messages. There was also some support for Clarke in this campaign through a suggestion that he should be put as No. 1 on the ballot by voters. Clarke says that he was unaware of discussions held between his media adviser Graham Staerk and the Chairman of the LVA that supposedly led to this support being incorporated into the campaign. When the matter received media attention, Clarke sought the advice of Tony Davis, Manager of the Office of the CEO at the Gold Coast City Council, and was told that he did not have to disclose the LVA campaign.

In the Commission's view, unsolicited campaigning, positive or negative, is not capable of amounting to a gift to a candidate if it is done without the candidate's knowledge. For it to constitute a gift, there would have to be an element of

acceptance on the part of the candidate. Even if a candidate was aware of the campaigns, it would not be possible for the candidate to quantify the benefit in the absence of information being provided about what the campaign cost. Section 427 requires a candidate to give a return for gifts 'received'. It is implicit that the benefit be accepted in some way by the candidate. That is also implied in the wording of section 428. Here, there is no evidence that the activities of Stephens or the LVA were solicited or accepted by Clarke.

Stephens's actions in towing the sign would seem to be 'volunteer labour', and so no return would be necessary. If the LVA had received gifts in the prescribed amount in order to conduct its campaign, it might be necessary for it to provide a third-party return under section 430. However, the evidence does not point to any obligation on Clarke to submit a return for those gifts. The Commission is satisfied that this is not a matter that should be referred for consideration of prosecution proceedings under section 49 of the CM Act.

### **Peter Young's return and register of interests**

A number of allegations were made about Young's failure to properly declare gifts in his electoral return and his failure to advise the CEO of an interest to be recorded in his register of interests. These allegations have been the subject of advice to the GCCC from the City Solicitor.

The first allegation relates to an alleged breach of section 436(2) of the LGA by Young in providing a return containing false or misleading particulars.

The chronology is as follows:

- 5 April 2004 — Young lodged an interim return and declared a gift of \$3000 from Cater Corporation made on 2 March.
- 20 May 2004 — Young lodged an amended return changing the amount from \$3000 to \$5000.
- 3 July 2004 — Young lodged a final return that declared a gift from Cater Corporation made on 2 March 2004 of \$5000.
- 10 May 2005 — Young sent a memorandum amending the date of the gift from 2 March 2004 to 20 February 2004.

As at 26 April 2005, Young was aware that he was under investigation over his register of interests. He gave the following evidence in relation to the amount declared:

(T1570–1571) I received the gift of \$5000. I made a note somewhere at the time ... I don't know how I did it but I inadvertently, in my own records then, put down \$3000 and that date, I probably had a few cheques come at once or something like that and just gave them a common date. Then subsequently, after the election, I realised that I'd made that error, that in fact it was \$5000 ... I was starting to review my documents a bit more closely, go through things that I'd need to be keeping and just trying to organise my records. That's when I realised that the date — sorry, that the amount — was wrong and I wrote immediately to the CEO and sought to change my interim return.

In relation to the date declared, he stated:

(T1571) I wrote to Cater Corporation ... Cater Corporation said, 'Here's the dates of the money we've given you,' and they included within that information a reference to the \$5000 that they'd paid on the 20th of February. At that point in time I realised that the date was — that

I'd always provided was wrong. It wasn't the 2nd of March, it was the 20th February, and I wrote to the CEO accordingly.

Young corrected the error of his own volition before any issue about the register was brought to his attention. Although the amount is material, he denies that he 'knowingly' declared the incorrect amount. Given that the correct donor was disclosed and a significant amount was otherwise declared by him, the Commission is satisfied that there is no basis to conclude that the inclusion of an incorrect amount on Young's return was other than unintentional.

The same comments apply on the issue of the different dates.

The Commission is satisfied that this is not a matter that should be referred for consideration of prosecution proceedings under section 49 of the CM Act.

The second allegation against Young relates to his disclosure of his register of interests. The CEO of a local government must keep a register of interests for councillors and related persons (s. 247[1]). Section 247(3) of the LGA provides:

If a councillor knows —

- (a) of an interest that the chief executive officer must record in a register of interests kept under subsection (1) in relation to the councillor or a person who, under a regulation, is related to the councillor (a 'related person'); or
- (b) that particulars of an interest recorded in a register kept under subsection (1) in relation to the councillor or a related person are no longer correct; the councillor must tell the chief executive officer of the interest, or the correct particulars, in accordance with the regulations.

The Local Government Regulation 1994 provides:

**17 Financial and non-financial particulars for registers — Act, section 247(2)(b)**

- (1) A register of interests of a local government councillor or related person must contain the following financial and non-financial particulars ...
  - (j) for each gift, or all gifts totalling, more than \$500.00 in amount or value received by the councillor or related person — the name and address of the person who gave the gift or gifts to the councillor or related person; ...
  - (o) particulars sufficiently detailed to identify each other financial or non-financial interest of the councillor or related person —
    - (i) of which the councillor is aware; and
    - (ii) that raises, appears to raise, or could foreseeably raise, a conflict between the councillor's duty as a councillor and the holder of the interest.

The councillor has three months to notify the CEO by way of statement of interest (Regulations 18 and 19).

On 1 July 2005 the 1994 regulation was repealed by the Local Government Regulation 2005; however, there does not appear to be any material change that would affect any alleged offence for failure to comply with the old regulation prior to 1 July 2005 [see s. 24(1)] and schedule 1 (ss. 10 and 15) of the Local Government Regulation 2005.

Cater Corporation paid the following sums on behalf of Young in partial payment of costs for a divisional local newsletter:

- 22 May 2004 \$450
- 01 July 2004 \$440

- 23 July 2004 \$440
- 25 August 2004 \$440

On 17 May 2005, Young sent a memorandum to the CEO disclosing those gifts. As previously noted, that correction occurred after he became aware that his register was under scrutiny. He explained:

(T1572) This was one of those things that I knew I had to attend to and that I had sort of left at the bottom of the pile. I just dealt with a lot of other things and left that one lie. Finally, I approached Cater Corporation and said, 'Can you please give me that information, I need to update my register'.

The council funded the first page of the newsletter and the company had agreed to pay for the cost of the second page. Young's evidence continued:

(T1572) Subsequently I received invoices from that company, the newsletter company. I would have forwarded them to Cater Corporation. They subsequently paid them. I didn't make myself aware when they had paid them, which is my failing. So I didn't amend my register within three months but I was becoming aware that I better get to this register because it's been a long time, you know, I've — I've sort of let it lie for too long. I wrote to Cater. They provided me the information. I nominated that to the CEO.

The section imposes a duty on councillors to ensure information is properly recorded in their register of interests. In sending invoices to Cater Corporation, Young would have been well aware that they were making payments on his behalf. His non-disclosure within the prescribed period may therefore support a charge under section 247(3) of the LGA. The question remains whether the matter warrants referral for consideration of possible prosecution in the circumstances.

In the July 2004 newsletter, Young stated that Gardens on Lindfield (a retirement community wholly owned by a trust controlled by Cater Corporation) would sponsor the cost of the newsletter for the following 12 months. It therefore appears that Young's failure to update the register was not an attempt on his part to conceal the information from disclosure. Indeed, in his divisional newsletter, he explained his reasons for accepting the financial assistance. Arguably, a wider publication occurred than would have been achieved by updating the register.

The Commission is satisfied that this is not a matter that should be referred for consideration of prosecution proceedings under section 49 of the CM Act.

### ***Additional complaint against Peter Young***

It is convenient at this point to deal with a complaint against Young made by Shepherd concerning his voting on a matter considered by council in which he had a 'material personal interest'. A developer lodged an appeal to the Planning and Environment Court against a council refusal to approve a material change of use application. In March 1999, Young (before being elected as a councillor) filed a notice of election to become a co-respondent in the appeal. A settlement of the appeal was considered by the City Planning Committee on 5 October 2004. It is noted in the minutes to the meeting that:

Councillor Young declared an interest and left the room during discussion and voting on this item.

At the meeting, it was agreed to settle the appeal. The report of the City Planning Committee went to council for consideration on 8 October 2004. The resolution was as follows:

That the Report of the City Planning Committee's Recommendations of Tuesday, 5 October 2004, numbered CP04.1005.001 to CP04.1005.012 be adopted with the exception of Recommendation Numbers CP04.1005.004 and CP04.1005.005 which were specifically resolved.

The relevant item was CP04.1005.011. A division was called and the resolution was carried unanimously. Young voted at that time.

In his evidence Young stated:

(T1576) I completely forgot, missed that opportunity and as you can see, accurately recorded in the minutes of 8th of October, council voted in favour of the adoption of all of the recommendations of the committee, which included the settlement of this appeal.

'Material personal interest' is defined in section 6 of the LGA as follows:

- (1) A person has a *material personal interest* in an issue if the person has, or should reasonably have, a realistic expectation that, whether directly or indirectly, the person or an associate stands to gain a benefit or suffer a loss ...
- (2) ...
- (3) However, a person does not have a material personal interest in an issue
  - (a) if the issue is about ...
  - (b) if the interest is merely -
    - (i) as an elector, ratepayer or resident of the local government's area; or ...

A councillor with a material personal interest in an issue to be considered at a meeting must disclose the interest and absent themselves during the consideration of the issue. A failure to do so is an offence under section 246 of the LGA.

Young does not accept that, in strict legal terms, he had a 'material personal interest'. Arguably, as a respondent to the proceedings, he held an interest that was not 'merely' that of an elector, ratepayer or resident of the local government's area. However, he had previously disclosed his interest, and when the matter was considered by council it was dealt with en masse with other recommendations from the Planning Committee. Further, there was no specific discussion at the council meeting that might have prompted him to the possible conflict. As a whole, the evidence does not support a conclusion that Young's vote on the relevant item was other than unintentional.

The Commission is satisfied that this is not a matter that should be referred for consideration of prosecution proceedings under section 49 of the CM Act.

### **Eddy Sarroff's return**

On 7 April 2004, Sarroff certified an interim return for the period from 5 May 2000 to 5 May 2004. It disclosed three donations totalling \$4453.50. On 28 June 2004, Sarroff certified a final return for the period from 5 May 2004 to 28 June 2004. It disclosed one donation in the sum of \$3801.20. The return failed to repeat the information contained in the interim return. Obviously, the final return should relate to gifts received during the entire disclosure period. This was clarified by Sarroff in a memorandum to Tony Davis, Manager of the Office of the Chief Executive Officer of the GCCC on 24 December 2004.

The Commission is satisfied that this is not a matter that should be referred for consideration of prosecution proceedings under section 49 of the CM Act.

## AFTER THE ELECTION

*Craig requests you raise and [sic] invoice for the \$7,000 (+-) + GST for 'general marketing advice' or similar and he will forward a cheque straight away.*

— Sue Davies, personal assistant to Gold Coast developer Brian Ray

**Chapter 7 examines two invoices that were issued by Quadrant after the election to receive payment for outstanding fees.**

### FEES OWING TO QUADRANT FOR WORK COMPLETED

After the election, Quadrant was still owed \$22 700 for work done for candidates, and company director Chris Morgan gave evidence that his partner Tony Scott pursued the shortfall with Brian Ray.

Scott had not been involved in the production of campaign material at Quadrant during the election, and only became involved some months later because Quadrant was still owed funds.

#### **Ninaford/Framwelgate invoice**

Tony Scott (CEO of Quadrant) said that he had spoken to Ray several times about the amount outstanding for work Quadrant had done, asking when Quadrant was going to be paid. According to Scott, he was eventually contacted by Tony Hickey, who said:

To get you paid I need you to send me an invoice for consultancy fees for \$10,000.00 plus GST made out to a company called ... Framwelgate. Send the invoice to me directly and I'll have it paid for you.

Hickey denies that he mentioned GST to Scott.

Scott created a tax invoice for \$11 000 (\$10 000 plus \$1 000 GST) for consultancy fees addressed to:

Ninaford Pty Ltd  
Framwgate [sic] Pty Ltd  
c/- Hickey Lawyers  
Attention: Tony Hickey

This invoice was paid, and Scott applied the \$11 000 to outstanding accounts from Betts's campaign.

Scott admitted in evidence that the invoice was false because it suggested that Quadrant had done consultancy work worth \$10 000 for Ninaford and/or Framwelgate.

Suk-Fun Joyce Chan, director and secretary of Ninaford Pty Ltd, gave evidence that Ninaford and Framwelgate Pty Ltd were involved in a development project at Broadbeach on the Gold Coast called 'The Wave'. Hickey acted as their local representative, and was at that time acting for them in respect of an approval application before the Gold Coast City Council. Hickey discussed a donation of

\$10000 to the council with her and her husband in about July 2004, and she said they agreed because the council does work for the community. Chan did not recall a donation to an election campaign being mentioned by Hickey. Her husband said they would need an invoice or receipt to raise a cheque and Hickey faxed them through an invoice. The invoice was in the name of Quadrant, but Chan did not know who or what Quadrant was. Chan could not explain why a GST component was charged on the invoice, and knew of no services that Quadrant had provided to Ninaford or Framwelgate. She said that when she saw the invoice she thought 'This is only a sort of invoice or receipt so that we can keep a record, so I don't care who is Quadrant, so I just write cheque and then sent it to Tony [Hickey]'.

Warren Cheung, Ms Chan's husband, was also present when Hickey raised the issue of a donation in July 2004. He says Hickey asked for a \$10000 donation to a campaign, and they agreed because their Wave project on the Gold Coast was 'very profitable'. He told Hickey that they would need an invoice for their books. Cheung did not know Quadrant, and knew that Quadrant had not done any consultancy work for the project.

### **Sunland invoice**

Hickey said that he became involved in trying to make up the Quadrant shortfall because Ray contacted him and said Quadrant was still owed money. Ray told Hickey that Power had spoken to Abedian (Managing Director of the Sunland Group), who had agreed that Sunland would make another contribution. Ray wanted Hickey to follow up the further contribution with Abedian, but Hickey had some business to discuss with Craig Treasure from Sunland, and said he would rather discuss it with him. Hickey said that he discussed it with Treasure, who said, 'Yeah, that's fine. Just tell them to send through an invoice'. Hickey rang Ray's personal assistant (Sue Davies) and passed on that message.

Davies sent an email to Tony Scott on 29 October 2004 that read:

Hi Tony

Tony Hickey spoke with Craig Treasure at Sunland. Craig requests you raise and [sic] invoice for the \$7,000 (+-) + GST for 'general marketing advice' or similar and he will forward a cheque straight away.

Hickey denies that he mentioned 'general marketing advice' and said he simply passed on the message that Quadrant should send an invoice to Sunland.

The Quadrant copy of the Sunland invoice was not originally produced to the CMC with Quadrant's material. Scott explained that a copy of that invoice was not backed up on their system, and was only kept on his secretary's personal computer. He had discovered it only a few days before giving evidence on 17 November 2005, and a copy of it was produced at that time.

Of the Sunland invoice, Scott said he was given the details of an invoice he should issue to get paid through an email from Ray's personal assistant. Scott agreed that the Sunland invoice was false insofar as it suggested that marketing work had been done by Quadrant for Sunland.

Treasure gave evidence that the Quadrant invoice to Sunland resulted from a request made for a donation by Power. Power, Treasure and Abedian met at Sunland's offices to discuss generally the fact that other developers 'seemed to be taking an aggressive position on property purchases in the cane field area [at Jacobs Well]'. Sunland was concerned to find out whether the council had any intention of changing the zoning in that area, and Power was asked to come to a meeting to discuss the issue. Treasure said that, at the end of the meeting, Power said words to the effect: 'By the way, there are unpaid fees still owing to Quadrant.'

Would Sunland be prepared to contribute towards those?’ No specific sum was mentioned, but an indication was given to Power that Sunland would be prepared to make a further donation.

Hickey later called Treasure and said something like, ‘I understand that Soheil has said he’s going to fix up the outstanding money owed to Quadrant’. Treasure said that he and Hickey discussed the fact that Quadrant was seeking an amount of \$7000, and that it would need to be paid directly to Quadrant as at that stage it could no longer be paid into the trust fund that had been operating. Treasure told Hickey that someone should send Sunland an ‘invoice or some paperwork’. Tony Scott of Quadrant then rang, and Treasure told him the same.

In relation to the email sent by Davies, Treasure denied suggesting that an invoice should be sent for ‘general marketing advice or similar’.

Treasure agreed that he expected after his conversations with Hickey and Scott to receive an invoice similar to the one that was received, noting:

(T1874) We were expecting to receive an invoice for that amount of money from Quadrant, for what purpose written on the invoice was not relevant.

Although the invoice lists the client as ‘Sunland Group Limited’, Treasure admitted that Sunland had not been a client of Quadrant in relation to this matter, and that Quadrant had not made any marketing recommendations to Sunland. He said that he had made the handwritten notation on the invoice ‘Discussed SA. OK to Pay CT 5/11/04’. Treasure said that the handwritten notation ‘Donation in kind’ was written on the invoice by him a couple of days later, as a result of an inquiry from the accounts or administration sections, or possibly from his personal assistant, about what the invoice was for.

Treasure said that, by the time he received the Quadrant invoice, he knew that Sunland was being asked to contribute to work done by Quadrant for candidates in the March 2004 election, but he denied that the invoice was a false document. He also denied that any person looking at the invoice, for example, the Australian Taxation Office, would be misled by its contents. However, he conceded that the document might, without further explanation, create the ‘false impression’ that Quadrant had done work for Sunland.

Abedian agreed that he was approached by Treasure to approve the payment of \$7700 to Quadrant, although he was not aware of the conversation between Hickey and Treasure that led to the issue of a Quadrant invoice. He had not seen the invoice at the time, but was not surprised by its contents. He saw the reference to ‘marketing recommendations’ in the invoice as relating to marketing recommendations that had been provided by Quadrant to the candidates, for which Sunland was now willing to pay.

### **Tax issues**

Of both the Sunland and Ninaford invoices, Scott said that they were properly accounted for in that Quadrant had paid GST and included the sums in its tax return.

Since the hearing concluded, further information has been provided to the CMC about the Ninaford invoice. KPMG (accountants and tax agents for Ninaford and Framwelgate) have advised that the \$11 000 payment to Quadrant was entered into the companies’ accounting systems as a non-deductible donation expense, and as a non-creditable acquisition whereby no input tax credit was claimed under the GST regime. However, insofar as both invoices were issued as tax invoices

and contained a GST component, they could have been claimed by Sunland and Ninaford as business expenses, whereas election campaign donations by companies cannot be used as a tax deduction. The CMC has referred these matters to the Australian Taxation Office for consideration, including the latest information provided on behalf of Ninaford and Framwelgate.

## FUNDRAISING FUNCTIONS

*Basically, if somebody's getting a dinner and a show then they're receiving something for their money so it's clearly not a donation. — Cr Bob La Castra*

**Chapter 8 examines the evidence given about fundraising functions held by sitting councillors David Power, Ted Shepherd and Bob La Castra.**

### OBLIGATION TO DISCLOSE

One of the issues considered by the inquiry was whether there is an obligation on candidates to disclose proceeds from fundraising functions. Before the March 2004 council elections, the then Department of Local Government and Planning published guidelines for the disclosure of election gifts (Exhibit 10). Consistent with section 414 of the LGA, the guidelines outline the election gifts to be disclosed (s. 2.5.10, p. 12), and further state (s. 2.5.12) that the following items do **not** need to be disclosed:

- proceeds of raffles, dinners and other similar fundraising activities conducted by a candidate or a candidate's campaign committee ...

In the Commission's view, this statement does not accord in all cases with section 414 of the LGA, which defines 'gift' as follows:

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

The Commission considers that the extent to which a profit is made from guests attending a particular campaign function is relevant to the issue of whether any money received constituted a gift; 'gift' being the disposition of property or the provision of a service for a 'consideration less than the full consideration'.

### COUNCILLOR POWER — 'VARIOUS LUNCHEON TICKETS'

On 3 March 2004 a fundraising luncheon for David Power was held at the Windaroo Country Club. The charge was \$125 per person. The records of the function have been destroyed by the club except for the account totals. Power also has no other records of the function. The number of people who attended cannot be ascertained. In his interim return dated 6 April 2004, Power declared that he received \$47 825 in the period ending 3 March 2004 for 'various luncheon tickets'. The return indicated that that amount was paid by 76 people. In his final return, Power declared that he received \$58 000 for the tickets from 464 people. Although Power signed the return, he said it was completed by his campaign manager and he was assured that it complied with the legislative requirements.

It appears that the figure of 464 attendees was chosen to correspond with the total funds raised of \$58 000, given that each ticket cost \$125. There is evidence to indicate that the function room can comfortably hold about 250 people for a 'stand up' lunch and about 150 for a 'sit down' lunch. On the basis of the two electoral

returns, it appears that an amount of \$7375 was collected in luncheon ticket sales in the period after the lunch was held.

The food bill totalled \$2475 and the alcohol sold totalled \$668. Mr Karel Weimar, Principal Financial Investigator of the CMC, concluded from the club's menu prices that a 'stand up' lunch involving 'finger food' might cost as little as \$6 per head and a two-course lunch up to \$28 per head.

In the circumstances, it is impossible to accept that anything like 464 people attended, or even bought tickets. In the Commission's view, the amount raised (a profit of \$54857) indicates that there were significant donations over and above the ticket price. Power disclosed the number of donors and the total value received, as required under section 427(2)(b)(ii) of the LGA. However, in the case of any gift in the amount of \$200 or more, an obligation also exists to identify the individual donor in the candidate's return [s. 427(b)(iii)].

In the Commission's view, it can be inferred in this case that the number of attendees was inflated to avoid that reporting requirement. Unfortunately, no records have been kept by either Power or the club that would allow the actual number of people attending to be ascertained.

## **COUNCILLOR SHEPHERD — THE WOODCHOPPER'S INN**

On 12 November 2003, Shepherd held a campaign function at the Woodchopper's Inn in Mudgeeraba. The requested donation was \$40 per person. Sunland Group Limited sent \$2000. Craig Treasure, a director of Sunland, said that the company received the invitation and 'chose to make a donation to the campaign in the sum of \$2000'. According to Shepherd, the amount was not treated as a donation, but 50 tickets were sent to Sunland on receipt of the cheque. Treasure did not attend but believes that another staff member attended with his partner. Treasure said he believed the tickets were offered to other staff and consultants, but there is no clear evidence about how many attended.

Another company, Peter Mills Property Development Pty Ltd, gave \$5000 to Shepherd's campaign. The CMC wrote to the company and Shepherd about this payment after the hearing, as the issue was not specifically canvassed in evidence. According to Shepherd, 125 tickets were sent to Peter Mills Property Development, although he has no records to support this claim owing to 'the passage of time'. The only relevant record in the material provided by Shepherd to the CMC is that the words 'function tickets' had been handwritten on the copy of the deposit slip for the \$5000 payment. Although the payment of \$5000 was made on or about 11 August 2003, three months before the function, Peter Mills Property Development said that the payment was made to purchase tickets for the function. The company employs only about 20 people, but said that they issued tickets to 'family members, employees, work colleagues, sales & marketing agents, consultants and builders'. The company was asked to supply the names of any of the recipients of tickets, but was unable to do so. For some reason, the company's two email responses to the CMC were copied to Shepherd, and his response to the CMC was copied to the company.

In evidence, Shepherd said he did not rely on the guidelines contained in the handbook (Exhibit 10) to form the view that he was not required to declare the funds raised, but on advice he received independently to that effect. Shepherd did not declare any of the funds from the function in his electoral return.

Of the \$10360 collected from the function, \$7840 (or 76%) came from developers/builders/planning consultants (Exhibit 280):

- Peter Mills Property Development \$5000
- Sunland \$2000
- Planit Consulting \$120
- Humphreys Reynolds Perkins \$40
- Dredge & Bell \$80
- Palmvale Homes \$80
- Burchill Partners \$40
- Glen Alpine Constructions \$40
- CB Constructions \$40
- Nifsan P/I \$240
- Rapcivic Constructions \$160).

The payment by Sunland Group Limited of \$2000 was considered by Treasure to be a donation. Shepherd did not treat it as a donation, but as a request for 50 tickets, which he thought was reasonable in view of the size of Sunland.

In the Commission's view, it must have occurred to Shepherd that it was highly unlikely that 50 tickets would be used by Sunland or 125 tickets by Peters Mills Property Development, a relatively small family company.

Unfortunately, the exclusion in the department's handbook of the proceeds of fundraising events as items requiring disclosure has encouraged a practice that allows large donations from developers to escape public scrutiny, which undermines the intent of the disclosure provisions in the LGA.

## **COUNCILLOR LA CASTRA — '\$5000 A NIGHT'**

Bob La Castra held a fundraising dinner at Royal Pines Resort on 22 March 2004. The ticket price was \$100 and 100 people attended. Of the total proceeds of \$10900 at least \$5900 (or 54%) came from developers, builders and/or planning consultants:

- Family Assets Pty Ltd — \$1500
- Nifsan Pty Ltd — \$1800
- Australand Holdings — \$1000
- Ray Group — \$800
- Royal Woods — \$800.

La Castra calculated that the cost of the dinner was \$42 per head, and considered that he was not required to declare the proceeds in view of the contents of the handbook on that topic. La Castra said:

(T2165) Basically, if somebody's getting a dinner and a show then they're receiving something for their money so it's clearly not a donation.

La Castra said he performed on the night and that a performer of his 'calibre' would be worth 'somewhere in the region of \$5000 – \$7000'. He said:

(T2179) I wouldn't go out for less than \$5000 a night. So therefore I made about \$900.

In the Commission's view, La Castra's notional apportionment of his own entertainment value is irrelevant to the question of what proceeds were earned through the function. La Castra did not suggest that he did actually pay himself \$5000, whatever a performance from someone of his calibre may be worth. In

these circumstances, the Commission is satisfied that this issue was raised as a means of understating the profit made from the function.

## CONCLUSION

By its nature, a fundraising function would usually be an occasion where guests pay more than they receive by way of food, drinks and entertainment. If guests received consideration of less value than the amount they paid to attend the function, arguably there is an obligation on the candidate concerned to disclose the total value of the donations/subscriptions and the number of people who made those payments [s. 427(2)(b)(i) and (ii)]. If any payment from a person or company was \$200 or greater, the name and address of the person/company making the donation would need to be disclosed [s. 427(2)(b)(iii)].

As to the functions mentioned, 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. It would not avail a councillor to believe that a declaration was not required, as such a belief would constitute a mistake of law even if it was supported, to a degree, by the department's own guidelines. However, it would be unfair to recommend action be taken in circumstances where some, at least, of the candidates have relied on the department's handbook.

The Commission is satisfied that these are not matters that should be referred for consideration of prosecution proceedings under section 49 of the CM Act. However, the issue of whether amendments should be made to the LGA to clarify the status of proceeds from fundraising functions is considered in Chapter 16 of this report.

## PERSONAL INTERESTS AND PUBLIC DUTY

*Public perceptions sit at the heart of democracy.*

— *Tweed Shire Council Inquiry: second report*

**Chapter 9 canvasses issues about matters before the Gold Coast City Council where an unfortunate public perception was created that some councillors were more interested in protecting the interests of donors than in making decisions that were in the public interest.**

### CONFLICTS OF INTEREST AND MATERIAL PERSONAL INTERESTS

The offence provisions in the LGA do not apply to conflicts of interests, only to the specific category of conflicts of interest that amount to a ‘material personal interest’ under that Act.

Essentially, a material personal interest in an issue arises when a councillor has, or should reasonably have, a realistic expectation that he or she (or an associate) stands to benefit or suffer a loss, directly or indirectly, as a result of the resolution of the issue (s. 6). It can exist even when a councillor takes an unreasonable but honest view of their own situation. Importantly, the receipt of a donation from a developer or other interested party by a councillor is not of itself sufficient to create a material personal interest, as that term is defined in the LGA.

A councillor with a material personal interest in an issue to be considered at a council meeting must disclose the interest and absent themselves during the consideration of the issue (s. 244). A failure to do so is an offence (s. 246).

Under section 229 of the LGA, a councillor is required to act in a manner that will represent the overall public interest of the local government area and of the division they represent. A councillor must ensure that their private interests and the public interest they are obliged to serve do not conflict. This is, however, only an aspirational provision and a failure to deal appropriately with a conflict of interest does not amount to an offence. Section 229 (3) provides:

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.

The use of the word ‘honest’ in that section has been relied upon by a number of councillors to bring a subjective element to the question of whether they should vote on applications concerning developers from whom they have received donations. The adequacy of section 229 to regulate the tension between private and public interests is considered further in Chapter 15 of this report.

The Tweed Shire Council Public Inquiry (Daly 2005b) stated (p. 938):

In Local Government, unlike the State or Federal Government spheres, the executive arm of government and the legislative arm are not separated. The Council both makes the rules (on zoning and development control plans, for example) and makes decisions on the application of those rules.

In the case of donations from developers to councillors, who are involved in everyday decisions on planning and development matters, the potential for corruption, or the perception of possible corruption, is obvious. Developer interests will not always coincide, and in fact may often conflict, with the public duties of councillors to whom donations are made.

There is some inconsistency in the approach taken by Gold Coast councillors as to whether a conflict exists in such circumstances. Some believe that receipt of a donation would result in a conflict where a council decision relates to the donor, such that the councillor should not vote (Young, Crichlow, Clarke and Pforr take this view). Other councillors believe they can resolve the conflict in favour of the public interest and continue to vote (see the evidence of Power and Shepherd below). Several councillors who gave evidence protested at the proposition that their impartiality might be affected. In the Commission's view, those councillors had very little insight into what would be the perception of a reasonable outsider. As was stated in Daly's report (2005b, p. 938): 'Public perceptions sit at the heart of democracy'.

## COUNCILLOR POWER

David Power has been a Gold Coast City councillor since 1995; before then, from 1991, he was an Albert Shire councillor.

Power's diaries reveal that he had more than 20 meetings with developer donors in the four months preceding the election (Exhibit 326). He said those relationships did not give rise to a conflict of interest and stated, 'It's part of the normal political process. I think anyone of strong mind can separate the two quite easily.' Power said that there was no difficulty in meeting with people on council business and at the same time discussing issues of funding, providing the donation was properly declared. He said that he believed a declaration in relation to donations should be made pre-poll.

Concerning candidates funded through Hickey Lawyers Trust Account, Power said that one of the objectives of the fund was to keep candidates separate from donors, and also that there was an issue of a possible perception that candidates might be considered beholden to him and Robbins. This last concern led to a change of name of the client for the trust account from Power and Robbins to Lionel Barden.

In writing to Bill Roche of the Roche Group to request a donation, Power said:

Your support will assist these people in bringing dignity back to the Gold Coast and certainty in the decision-making process.

Power said he was referring to a decision being carried through and finalised. However, the reference to 'certainty in the decision-making process' suggests some knowledge or belief on his part as to the voting patterns of those to be supported by the fund. Power denied that there was a potential for favouritism and gave the following evidence:

(T2486)

Mulholland: Do you accept or not that there is always the potential that councillors who receive donations in the circumstances I've mentioned, even if perhaps unconsciously, will be influenced in their decisions?

Power: I don't believe so, if they're strong enough minded ...

Power was questioned as to his understanding of a conflict of interest. He said that if the individual can place the public interest above the private then no conflict exists. He said:

(T2501) Matters pertaining to myself, that the conflict of interest only — can only exist within the individual's mind and therefore if the conflict is resolved ... there is no conflict. ... Now the interpretation, I guess, is up to the individual.

## **COUNCILLOR SHEPHERD**

Ted Shepherd has been a Gold Coast City councillor since 2000 and Chairman of the City Planning Committee since the 2004 election. He was asked questions about the issue of favouritism to donors:

(T2041) To suggest that any one councillor could have an influence over an outcome is wrong because of the processes that we have and to suggest that any one councillor could get away with — to use a phrase — anything of that nature is totally inappropriate because it just can't happen. There are too many checks and balances and it just can't happen. But from my point of view, from a personal point of view, it's not the way I operate and I would — and have — taken offence at many of these allegations that are attacking my integrity as a councillor.

Shepherd maintained that he dealt with applications fairly and evenly from the material before him. He was questioned about the perception that might arise from fundraising functions where he invited developers, when he held the position of Chairman of the City Planning Committee:

(T2059)

Chairperson: ... but there's that perception that can arise that, at the same time as you're dealing with these companies professionally, you are writing to them and saying, 'come along to my fundraising function'? ...

Shepherd: No, Mr Chairman, I reject that. I reject that outright because people understand that someone in my position has to raise money for an election campaign. They understand that. I have had nobody come forward to me and say, 'This was wrong, this was scurrilous. What are you doing?'

Shepherd said that it was necessary to raise funds for election campaigns, including by way of holding functions. On the issue of conflict of interest he stated:

(T2062) ... a conflict of interest is one where if you can vote in your mind on the public interest on the public good then the conflict doesn't exist.

## **A FUNDAMENTAL LACK OF UNDERSTANDING**

The Commission considers that the statements made by Power and Shepherd reflect a fundamental lack of understanding about 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 the councillors can impartially carry out their public responsibilities. By contrast, Queensland's Integrity Commissioner, Mr Gary Crooke QC (2006, pp. 1–2), advises statutory office holders that:

In the area of conflict of interest perception is all important. The established test is an objective one, namely whether a reasonable member of the public, properly informed, would feel that the conflict is unacceptable. Essentially it means that such reasonable member of the public would conclude that inappropriate factors could influence an official action or decision. Because the test is an objective one, it matters not whether you as an individual are convinced that with your undoubted integrity you can manage what would otherwise be an unacceptable conflict of interest. The test does not permit you as an individual to be a sounding board.

The appearance of a conflict of interest may be as serious as an actual conflict because it may reduce public confidence in the integrity of office that is held.

## **PARTICULAR DECISIONS OF COUNCIL**

In the course of the inquiry, three decisions of council since the election in 2004 were the subject of detailed examination.

### **Application by Yarrayne Pty Ltd**

Yarrayne Pty Ltd — a donor to Power's election campaign fund — made an application to the Gold Coast City Council regarding a residential development in Upper Coomera. The application was considered by the City Planning Committee on 3 August 2004, before going to a full council meeting on 6 August 2004. Between these two meetings, changes were made to the committee's resolution without the committee members being consulted. As a result, Cr Sarroff — a member of the committee — made an allegation about the way the application was handled.

It appears that, at the 3 August meeting of the Planning Committee, Cr Power (a member of the committee) proposed changes to conditions recommended by the council officer. Power's changes were adopted by the committee by a narrow majority, on the casting vote of the chair. After the committee meeting, the council officer realised that the changes adopted caused an internal inconsistency within the conditions. After discussions between the officer and Power, further changes were made to the conditions to resolve the inconsistency.

It was these changed conditions that were taken to the council meeting of 6 August 2004 as being the recommendations of the Planning Committee, although no new committee meeting had taken place and the members of the committee were apparently not consulted about the changes. Sarroff certainly was not. An 'explanatory note' about the changes was included in the agenda material provided at the council meeting, but that note was extremely cryptic, consisting merely of six and a half lines.

This way of conducting council business is not open and accountable and is far from ideal. While Sarroff conceded that the final proposal was acceptable in terms of proper development, it was nonetheless more favourable to the developer than the original proposal as recommended by the council officer.

It is understandable how the lack of transparency in the process adopted could lead to perceptions of possible favouritism being shown to a developer, especially where, as in the case of Yarrayne, the developer was a donor to a councillor's election campaign fund.

## **Dealings with Sunland Group**

### ***Payment to Quadrant***

After the election, Ray and Power were involved in attempting to obtain funds to pay fees still owing to Quadrant for their work with selected candidates. Sunland had previously made a \$10 000 donation to the fund before the election. Sometime in October 2004, Power asked Sunland for a further donation.

Power gave evidence that the request was made after a meeting with Abedian:

(T2491) ... we were leaving his office, heading towards the lifts. I mentioned to him that there was a shortfall in what was available to pay for the campaigns; suggested that if he was of a mind, it would be lovely for him to donate some. He said that he would take under it consideration and that was it. That's as far as it went.

On 1 November 2004 Sunland paid Quadrant \$7700. The circumstances of this donation have already been dealt with in Chapter 7 of this report.

Abedian and Treasure said they met with Power to get his advice about the council's future development plans for a sugar cane area in Power's electorate. Power assured them that the land would not be made available for development. The issue of Sunland making a further donation was raised informally at the end of this meeting. Power's advice about the council's position on the area in question arguably gave Sunland an advantage, as it saved them having to investigate further whether they should pursue the purchase of property in the area. Having provided this service, Power requested a donation.

The Commission does not consider that these facts suggest corruption, but they do provide another example of a situation that would cause a possible public perception that private interests were being favoured over public duty.

### ***Attempts to purchase property at Hinkler Drive, Carrara***

Desmond Campbell, a real estate agent at Ashmore First National Real Estate, said that in August 2004 he was asked to seek out expressions of interest for a property at 167 Hinkler Drive, Carrara. Campbell gave evidence that Treasure contacted him (Exhibit 124) and said to him:

(T801) He should let the vendor know that Sunland could get the development through council, because they had contributed to the councillors' election fund.

Treasure gave evidence that he did contact Campbell, but said he did not mention anything in relation to the fact that Sunland had contributed to the councillors' election fund.

In the Commission's view, it is unnecessary to resolve this factual dispute, as nothing further eventuated in this matter.

### ***Rates discount***

On 15 November 2004, the council resolved that the discount on a rates notice issued to Carnriver Pty Ltd should be granted due to special circumstances. Carnriver Pty Ltd is part of the Sunland Group. Treasure and Abedian are two of the directors of Carnriver Pty Ltd.

On 28 January 2004, a rates notice was issued to Carnriver Pty Ltd at Level 18/50 Cavill Avenue, Surfers Paradise. The due date for payment of the rates was

2 March 2004. On 19 March 2004, the rates had not been paid and the council issued a notice that it intended to institute legal proceedings. On 25 March 2004, the discounted amount of rates was paid. Sunland wrote several letters to the council seeking the discount, which totalled \$13 882.45. On 21 September 2004, the Falcon Group, an unrelated company, wrote to the council about the rates notice. It stated:

We believe the rates notice was delivered to our office but we did not recognise the name Carnriver. Unfortunately, by the time the letter was re-directed to Sunland through the internal Building Management, it arrived too late for Sunland to pay by the discount rate.

That letter was signed by Lloyd Ross, Managing Director of the Falcon Group Pty Ltd. According to the records of the Australian Securities and Investment Commission, Ross ceased to be a director of the Falcon Group on 13 August 2004. Since the conclusion of the CMC's public hearing, Ross has informed the CMC that he signed the letter at the request of his secretary. He believes that a draft of the letter was sent from the Sunland Group.

A report was prepared by a council officer for the Finance and Internal Services Committee meeting on 9 November 2004. The report recommended that the council advise the applicant that it could not allow the discount on the subject rates notice, which was paid late. It stated (incorrectly):

On 22 September 2004, the applicant wrote to the Mayor's office stating that it was now believed the rate notice was delivered to their office but because of an administrative mix up, the rate notice was not recognised as one of their own because they did not recognise the company name (Carnriver Pty Ltd) on the rate notice.

The council officer appears to have incorrectly assumed that there was some formal association between the Falcon Group and Carnriver Pty Ltd.

On 8 November 2004, a memorandum was prepared by council officers for Molhoek, the chair of the Finance Committee, setting out the circumstances where discounts had been allowed and not allowed in the past by the council. This followed a request from Molhoek for that information.

Anne Jamieson, General Manager for the Sunland Group, and David Brown, National Design Director for Sunland Group, attended the meeting of the finance committee on 9 November 2004. Jamieson said in her statement to the CMC:

I made the suggestion that in the circumstances, a reasonable thing would be for Sunland to contribute the amount in dispute to a charity nominated by the Gold Coast. I said that we regularly contributed to such charities including the Lady Mayoress Ball and this sum would represent a valuable contribution to that cause.

According to the minutes of the meeting, there was a motion by Cr Crichlow (seconded by Sarroff) to adopt the officer's recommendation that the applicant be advised the council could not allow the discount. That motion was lost. A further motion was moved by Clarke (seconded by Power) that the discount on the subject rates notice be granted due to the special circumstances. This motion was carried. After the granting of the discount, Sunland wrote a cheque in the sum of \$15 236.28 in favour of the Gold Coast Community Fund. The cheque was handed over by Abedian.

On 22 November 2004, at the council meeting, the following motion was moved by Crichlow (seconded by Young):

That the original officer's recommendation, as follows, be adopted: 'That Council advise the applicant that it cannot allow the discount on the subject rate notice, which was paid late'.

Sarroff called for a division. Six councillors voted in favour of the motion (Power, Pforr, Young, Crichlow, Douglas, Sarroff) and seven voted against the motion (Clarke, Hackwood, Molhoek, La Castra, Shepherd, Grew, Betts). The motion was lost.

At that point Betts declared a conflict of interest and left the chambers during further discussion and voting on the matter. A second motion was put that the committee recommendation to allow the discount be adopted. That motion was moved by Molhoek (seconded by La Castra). Sarroff called for a division. Eight councillors voted in favour of the motion (Hackwood, Power, Pforr, Molhoek, La Castra, Shepherd, Grew and Clarke) and four voted against (Young, Crichlow, Douglas, Sarroff). The motion was carried. Pforr and Power changed their vote after the lost motion by Crichlow. Had they voted against the motion moved (i.e. to allow the discount), the vote would have been six all, after the departure of Betts.

The relevant provision of the LGA relating to the allowance of a discount is section 1021. It provides:

**Discount if special circumstances prevent prompt payment**

If a local government is satisfied that a person liable to pay a rate has been prevented, by circumstances beyond the person's control, from paying the rate in time to benefit from a discount under section 1019 or 1020, the local government may still allow the discount.

The issue is whether, on the material reviewed by the committee and ultimately the council, there were 'circumstances beyond the person's control'. Section 1008 of the LGA provides:

**Levying rates —**

- (1) A local government may levy a rate only by a rate notice given to –
  - (a) ...
  - (b) in any other case — the person recorded in the local government's land record as the owner of the land on which the rate is levied.'

According to Sunland, in February 2003, they moved from Level 18 to Level 14. On 3 October 2003, a Form 24 Property Transfer Information was lodged with the Queensland Land Registry showing the address for service as Level 18/50 Cavill Avenue, Surfers Paradise. It therefore appears that the council correctly forwarded the rates notice to the address as required under section 1008(1)(b). It is also clear that there had been a failure to advise the correct address in the Form 24. That responsibility remains with Carnriver Pty Ltd. It therefore could not be established by Carnriver that the circumstances that occurred were beyond their control and, in the Commission's view, the discount should not have been allowed under the criteria specified in the LGA.

Sunland had donated \$10000 to the fund operating through Hickey Lawyers Trust Account on 28 January 2004. At the request of Power, a further amount of \$7700 was paid by Sunland to Quadrant on 1 November 2004.

The issue of the rates discount sought by Sunland was considered by the committee on 9 November 2004 and the council on 22 November 2004. Power voted at both those meetings. He must have been aware, at least, that Sunland was going to make a further donation, and possibly knew it had already made the further donation.

Power gave the following evidence about this matter:

- (T2493) It was an issue that was clearly decided on individual opinions. I was convinced in the committee that the Mayor's argument was sufficient to vote for it. Cr Crichlow's argument within the committee was not

coherent. When we got to council she was far better prepared, the argument she put forward on her amendment I felt had greater weight and therefore voted for it. She lost that amendment, we moved on ... I believe that councillors had satisfied themselves, and certainly at the committee meeting I was satisfied that sufficient argument had been put forward that it was beyond the ratepayer's control.

There is no evidence to suggest that any of the councillors, apart from Power, knew of the \$7700 donation by Sunland. Comment has already been made about Power's views on conflict of interest situations. The councillors who voted in favour of allowing the discount stated they did so for genuine reasons. This may be so, but the Commission considers that they failed to consider properly whether there were 'circumstances beyond the person's control' in accordance with section 1008 of the LGA.

Further, they acted against the council officer's recommendation. Evidence was given that suggested it was wholly unprecedented for a discount to be granted in the circumstances referred to. Some of the councillors who voted in favour of the discount saw nothing objectionable in their conduct, and would not have altered their stance even if they had known that Sunland had made another donation around the time of the relevant meetings. This is another example, in the Commission's view, of councillors being out of touch with how electors might view their actions if all of the facts were publicly known.

### **Infrastructure charges**

One allegation raised by Young related to infrastructure charges that were adopted by the council in January 2004. The introduction of those charges substantially increased development costs. Young said this resulted in the development industry lobbying against the charges immediately before the 2004 election. He said that Power, in the final council meeting before the election, attempted to put a moratorium on the charges. There was considerable debate on the topic, although a motion that had been drafted was not actually put to the meeting.

Young said that an advisory group was established after the election, consisting of members of the development industry. The proposal that there be a staged introduction of the infrastructure charges was debated for a number of weeks, but was ultimately unsuccessful. Young stated:

(T1151) ... my concern and that of a few other councillors was that public interest was being subordinated to the interests of a few with, you know, vested interest.

Power said that, in the lead-up to the election, he and Robbins were the committee chairs responsible for ensuring the appropriate implementation and enforceability through the committee process of the infrastructure charges. He considered the request by the Urban Development Institute of Australia (UDIA) for a phased implementation to be fair, and said that it followed the Brisbane model. Power also had concerns about the legal implications of making the changes retrospective, as they would affect applications that were already under way.

At the council meeting on 19 March 2004, Power sought to suspend standing orders to permit discussion of the issue, but did not attempt to move any motion. When asked about the public perception in the matter, given that developer interests were making payments to the fund, he said:

(T2490) The fact of the matter is that we have an obligation under the Act and by our oath to continue on with the business of council, which we did in a very professional manner.

## **CONCLUSION**

Because of the narrow definition of 'material personal interest' under the LGA, in none of these cases could the actions of the councillors involved amount to offences under the LGA. In each of the cases examined in this chapter, the councillors involved seem to have genuinely considered their actions appropriate, and believed that they were not influenced by donations made. However, as pointed out in Chapter 15, 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

**Chapter 10 details the reasons for 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.**

### ROLE OF THE CMC

Under section 49 of the CM Act, the CMC may, if it has investigated a matter involving misconduct and decided that prosecution proceedings should be considered, report on its investigation to an appropriate prosecuting authority for the purposes of any prosecution proceedings that authority considers warranted.

The terms of reference in this case required the inquiry to consider a number of possible breaches of provisions of the LGA. The evidence also raised the issue of possible breaches of section 218 of the CM Act.

The Commission considers it appropriate to report to the DLGPSR on possible breaches of the LGA, and for an appropriate CMC officer to be asked to consider whether prosecutions should be commenced under section 218 of the CM Act.

In respect of the possible offences outlined in the terms of reference, consideration has been given to the following matters:

### RESPONDING TO THE FIRST TERM OF REFERENCE

#### **False or misleading statements of candidates about association with other candidates or entities**

As outlined in Chapter 5 of this report in relation to false or misleading statements to the media, the Commission considers that a number of candidates and their supporters made false or misleading statements during the March 2004 election process. However, the offence provisions in the LGA regarding false statements are fairly narrow in scope, and do not create an offence in respect of every false statement made during the election process.

The relevant provision is section 394 of the LGA:

##### **Misleading voters**

- (1) During an election period, a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the way of voting at the election.
- (2) 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.

The Commission considers that the false statements made in this matter do not come within the meaning of either section 394(1) or (2), and therefore no report should be made under section 49 of the CM Act concerning them.

## Electoral bribery

The relevant offence provision is section 385:

### 385 Bribery

- (1) In this section—  
election conduct of a person means—
  - (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.
- (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 Commission was required to consider the equivalent bribery provisions under the *Electoral Act 1992* in the 1996 CJC *Report of 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*. That report incorporated a joint advice from Messrs Gotterson QC and Butler SC that noted 'the absurd conclusions' that would follow if the section was interpreted too broadly. Counsel advised in that matter that an interpretation of the section that prohibited 'conventional democratic conduct' should be rejected.

The offence provision in section 385 of the LGA includes a situation where a person asks for property or benefit on the understanding that their election conduct will be influenced or affected; 'election conduct' includes the person's nominating as a candidate for an election. It is also an offence to give or offer to give property or a benefit to a person in order to influence or affect another person's election conduct.

In the present case, the Commission had to consider whether any candidate was influenced or affected in their decision to nominate as a candidate on the basis of an offer of property or a benefit of any kind within the meaning of these provisions.

In particular, Brian Rowe had been quoted in media articles as making comments that suggested he would not have nominated as a candidate if it had not been for an offer of funding made to him. In a *Gold Coast Bulletin* article, 'Three admit to fund', on 27 March 2004, Rowe is quoted as saying that 'he stood by the concept of the trust fund and without it he would not have run for council'.

In evidence before the Commission, Rowe said that real estate agent John Lang asked him to stand 'out of the blue' in about June 2003. Rowe said that he was always prepared to run once he made up his mind, but the issue was whether or not he would run on a shoestring budget or 'do it bigger and better'. He said that he was unaware of monies being available from the trust before his candidacy was announced.

Rowe was quoted in a *Gold Coast Bulletin* article, 'Ray powers the bloc', on 25 March 2004 as saying:

At the time I was considering that [running for council] I knew that we were going to need a budget ... you don't go in with two and six. I was aware of the fact that there were monies available if I was prepared to run as a candidate.

Rowe claimed in evidence that the reference in this article to 'monies available' was a reference to funds he and Lang hoped to raise in their local area, not the trust fund.

Lang agreed that he approached Rowe about running in about July 2003. It was at a later meeting that Cr David Power said he wanted to see a good candidate run in Division 5 and indicated that there might be some funding, but by then Rowe had already decided to run.

It is not entirely clear whether section 385 of the Act would cover a situation where a candidate agreed to run because they were offered funding. In any case, it is the evidence of Rowe and Lang that Rowe had already made up his mind to run as a candidate before any offer of funding was made.

In these circumstances, this is a not a matter for a report under section 49 of the CM Act.

## Returns about election gifts

The third-party return given by Lionel Barden and the election gift returns given by candidates who were funded through Hickey Lawyers Trust Account have been considered in detail earlier in this report, as have the offence provisions in relation to false or misleading returns.

The Commission has decided that prosecution proceedings should be considered in respect of the third-party return made by Barden and the election gift returns given by Power, Rowe, Scott and Pforr, and that a report on the investigation of those matters should be provided to an appropriate prosecuting authority under section 49 of the CM Act for the purposes of any prosecution proceedings that the authority considers warranted.

The persons in respect of whom such reports will be made, and the basis on which they will be made is set out briefly below:

- 1 **Lionel Barden** lodged a third-party return dated 16 June 2004 containing information in the section headed 'Details of gifts received' that he had received gifts within the meaning of section 430 of the LGA from nine named donors between 23 December 2003 and 3 March 2004. Funds were not transferred to Barden's name in the Hickey Lawyers Trust Account into which these donations were paid until 4 March 2004.

A report will be made to the DLGPSR under section 49 of the CM Act with a view to its considering whether prosecution proceedings are warranted against Barden on the basis that the third-party return he gave under section 430 of the LGA contained particulars that were, to his knowledge, false or misleading in a material particular under section 436(2) of that Act.

- 2 **Tony Hickey** prepared a third-party return for Barden containing information in the section headed 'Details of gifts received' that indicated that Barden had received gifts within the meaning of section 430 of the LGA from nine named donors between 23 December 2003 and 3 March 2004. Barden did not become the client for the Hickey Lawyers Trust Account into which these donations were paid until 4 March 2004.

A report will be made to the department under section 49 of the CM Act with a view to it considering whether prosecution proceedings are warranted against Hickey on the basis that he gave Barden, a person who was required to give a third-party return under section 430 of the LGA information to which the return related that was, to Hickey's knowledge, false or misleading in a material particular under section 436(3) of that Act.

3 **David Power**

The third-party return lodged by Lionel Barden dated 16 June 2004 contained the information in the section headed 'Details of gifts received' that he had received gifts within the meaning of section 430 of the LGA from nine named donors between 23 December 2003 and 3 March 2004. Barden did not become the client for the Hickey Lawyers Trust Account into which these donations were paid until 4 March 2004. At the time of these gifts were received, the clients for the accounts were Power and Robbins.

Power and Robbins did not lodge a third-party return under section 430 in respect of the gifts received between 23 December 2003 and 3 March 2004 by the Hickey Lawyers Trust Account.

Section 430 provides that it does not apply to a political party, an associated entity or 'a candidate for the election'. However, the reference to 'a candidate for the election' could not have been intended to allow candidates to organise funding for candidates other than themselves without any requirement for disclosure. In context, it must be taken to mean 'a candidate for the election in respect of his or her own campaign'.

Submissions made on behalf of Power suggested that he was not required to lodge a return under section 430 because he did not physically receive any funds, or take any legal or beneficial interest in the funds. For the reasons outlined in Chapter 4 of this report in respect of the operations of the trust account at Hickey Lawyers, the Commission does not accept this argument.

Power also did not lodge a return under section 427 of the LGA in relation to the gifts received as detailed above. On the evidence, it is arguable that Power was a candidate who received gifts during his disclosure period for a purpose related to an election, within the meaning of section 427.

A report will be made to the department under section 49 of the CM Act with a view to its considering whether prosecution proceedings are warranted against Power on the basis that:

- (i) he did not give a return he was required to give under section 430 of the LGA, contrary to section 436(1) of that Act; and/or
- (ii) he did not give a return he was required to give under section 427 of the Act contrary to section 436(1) of the Act.

4 **Brian Rowe** lodged a final election gift return on 21 April 2004, and, in respect of funding he had received through Hickey Lawyers, his return listed the following donors and amounts:

Common Sense Trust	5.1.2004	\$7500.00
Common Sense Trust	30.1.2004	\$7500.00
Common Sense Trust	20.2.2004	\$20 000.00

Rowe did not list any trustees for the 'Common Sense Trust'. At the time the gifts referred to above were made, the Hickey Lawyers Trust Account was operating under the control of Power and Robbins, and they were effectively the trustees of the fund.

A report will be made to the DLGPSR under section 49 of the CM Act with a view to its considering whether prosecution proceedings are warranted

against Rowe on the basis that he gave a return under section 427 of the LGA containing particulars that were, to his knowledge, false or misleading in a material particular under section 436(2) of that Act.

- 5 **Roxanne Scott** lodged a return on 16 April 2004, and, in respect of the funds she had received through Hickey Lawyers, her return listed the following donors and amounts:

Tony Hickey	3.2.04	\$7000
Tony Hickey	24.2.04	\$3000
Chris Morgan Quadrant	Feb./Mar. 2004	\$18 673.72

Scott listed gifts she had received totalling \$5000 from the trust account of another solicitor, Mal Chalmers, and listed the donor as 'Mal Chalmers'.

On 15 June 2004, Scott provided a replacement page for her return that changed the two entries for 'Tony Hickey' to 'Hickey Lawyers Trust Account', and the entries for Chalmers to 'Mal Chalmers and Co. Solicitors Trust Account'. She also changed the entry for 'Chris Morgan, Quadrant' to 'Quadrant'.

The payments of \$7000 and \$3000 that Scott listed as gifts were received by her under cover of letters from Hickey Lawyers that said the payments were being made 'as directed by Councillor Robbins and Councillor Power'.

As these letters indicated, at the time those gifts were made, the Hickey Lawyers trust account was operating under the control of Power and Robbins, and they were effectively the trustees of the fund.

The amounts listed as a gift from Chris Morgan or Quadrant were authorised for payment through Hickey Lawyers at a time when Lionel Barden was the client and the trustee of the funds.

The amounts listed as donations from 'Mal Chalmers and Co. Solicitors Trust Account' were in fact donations made by Norm Rix through his company Family Assets Pty Ltd. On 25 August 2005, Chalmers wrote to Scott to confirm that Family Assets Pty Ltd was the principal donor to her campaign of the sum of \$5000. Scott then faxed this letter to Tony Davis at the council.

In view of the fact that the record was finally corrected in respect of the donations from Rix, a report will not be made under section 49 on that matter.

Regarding the other information listed above, a report will be made to the department under section 49 of the CM Act with a view to its considering whether prosecution proceedings are warranted against Scott on the basis that she gave a return under section 427 of the LGA containing particulars that were, to her knowledge, false or misleading in a material particular under section 436(2) of that Act.

- 6 **Grant Pforr**

In respect to the funds Pforr received through the Hickey Lawyers Trust Account, Pforr's interim return listed the following donors and amounts:

Hickey Lawyers	29.1.04	\$7500.00
Hickey Lawyers	20.2.04	\$5000.00

In his final return, lodged on 30 June 2004, Pforr included these entries in the same terms and added:

Hickey Lawyers	21.6.04	\$22 414.69
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Pforr received the first two payments listed under cover of letters from Hickey Lawyers that indicated the payments were made 'as directed by Councillor Robbins and Councillor Power'.

As these letters indicated, at the time those gifts were made, the Hickey Lawyers trust account was operating under the control of Power and Robbins, and they were effectively the trustees of the fund.

In respect of the final amount that lists 'Hickey Lawyers' as the donor, on 21 June 2004 Morgan sent Pforr a letter enclosing invoices and statements in relation to expenditure by Quadrant debited to the Lionel Barden Trust Fund. The invoices and statement are all headed:

Lionel Barden Trust Account  
G Pforr  
c/- Hickey Lawyers.

The amounts of \$22 419.69 listed as a gift from Hickey Lawyers were authorised for payment through Hickey Lawyers at a time Lionel Barden was the client, and the trustee of the funds.

A report will be made to the department under section 49 of the CM Act with a view to its considering whether prosecution proceedings are warranted against Pforr on the basis that he gave a return under section 427 of the LGA containing particulars that were, to his knowledge, false or misleading in a material particular under section 436(2) of that Act.

### **Declaring and dealing with conflicts of interest or material personal interests since the March 2004 GCCC election**

As mentioned in Chapter 9 of this report concerning conflicts of interest, the offence provisions in the LGA do not apply to conflicts of interests, only to the specific category of conflicts of interest that amount to a 'material personal interest' under that Act.

In these circumstances, none of the matters discussed in relation to conflicts of interest is a matter for a report under section 49 of the CM Act.

### **Any criminal offence involving the performance of councillors' functions since the March 2004 GCCC election**

No other matter has been identified in this category as suitable for a report under section 49 of the CM Act.

## **PRODUCTION OF MATERIAL BY HICKEY LAWYERS**

In April 2005, Hickey Lawyers provided a trust statement to the CMC in response to a written request for information. The trust statement was provided under cover of a letter from Tony Hickey dated 13 April 2005. The letter stated:

I refer to your letter of 11 April and as requested we now enclose a statement with respect to the Lionel Barden Common Sense Campaign Fund. This statement records all funds paid into our trust account and all funds paid out of trust account [*sic*].

We do not believe that there exists any trust document or terms of trust. We certainly do not hold any such documentation and we are told by Mr Barden that no such documentation exists.

There was no mention in Hickey's letter, or in the attached trust statement, of Power or Robbins, or of any inquiry that had been addressed to them about the terms of the trust.

In fact, later evidence showed that the trust statement headed 'Lionel Barden Common Sense Campaign Fund' that was produced to the CMC was a composite document that had been prepared by combining the information contained in two existing trust statement documents on the file held by Hickey Lawyers for client 248311 'Mr L Barden'.

One of those statements lists 'Mr L Barden' as the client, is headed 'Re: Common Sense Campaign Fund', and lists all payments in and out of the trust account between 4 March 2004 and 26 May 2004, the date of the last payment out of the account. This statement begins with a trust journal transfer on 4 March 2004 of \$20 500 from 'MN 245821-1 Sue Robbins & David Power — GCCC Election Campaign Fund'.

The other statement lists 'Sue Robbins Councillor & David Power Cou' as the clients, is headed 'Re: Gold Coast City Council — Election Campaign Fund', and lists all payments in and out of the trust account between 23 December 2003 and 4 March 2004. It ends with a trust journal transfer on 4 March 2004 of the balance then in the account (\$20 500 to 'MN 248311-1 L Barden — Common Sense Campaign Fund').

Section 218 of the CM Act provides:

**218 False or misleading documents**

- (1) A person must not give the commission a document containing information the person knows is false or misleading in a material particular.  
Maximum penalty — 85 penalty units or 1 year's imprisonment.
- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) tells the commission, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.
- (3) It is enough for a complaint for an offence against subsection (1) to state the document was 'false or misleading' to the person's knowledge, without specifying which.
- (4) A court may order that a person who contravenes subsection (1) must pay an amount of compensation to the commission, whether or not the court also imposes a penalty for the contravention.
- (5) The amount of the compensation must be a reasonable amount for the cost of any investigation made or other action taken by the commission because of the false document.
- ...
- (7) In this section—  
'give', a document to the commission, includes cause the document to be given to the commission.

Having considered the evidence and submissions made on behalf of Hickey about this issue, the Commission requested an appropriate senior police officer seconded to the CMC to consider whether prosecution proceedings were warranted against Hickey on the basis that he gave the Commission a document containing information that he knew was false or misleading in a material particular contrary to section 218(1) of the CM Act. As a result, a charge under that section was preferred against Tony Hickey on 11 April 2006. He has been summonsed to appear at the Brisbane Magistrates Court on Tuesday 16 May 2006.

In view of these pending proceedings, the Commission does not intend to provide detailed reasons in this report for its referral of this matter.

## COUNCILLOR POWER'S STATEMENT TO THE CMC

On 11 August 2005, the CMC issued a notice to discover to Power, requiring him to provide a written statement of information on a number of matters listed in the schedule to the notice. The notice required Power to provide information detailing, among other things, his dealings with 'the Lionel Barden Trust', the 'Power and Robbins Trust' and a list of named developers who had donated to the fund. It also required him to provide a written statement of information detailing:

all donations, gifts, services, benefits or funds (hereinafter collectively referred to as 'gifts') you or your campaign committee requested, were provided, or received either directly or indirectly through another person or entity, and whether or not requested, or provided, or received wholly by yourself or in conjunction with others, from any person or entity for a political purpose related to the Gold Coast City Council elections of 27 March 2004 including but not limited to:

The identity of the person or entity who provided gifts, including the identity of any third person or entity involved in the distribution or eventual provision of the gifts to yourself;

The nature of the gifts you requested, were provided, or received. For example, whether the gift was monetary, in-kind, or the provision of a service;

The amount or market value, of any gifts you requested, were provided, or received; and

The date you requested, were provided, or received any gifts.

Power provided a statement dated 6 September 2005 in response to the notice, but claimed privilege against self-incrimination.

In respect of the 'Lionel Barden Trust', Power said:

The fund originally established was known as the Power and Robbins Trust. This was proposed by Sue Robbins and Brian Ray. A further fund or funds was established by Mr Lionel Barden, a member of the executive of the Gold Coast Combined Chambers of Commerce. I believe that Mr Barden established the Lionel Barden Common Sense Campaign Fund, the Lionel Barden Common Sense Trust, the Common Sense Trust, and the Lionel Barden Trust, but I have limited knowledge of these entities. They may in fact all be the same entity.

I believe that Hickey Lawyers was the firm retained to set up and administer this trust or trusts.

Of the operation of the trust account at Hickey Lawyers, Power said:

... I had dealings with Tony Hickey and Hickey Lawyers in relation to the establishment of a fund to support candidates in the 2004 elections. As I understand it, Hickey Lawyers acted as the trust lawyers for that purpose. Apart from a brief period when my name was used for the Power and Robbins Trust, I believe that my discussions with Tony Hickey were limited to efforts to source sufficient funds to support candidates. So far as I am aware, all funds received and disbursed by Hickey Lawyers were declared through third-party returns as required by law. However, although I believe I may have been told by one or more persons that they intended to make contributions to the fund, I do not believe that I was ever involved in the actual receipt of funds, nor do I recollect ever being notified by Hickey Lawyers or anyone else of the actual receipt of funds or the quantum of specific contributions made to the trust or what amounts were paid out to support the various individuals candidates.

Although Power claimed privilege against self-incrimination in respect of the information provided in his statement, the restrictions on further use of that material do not apply to proceedings about the falsity or misleading nature of the statement itself or an offence against the Act.

Having considered the evidence and submissions made on behalf of Power about this issue, the CMC requested an appropriate senior police officer seconded to the

CMC to consider whether prosecution proceedings were warranted against Power on the basis that he gave the CMC a document containing information that he knew was false or misleading in a material particular contrary to section 218(1) of the CM Act. As a result, a charge under that section was preferred against David Power on 11 April 2006. He has been summonsed to appear at the Brisbane Magistrates Court on Tuesday 16 May 2006.

In view of these pending proceedings, the Commission does not intend to provide detailed reasons in this report for its referral of this matter.

## SUMMARY

Name	Reported to DLGSR for consideration of prosecution under the LGA	Charged under CM Act, s. 218(1)
Lionel Barden	●	
Tony Hickey	●	●
Grant Pforr	●	
David Power	●	●
Brian Rowe	●	
Roxanne Scott	●	



## CORRUPTION OF THE ELECTORAL PROCESS

*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. — Counsel assisting the CMC's inquiry*

**Chapter 11 explains why the Commission considers that the conduct outlined in this report adversely affected the integrity of the electoral process.**

### TRIVIAL OFFENCES?

Many final submissions to the inquiry conceded that the electoral return provisions in the LGA may have been breached by various parties during the 2004 GCCC election. However, the submissions universally suggested that any such breaches were minor, unintentional or not worth pursuing because the important information required under the LGA was still made available through the returns that were lodged.

On the LGAQ's view of the law, offences that were 'minor or technical' or 'trivial' may have been committed with third-party returns. Candidates' returns may have contained information that was 'technically inaccurate from a legal perspective' or involved 'some errors in nomenclature or terminology'.

Submissions made on behalf of the CEO of the GCCC also suggested that any breaches of the LGA by candidates or councillors were 'truly relatively trivial', and resulted from 'understandable confusion as to who should be shown as the donor of the gift'.

Rowe's submission talked about 'interpretive technical defects with the legislation'.

Pfarr's submission suggested that the worst that could be said of him was that he made 'incorrect disclosure rather than non-disclosure'.

Power's submission disputed any breach by him, but said that if there was any breach it was 'unintentional'.

It should be pointed out that the LGA treats the offences of failing to provide a return or providing a false or misleading return seriously. They are two of the offences under that Act that are linked to unfitness to hold office as a councillor. Conviction for either offence leads to automatic vacation of a councillor's office or disqualification from becoming a councillor for a period, unless a court orders otherwise.

Despite this, many of the submissions to the inquiry took the stance that candidates were under no obligation to find out more about their legal obligations or the sources of the large donations made to their campaigns.

Rowe's submission says that he used the term 'Common Sense Trust' in his return and that 'no developer or benefactor to that "Common Sense Trust" called upon him (save the direct conversation with Fish) to say that they were funding his

campaign'. This seems to suggest that candidates have no responsibility to find out who the real donors to their campaigns are.

Pfarr's submissions stressed that he did not know where the money in Hickey Lawyers Trust Account came from and did not want to know, so 'he would not have any pressure or obligation imposed on him by any contributor in relation to his conduct or decisions'.

Any basic knowledge of the law, or reasonable inquiries about their obligations, would have informed candidates that they could not remain ignorant of the names of the donors after the election, as a third-party return would then be lodged that listed them. They would also have been aware that the legislation was designed to prevent anonymous donations.

None of the submissions made acknowledged what was, in the Commission's view, the real reason for any confusion by candidates about the sources of their donations, a reason that militates against any offence that may be found to have been committed being treated as trivial. The candidates chose not to find out the detailed information that would have allowed them to put in accurate returns.

The reason they did not try to obtain that information is that it was made clear to them from the beginning of their involvement in the receipt of funding that certain information was to be kept confidential, from them to some extent, and from the public to the greatest extent possible.

## **HOW SECRECY CAN DAMAGE THE INTEGRITY OF AN ELECTION**

In their opening statement, counsel assisting 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 report has outlined in respect of the 2004 GCCC elections.

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, these candidates received funding through the initiative of Power and Robbins — funding that had come from parties with development interests. If elected, they would be beholden to Power and Robbins for that funding, consciously or unconsciously, during their four-year terms. If they harboured ambitions to run for a further term as councillors, they would be aware that their chance 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.

Considerable effort was put into hiding these circumstances from the public.

In the Commission's view, the hiding of this factual situation from the public through the deceit and misinformation outlined in this report cannot but have affected the integrity of the electoral process.

The following chapters — Chapters 12 to 23 — outline the Commission's proposed agenda for legislative reform.

## **PART B**

### ***Second and third terms of reference***

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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.

To make any recommendations as may be considered appropriate in relation to the above including recommendations for any necessary changes to current policies, legislation and practices.



## THE ADEQUACY OF EXISTING LEGISLATION: A REVIEW

**Chapter 12 looks at the origin of disclosure laws in Queensland local government and whether these laws require reform.**

### MISCONDUCT PREVENTION ROLE OF THE CMC

One of the CMC's functions is to help prevent misconduct. It is required to take this prevention function into account when carrying out all of its work.

Through this inquiry's second and third terms of reference, the CMC resolved 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

and to make any recommendations considered appropriate in relation to those issues, including recommending any necessary changes to current policies, legislation and practices.

The CMC's prevention function is wide-ranging and, in the context of this inquiry, allows the CMC to use evidence from the investigative hearings to illuminate its consideration of any recommendations that should be made for changes to the LGA. It also allows the CMC to consider information from other sources. To this end, a discussion paper was released in December 2005 inviting submissions from key stakeholders and members of the public on the second and third terms of reference. Over 50 submissions were received.

The Commission considered legislative regimes operating interstate and overseas, as well as numerous reports, publications and articles on the issue of campaign financing and disclosure. In particular, it looked again at earlier reports on relevant issues by the Criminal Justice Commission (CJC)<sup>5</sup> and the Electoral and Administrative Review Commission (EARC),<sup>6</sup> and the recent pertinent reports of the Tweed Shire Council Public Inquiry.

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<sup>5</sup> The CJC became the CMC in January 2001.

<sup>6</sup> EARC was established by the *Electoral and Administrative Review Act 1989* (Qld) with the object of reporting on the efficiency in the operation of Parliament, elections, public administration of the state and local authority administration. EARC was abolished on the introduction of the *Parliamentary Committees Act 1995* (Qld)

## THE CJC'S 1991 GOLD COAST CITY COUNCIL INQUIRY

In 1991, the CJC held a public inquiry into 'payments made by land developers to aldermen and candidates for election to the council of the City of Gold Coast'. That inquiry found:

- Developers made generous donations to certain candidates, either directly to the candidates themselves, or indirectly through a public relations company that provided advertising and promotional services to the candidates free of charge.
- There was an attempt to keep the payments confidential because there was a belief that the public would react adversely to the knowledge that developers helped the campaigns of elected aldermen.
- Developers claimed that they provided generous support to certain candidates who were thought to be 'the right people'.
- Developers provided generous support to certain candidates who were running against aldermen that were considered by the developers to be 'disappointing' and 'inconvenient'.
- There was an expectation on the part of the developers that they would receive something in return, even if nothing more than access to council through familiarity with some members 'via previously mutually agreeable contact'.
- It could not be accepted that the receipt of donations from developers would have absolutely no effect on the deliberations of aldermen, however uninfluenced they might claim to be.

The CJC refrained from making detailed recommendations in 1991 on the issue of disclosure of gifts to candidates for local government elections because this issue was then also being considered by EARC. However, the CJC did consider it appropriate to make a small number of recommendations in view of (a) the peculiar nature of local government elections where candidates do not necessarily run on a party platform, and (b) the nexus between developers and the role of council, which creates an opportunity for developers to purchase influence by giving donations.

The CJC recommended that legislation be introduced to make the disclosure of donations to local government candidates compulsory and that councillors also be required to disclose other gifts received. The Commission also 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. The recommendations were based on the Commission's view that the public has the right to know the source of campaign funding in local government elections so that the possibility of influence is open to public scrutiny.

## EARC'S 1992 RECOMMENDATIONS, AND THE 1996 AND 1999 AMENDMENTS TO THE LGA

EARC reported on its investigation into the public registration of political donations, public funding of election campaigns and related issues in 1992, and recommended that candidates and political parties contesting state, local government and community council elections be required to disclose political donations they received (EARC 1992, p. 19). While EARC recommended that the disclosure provisions recommended for use at a state level should also apply to candidates at local government elections, its primary focus was on Legislative Assembly elections. Only four of the EARC report's 174 pages are directed at local government issues. Apart from a brief discussion on the need for there to be

disclosure requirements at the local government level, no further consideration was given as to what provisions would best suit the local government electoral process.

When provisions requiring the disclosure of election gifts were finally inserted in the LGA in 1996, they were largely based on the disclosure requirements for state Members of the Legislative Assembly under the *Electoral Act 1992 (Qld)*<sup>7</sup> which in turn were based on the disclosure provisions of the *Commonwealth Electoral Act 1918*.<sup>8</sup> The Brisbane City Council (BCC) was initially exempted from the disclosure provisions inserted in the LGA. For the most part BCC elections were contested by candidates from political parties that were already covered by the disclosure laws under the *Electoral Act 1992 (Qld)*, and it was considered unnecessary to impose further disclosure requirements.<sup>9</sup> This allowed party-endorsed candidates in BCC elections not to disclose election gifts they had personally received and retained, and it also meant that there were no election gift disclosure requirements at all on candidates not endorsed by a registered political party or third parties.

The LGA was further amended in 1999 to extend the existing disclosure requirements to the BCC and to groups of candidates participating in all council elections.<sup>10</sup>

## THE TWEED SHIRE COUNCIL PUBLIC INQUIRY

As detailed earlier in this report, the CMC inquiry heard that there were similarities between the conduct of certain parties during the 2004 Gold Coast City Council election and the conduct of parties involved in the Tweed Shire Council elections in 1999 and 2004. Recognising that the circumstances were not entirely identical, it is nevertheless appropriate for the Commission to consider the findings and recommendations of the Tweed Shire Council Public Inquiry, given the circumstantial similarities and the proximity of the Gold Coast City to the Tweed Shire.

The Tweed Shire Council Public Inquiry recommended that the laws governing local government elections in New South Wales be revised with a view to establishing an electoral process that reflects the differences between the operations and purposes of local government and the operations and purposes of state and federal government (Daly 2005b, p. 947). In New South Wales, as in Queensland, the disclosure laws for candidates at local government elections are based on the disclosure laws applying to candidates in state government elections. The Tweed Shire Council Public Inquiry found:

- The problem with transferring parts of the New South Wales parliamentary elections legislation to local government is that the structure, operations and roles of the two spheres of government differ in significant ways.
- The concepts of parliamentary governance and governance at the council level are quite different.
- In parliamentary governance, the actions and policies of the government are scrutinised by an identified opposition, and the legislative and executive roles are separated. In local government, the Charter [s. 8 of the *Local Government Act 1993 (NSW)*] intends councillors to work together in the interests of the

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7 Hon. D McCauley, Local Government Legislation Amendment Bill 1996, Second Reading Debate, *Queensland Parliamentary Debates*, 28 November 1996 at 4664.

8 Hon. D Wells, Electoral Amendment Bill 1994, Second Reading Debate, *Queensland Parliamentary Debates*, 16 November 1994 at 10406.

9 Hon. D McCauley, Local Government Legislation Amendment Bill 1996, Second Reading Debate, *Queensland Parliamentary Debates*, 28 November 1996 at 4664.

10 *Local Government and Other Legislation Amendment Act 1999*.

whole council, and there is no formal opposition. In local government the legislative and executive functions are not functionally separated.

- In local government, frequently the only opposition, in the sense of scrutinising aspects of governance, is the local community and the media. The opportunity to scrutinise and debate issues afforded by the parliament is not similarly present in local government.
- In local government, political parties with detailed policy agendas that are presented at elections do not operate in the way that political parties do at state or federal elections. Political parties often field candidates at council elections, but the policies presented to the electorate in any one council will reflect issues that are pertinent to that council, and not necessarily to the other 151 councils in the state. Parliamentary elections legislation contemplates the presence of political parties with political agendas that apply to the whole state.
- Since the level of scrutiny of councils is weak (councils do not afford their communities much opportunity to debate policy and governance issues) it is important that there be a very high level of transparency in electoral processes. The community must have a clear understanding of what policies each candidate brings, what associations the candidate might have with interest groups, and the sources and size of monetary and other resources applied to their campaign. In relative terms, the community places a great deal more trust in the individuals who represent them at council level than in individual members of state or federal parliaments.

In recommending unique disclosure laws for local government, the Tweed Shire Council Public Inquiry (Daly 2005b, p. 941) concluded:

- The argument often put forward that electoral donations are common to elections at all three levels of government, and therefore regulations cannot restrict what happens in council elections, is false.
- The significance of electoral donations at council elections is much greater than at state or federal elections because the range of policy areas in the domain of councillors is quite small, compared to 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 policy settings or take actions that can provide immediate and substantial material benefits to those who support their campaigns.
- A further factor is that council elections generally require much less expenditure by candidates or groups. The election outcome only affects the council area itself, it is decided by a relatively small number of voters, and concerns are restricted to a relatively limited number of issues. Compared with state or federal elections, entities that contribute to an election campaign need expend only limited amounts of money to advance their cause. Because the average expenditure by candidates is low, even modest donations can provide candidates with electoral advantages.

The question of whether unique disclosure laws for local government present a workable and appropriate alternative for Queensland is considered in detail in the next chapter.

## UNIQUE DISCLOSURE PROVISIONS FOR LOCAL GOVERNMENT

**Chapter 13 presents the Commission's case for recommending unique disclosure provisions for local government.**

### SUBMISSIONS FROM COUNCILS, THE LGAQ AND THE PUBLIC

In view of the findings of the Tweed Shire Council Inquiry about the unique nature of council elections, detailed in the previous chapter, the CMC invited submissions on whether the laws relating to the disclosure of election gifts for candidates at local government elections should differ from those applying to candidates at state government elections.

The councils that made submissions to the inquiry opposed the idea of having different disclosure laws at the state and local level.

Even councils that considered some provisions of the LGA needed amendment submitted that legislative reform should occur only if the same reforms were imposed on candidates at state elections. The councils that opposed differing disclosure laws did not explain the basis of their opposition.

The LGAQ also opposed different disclosure laws at state and local government levels. The LGAQ rejected the proposition that the significance of electoral donations is much greater at council elections than at state or federal elections. It submitted that state government politicians are equally, if not more, susceptible to the influences of the development industry.

The LGAQ submitted that campaign expenditure at a local government level plays only a minor part in improving a candidate's chances of election and, therefore, the suggestion that a candidate could be said to be reliant on donations from a particular interest group for electoral success was wrong.

Several councillors from around Queensland made individual submissions. Not all addressed this issue. Of those who did comment, most were of the view that disclosure laws should be the same across all levels of government, wherever possible.

Some councillors, such as Mayor Les Tyrell of the Thuringowa City Council, took issue with the comments in the CMC's discussion paper (2005) about donors having more influence at a local government level and the inference that donors to a councillor's election campaign are automatically able to exert some influence over the councillor. Tyrell submitted that the political risk of alienating a portion of the community was greater than the risk of alienating a donor. Tyrell was of the view that if a councillor was faced with the choice of acting in the community's best interests or ignoring community views and favouring a developer who had donated to their campaign, the councillor would choose the community's interests, because:

... It is easier to confront a single donor about a decision not in their favour, than an angry community.

Submissions from members of the public generally supported unique disclosure provisions for local government. Several people put forward the view that the unique role a councillor has, as an independent local representative not tied to a political party, required unique disclosure provisions.

There were also submissions from members of the public that, while supporting reform, argued that any changes to local government disclosure laws should equally apply at a state level.

## THE CASE FOR UNIQUE DISCLOSURE PROVISIONS

There is no apparent reason why, as a matter of public policy, the disclosure provisions in the LGA should mirror those in the *Electoral Act 1992* (Qld). The CMC would be shirking its responsibilities if it identified a defect in the LGA but did not recommend it be rectified simply because it would mean that local government candidates would be operating under different disclosure rules from state government candidates. One might assume that councillors would want to be elected under laws that give the public the greatest confidence in the integrity and transparency of the electoral process, even if those laws are different from those applying to state government candidates.

The Commission notes the view of the LGAQ and others that campaign expenditure at a local government level plays only a minor part in improving a candidate's chances of election. This may be true in small local government areas, but the same cannot be said of more populous areas where candidates are far more reliant on campaign advertising. In any case, because local government election campaigns are not well funded the marginal utility of available funds is greater.

Candidates at local government elections do not have to report what they have spent campaigning (only gifts received), so there is no way of knowing exactly what some candidates spend on their campaigns. Nor is there any way of estimating exactly how many extra votes a candidate attracts by spending a particular amount of money on campaign advertising. However, one conclusion that can be drawn from the evidence heard at this inquiry is that there are candidates who think that the more they spend on their campaigns the better are their chances of election. It is also clear that there are candidates who will avail themselves of any funding source available.

One of the key reasons behind having the same disclosure provisions in the *Electoral Act 1992* (Qld) 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 (PCEAR 1993, p. i). There was recognition that most candidates in state and federal elections were endorsed by one of 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.

In any case, given recent happenings at the federal level it is doubtful how much longer this nexus between disclosure laws at a Commonwealth, state and local level can last. The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (Cwlth) introduced into the House of Representatives in December 2005 will, if passed, increase the disclosure thresholds applying federally to above \$10 000 (with legislated consumer price index increases). For example, like section 427 of the LGA, section 304 of the *Commonwealth Electoral Act 1918* requires candidates to lodge a return after an election setting out the relevant details for gifts over \$200 in value. If passed, the Bill will provide that

the returns candidates have to provide after an election need only set out the relevant details for gifts over \$10 000 in value. In the Commission's view a \$10 000 disclosure minimum at the local government level would make disclosure laws useless.

Furthermore, the Australian Electoral Commission has expressed the view that, if the disclosure provisions in the Commonwealth Electoral Act are to deliver transparency in the financial relationships of political parties, candidates and others associated with them, a comprehensive review of the legislation and the principles underpinning it is required.

Taking into account the significant differences between federal and state elections on the one hand, and the local government electoral process on the other, the Commission considers it appropriate to recommend changes that would result in different disclosure provisions applying to candidates for local government elections.

The next chapters contain detailed recommendations about what form any such unique disclosure provisions should take.



## DISCLOSURE OF ELECTION GIFTS BY CANDIDATES AT LOCAL GOVERNMENT ELECTIONS

**Chapter 14 assesses the existing disclosure laws applying to candidates and councillors, and considers whether these laws should be changed to improve the public's access to information on the sources of gifts to candidates and councillors.**

### A SUMMARY OF EXISTING DISCLOSURE PROVISIONS

Local government elections are held every four years (after 2000) and, unless otherwise regulated, are held on the last Saturday in March (s. 269, LGA).

The LGA presently requires candidates and groups of candidates to provide, within three months after the conclusion of an election, a return declaring the total amounts of gifts received for a purpose related to an election and how many people the gifts came from. If a candidate is elected, they must not act in the office of councillor until they give the CEO a return (s. 242).

Candidates and groups of candidates must also declare the origin and value of any gifts of a cumulative value of \$200 or more (ss. 427 and 427A). For example, if a candidate received donations of \$100 from 10 different entities and donations of \$200 from 10 different entities, the candidate would have to disclose that they received \$3000 in gifts from 20 different entities, but would only have to identify specifically those that gave \$200 or more.

Only gifts received within the disclosure periods specified in the LGA are required to be disclosed. The disclosure periods vary according to whether a candidate ran at the last quadrennial election, has competed in an election since the last quadrennial election, or has been appointed as a councillor. Generally speaking, the disclosure period for new candidates runs from when the candidate announces their candidacy or submits their nomination until 30 days after the election. For candidates who ran at the last election, and this would include sitting councillors, the disclosure period runs from 30 days after the conclusion of that most recent election until 30 days after the conclusion of the current election.

To ensure that candidates and groups of candidates are able to identify the provider of gifts of \$200 or more, the LGA forbids them to receive gifts of \$200 or more unless they know details of who is giving the gift and the value of the gift (s. 428). This also applies to gifts 'in kind', that is, the provision of products or services free or at reduced rates (except for volunteer labour).

A threshold limit for full disclosure was adopted because it was considered that small donations have little potential for influencing political outcomes and full disclosure of all donations would be an unnecessary administrative burden (EARC 1992, p. 37).

## SHOULD ELECTION GIFTS BE DISCLOSED BEFORE AN ELECTION?

The inquiry heard that a group of candidates at the 2004 Gold Coast City Council election shared a common funding source. This fund was created through donations from businesspeople with development interests. There was a concerted effort by those involved in seeking, distributing and receiving this money to keep the existence of the fund secret.

Queensland, like many other jurisdictions, accepts that the public has a right to know the source of a candidate's campaign funding so that potential influences on the candidate can be examined. The Tweed Shire Council Public Inquiry (Daly 2005b, p. 98) endorsed the view that the voting public have a right to know what groups or individuals are supporting candidates, but considered that the disclosure of election gifts after an election prevented the public from exercising this right in any practical way.

It stands to reason that voters can take account of information about the sources of candidates' election gifts, when voting, only if that information is available before the election. Hence, the CMC sought submissions on whether candidates should have to disclose their elections gifts before an election.

Submissions from councils and councillors generally supported the disclosure of election gifts before the election. Of those against, a point of common objection was that a requirement for disclosure before the election would deter donors from making campaign contributions because of the prospect of adverse publicity. In the Commission's view, while prior disclosure might deter large donations being made from a single source, it is unlikely to affect most donors. In any case, one might question why a donor would not wish to be identified as supporting a particular candidate.

On the issue of disclosure of election gifts, Ray Stevens, a former Albert Shire Mayor and now a GCCC employee, submitted:

If people or entities wish to support candidates, then they should have the courage of their convictions to do so at least three days before an election date. If the voting public is fully informed about the candidate and their support base, then they are casting their vote with their eyes wide open. Donations and gifts made before an election result is known are made with no certainty of success but with more show of support and belief. Donations and gifts made after an election result is known carry a distinct waft of garnering favouritism from successful representatives.

Submissions from members of the public generally supported pre-election disclosure of gifts by candidates.

However, there were differing views from those who supported pre-election disclosure on when disclosure should be made. Periods of three, five, seven and fourteen days before an election were all put forward as disclosure deadlines.

Stanthorpe Shire Council cited the use of postal ballots by many councils as an issue for consideration in changing to a pre-election disclosure regime. At the 2004 elections, 64 councils conducted all or part of their elections by postal ballot.<sup>11</sup> Postal ballots require ballot papers to be sent out 14–21 days before the election.

Several submissions preferred a model similar to the Western Australia disclosure provisions, where a candidate has to declare all gifts within a certain period of the gift being received (basically, a 'continuous disclosure' regime).

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<sup>11</sup> Department of Local Government, Planning, Sport and Recreation website <[www.lgp.qld.gov.au](http://www.lgp.qld.gov.au)>.

GCCC Mayor Ron Clarke and Paul Tully from the Ipswich City Council suggested different models of disclosure, but in both models gifts to a candidate would be publicly declared within seven days of receipt. Tully opposed a disclosure deadline. He submitted that a gift should be able to be accepted any time within the four-year election cycle, with the proviso that it be declared within seven days and a councillor who received gifts above a certain amount be deemed to have a material personal interest with regard to the donor for one year from the receipt of the gift.

If candidates were required to disclose gifts before an election, they would have to be prohibited from accepting election gifts for a period after the disclosure deadline. It was explained in the CMC discussion paper (2005) that a ban on receiving donations after lodgment of an election return would prevent the disclosure regime being circumvented by a candidate incurring costs associated with an election campaign on the promise that a donor would reimburse the candidate once the election was over.

The fact that a requirement for pre-election disclosure would also require a ban on accepting election gifts for a period after the disclosure deadline was evident from several submissions, including the following:

To set a date for disclosure prior to the election is open to manipulation, e.g. arrangements could be made to receive donations within, say, the five-day period after declaration. *Les Tyrell, Mayor, Thuringowa City Council*

The other point is that there is no guarantee that these donations are going to be received (or banked for that matter) before the election. This leaves the loophole where candidates can claim that they have not accepted donations from 'developers' or anyone else that is considered sinister. The cheques can be received or banked after the election, leaving the candidate well within the law. *Greg Betts, Division 12 Councillor, Gold Coast City Council*

Redland Shire Council supported disclosure of gifts before an election but was opposed to candidates being prohibited from receiving gifts after the disclosure deadline.

Some submissions put forward suggestions on the period after a disclosure deadline in which a candidate should be banned from accepting election gifts, if pre-election disclosure was introduced.

Some councils favoured the model recommended in the Tweed Shire Council Public Inquiry (Daly 2005b) — namely, that no donation could be accepted by a candidate for 12 months after an election. Other submissions suggested periods ranging from 14 to 90 days after the election.

Most submissions supported some alteration to the disclosure period applying to new candidates. Some suggested the disclosure period should be the same for new candidates as for existing councillors: that is, the four years preceding the election. There were other suggestions that the disclosure period for new candidates should start on a set date, rather than varying according to when a candidate announced their decision to contest the election. For example, the LGAQ supported a disclosure period for new candidates that started 12 months before nomination day. Dale Dickson, Chief Executive Officer of the GCCC, suggested that the disclosure period for new candidates start two years before the election.

The present disclosure period for new candidates — from the candidate announcing their candidacy or submitting their nomination (whichever is the earlier) until 30 days after the conclusion of the election — was recommended by EARC (1992, p. 50), based on the provisions of the *Commonwealth Electoral Act 1918*. However, the Parliamentary Committee for Electoral and Administrative Review recommended that the disclosure period for new candidates should run

from one year before the candidate's nomination, as there was a realistic prospect that donations could be made to a candidate before nomination (p. 26). In the Commission's view, this argument has some force, as there is currently nothing to stop new candidates receiving large donations before formally announcing their candidacy. However, the committee's recommendation was not acted upon and the present disclosure period for new candidates was enacted.

## A COUNCILLOR'S REGISTER OF INTERESTS

Councillors have disclosure obligations apart from the requirement to disclose election gifts. The LGA provides that the CEO of a local government must keep a register of interests of each local government councillor and a register of interests of a person who is related to the councillor [s. 247(1)]. A 'related person' is defined as the councillor's spouse or a person who is totally or substantially dependent on the councillor and is either the councillor's child or a person whose affairs are so closely connected with the affairs of the councillor that a benefit derived by the person, or a substantial part of it, could pass to the councillor (s. 22, Local Government Regulation 2005). The particulars to be contained in a councillor's register of interests are set out in schedule 1 of the Local Government Regulation 2005 and include:

- the donor's name and the amount or value of each gift totalling more than \$500 in amount or value given by a person to the councillor
- the particulars of any travel undertaken, accommodation used or hospitality received other than in an official capacity by a councillor where a contribution, whether financial or non-financial, for the cost of the travel, accommodation or other benefit is made by someone other than the councillor
- the particulars for each corporation in which a councillor is a shareholder or has a controlling interest in shares
- the particulars for each corporation of which a councillor is an officer
- the particulars for each family or business trust or nominee corporation in which a councillor holds a beneficial interest
- the particulars for each family or business trust of which a councillor is a trustee
- the particulars for each partnership or joint venture in which a councillor has an interest
- the particulars for all land in which a councillor has an interest
- the particulars for each liability, other than department store and credit card accounts, of a councillor (this does not apply to debts less than \$10 000 that arise from the supply of goods or services supplied in the ordinary course of the councillor's business or the business of the trust of which a councillor is a beneficiary or private company in which a councillor holds securities)
- the particulars of each debenture or similar investment held by a councillor
- the particulars (only the nature of the account and the name of the institution) of each savings or investment account of a councillor
- the particulars of each political party, body or association or trade or professional organisation of which a councillor is a member
- the particulars of each other asset of a councillor or related person with a value of more than \$5000, other than the household and personal effects, a motor vehicle used mainly for personal use, and superannuation entitlements
- the particulars of each other source of income more than \$500 a year received by the a councillor and a proprietary company, or trust, in which a councillor holds securities

- the particulars for each other financial or non-financial interest of a councillor of which the councillor is aware and that raises, appears to raise, or could raise, a conflict between the councillor's duty as a councillor and the holder of the interest.

Given the requirement for a councillor to declare all gifts received over \$500 in value, it follows that election gifts over \$500 given to a councillor must be included on a councillor's register of interests as well as on the councillor's election return.

Currently, if a councillor's register of interests requires amendment the councillor must advise the CEO of the necessary amendment within three months (s. 247 LGA; s. 25, Local Government Regulation 2005).

Given the personal information that must be included on a councillor's and related person's register of interests, access to the registers is restricted.

A register of a councillor's interests is open to inspection. However, a register of other persons' interests is not open to inspection other than by the mayor, the CEO and a person permitted by law to have access to information in the register.

A person seeking access to a register must apply in writing to the CEO. The CEO must record who is given access to a register and tell a councillor who has inspected their register or the register of a person related to a councillor.

There are penalties for misrepresenting the information in a register.

The LGAQ submitted that all of the information in a councillor's register of interests should be more readily available for public scrutiny, and suggested that this information be made available on a council's internet site and be published annually in a local newspaper.

## **WHAT SHOULD A DISCLOSURE SCHEME ACHIEVE?**

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 a councillor throughout their term of office should be open to greater scrutiny.

If a new disclosure scheme is introduced, one of its aims should be to prevent a candidate who does not want to be seen to accept money from a particular donor before an election from making an arrangement to incur the costs and be reimbursed after the election.

Any new disclosure scheme should also aim to improve accountability without creating an impossible administrative burden for councillors, candidates and council staff.

The Commission gave serious consideration to the LGAQ's proposal that a councillor's entire register of interests should be published. After all, if a councillor's register is already open to an inspection process, why not make the information more readily accessible to the public?

While much of the information that must be contained in a councillor's register of interests is unremarkable, some information is of a nature that its general publication would not necessarily be in the public interest. There is a need to balance intrusions on a councillor's privacy against the public interest, in making the information in a councillor's register of interests more readily available. In the

Commission's view, councillors do not sacrifice their right to privacy altogether when they become councillors. Any examination of a councillor's private interests should be related to the councillor's public duties or necessary in the public interest.

In the Commission's view, the current barriers to viewing a councillor's register of interests should remain, subject to the recommendations made below. A system that requires a person to apply in writing and then presumably attend council offices to view a register makes it more likely that the information in a councillor's register of interests will be used for the purpose for which it was collected: that is, to allow interested members of the public to assess how a councillor has performed their public duty, rather than for any other purpose.

## **A NEW DISCLOSURE SCHEME FOR CANDIDATES AND COUNCILLORS**

The Commission considers that a modified and streamlined gift register would provide a more timely and efficient method of recording gifts to councillors, including election gifts, and that this registration process could also be extended to include gifts received by new candidates.

At present, sitting councillors have to disclose all gifts over \$200 in value received from 30 days after the conclusion of the election, if they run at the next election, and also have a continuing duty to disclose gifts over \$500 in value within three months of receipt, regardless of whether they are running again. Currently, a cash gift of \$400 to a councillor, or 10 cash gifts of \$400 from separate entities to a councillor during the councillor's term would not have to be included on their register of interests. If they were gifts for the purposes of an election, they would have to be included on the councillor's election return if the councillor stood for election again, but would not be declared anywhere if the councillor did not contest the next election. Subjecting councillors to two disclosure schemes, one a scheme of continuous disclosure for gifts of \$500 or more and one a scheme of disclosure within a defined disclosure period for election gifts of \$200 or more, seems confusing and unnecessary.

Under the Commission's proposals, participants in local government elections would no longer be required to submit election gift returns. Rather, candidates would have a duty of continuous disclosure. They would be required to disclose all gifts as they are received, in a similar manner to the present disclosure requirements for a councillor's register of interests. If elected, a councillor would continuously disclose gifts until they ceased to be a councillor. There would be no differentiation between election gifts and other gifts.

To allow timely public examination of the sources of gifts to a councillor, the information needs to be made publicly available soon after the gift is made. To prevent candidates and councillors incurring election expenses on the promise of a gift, there needs to be a period before and after an election where candidates and councillors are prohibited from accepting any gifts.

In the Commission's view, the system of continuous disclosure of gifts detailed in the following recommendation would:

- simplify the process of disclosure for candidates
- allow the public to go to the polls knowing the sources of candidates' campaign funding
- avoid disclosure requirements being circumvented to conceal the source of campaign donations or other gifts until after the election.

## Recommendation 1

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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

**Chapter 15 makes two recommendations for amendments to the Local Government Act which are designed to help councillors better identify and resolve conflicts of interest.**

### A COUNCILLOR'S OBLIGATIONS

The inquiry has 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 council 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 hearing and the Tweed Shire Council Public Inquiry that identifying and resolving conflicts of interest is difficult for many councillors.

It is not always easy to decide when private interests and public duty are, or might be, in conflict with each other. The key test is whether an individual public official could be influenced, or appear to be influenced, by a private interest in carrying out their public duty (CMC 2004, p. 12). Deciding how to manage a conflict of interest is a particularly difficult decision for a councillor, because the councillor must also have due regard to their obligations under section 229 of the LGA. The easy option would be for a councillor to opt out of any process where they think they have a conflict of interest. Section 229(3) supports such a stance because it states 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 that sometimes means participating in decisions where they have a conflict of interest. Councillors should absent themselves from a decision-making process only where it is in the overall public interest to do so.

Of course, a councillor can decide how to manage a conflict of interest only if the councillor can identify the conflict in the first place.

The evidence heard at this inquiry and the Tweed Shire Council Public Inquiry indicates that many councillors are incapable of identifying a conflict of interest. Power's statement (Exhibit 327) that a 'conflict of interest ... is determined by the individual within their own mind and if the individual can place the public interest above the private then no conflict exists' is indicative of the ignorance of some councillors in this regard.

In the case of a councillor who has received a gift from a person who has a matter before council, even if the councillor is confident that they will act in the public interest, a reasonable observer may be concerned that the gift has affected the councillor's behaviour. To retain public confidence, councillors must avoid not only actual but also perceived conflicts of interest.

The LGAQ's view is that section 229 of the LGA refers only to actual, not perceived, conflicts of interest. In relation to a councillor's obligations under section 229, the LGAQ stated in its final submission to the investigative hearings:

This provision does not talk about potential or perceived or theoretical conflicts or anything of that nature. It talks simply about a situation where an *actual* conflict 'arises', and it gives a simple and easily understood direction to the councillor to give 'preference to the public interest', that is, it imposes a simple and clear duty to ensure that considerations arising out of any private interest do not affect the decision which the councillor would otherwise make in the public interest as required by section 229(2)(a).

As mentioned in Chapter 9 of this report, Queensland's Integrity Commissioner, Mr Gary Crooke QC, does not agree with this view (2006, pp. 1–2). He advises statutory office holders that:

In the area of conflict of interest perception is all important. The established test is an objective one, namely whether a reasonable member of the public, properly informed, would feel that the conflict is unacceptable. Essentially it means that such reasonable member of the public would conclude that inappropriate factors could influence an official action or decision. Because the test is an objective one, it matters not whether you as an individual are convinced that with your undoubted integrity you can manage what would otherwise be an unacceptable conflict of interest. The test does not permit you as an individual to be a sounding board.

The appearance of a conflict of interest may be as serious as an actual conflict because it may reduce public confidence in the integrity of office that is held.

Through its misconduct prevention material, 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 connected to the exercise of their public duties.

If a councillor identifies a conflict of interest, there are various ways the councillor may attempt to manage the conflict. For example, a councillor may:

- take no part in any debate about the issue; and/or
- abstain from voting on any decision or proposal; 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.

Each of these options has peculiar difficulties for a councillor. Take, for example, a situation where a councillor has accepted a gift from a child-care centre. Soon after, council considers an application for the construction of another child-care centre that will compete with the child-care centre that gave the gift to the councillor. There is a debate and a vote on the application. The councillor concerned declares a conflict of interest, decides to take no part in the debate on the issue and abstains from voting. Under section 447 of the LGA, if a councillor present at a meeting fails to vote, the councillor is taken to have voted in the negative. Thus the councillor is now open to an allegation that they only pretended to manage the conflict of interest, knowing all along that abstaining from a vote would be the same as voting no on the application. An alternative would have been for the councillor to acknowledge the perception that a conflict could exist but to continue to speak and vote on the matter in accordance with what the

councillor believed was in the public interest. Either way, the councillor is in a difficult position.

A practical issue also arises if several councillors exclude themselves from considering an issue in which they think they have a conflict of interest. A local government meeting needs a quorum of one-half or a majority (depending on whether the council has odd or even numbers of councillors) present at meetings to conduct business (ss. 446 and 447, LGA).

There is no penalty in the LGA for a breach of section 229(3). However, a failure by a councillor to appropriately deal with a conflict of interest may breach the code of conduct for councillors that all councils were required to adopt by 1 March 2006. Councils' codes of conduct are required to identify each statutory obligation of a councillor regardless of whether the LGA provides a penalty for a breach of the obligation [s. 250F(1)]. This includes a councillor's obligations under section 229. Councils' codes of conduct may also state additional ethical and behavioural obligations with which councillors must comply, provided these ethical and behavioural obligations are based on those set out in schedule 1 of the LGA [s. 250F(2)–(3)]. The ethical and behavioural obligations in the LGA include the requirement for councillors to make decisions solely in terms of the public interest and to take steps to avoid, resolve or disclose conflicts of interest (schedule 1, s. 2).

Neither the ethical and behavioural obligations for a councillor set out in schedule 1 of the LGA nor the *Model code of conduct* published by the DLGPSR prompt a councillor to consider that the receipt of a gift may give rise to a conflict of interest. The provisions of the *Model code of conduct for councils in New South Wales*, which New South Wales councils have to adopt, reminds councillors that matters before council involving campaign donors may give rise to a conflict of interest.<sup>12</sup>

The penalty for a Queensland councillor who has been found to have contravened a provision of a code of conduct varies according to the nature of the breach. The failure of a councillor to properly manage a conflict of interest could be dealt with as a 'minor breach' or a 'statutory breach', depending on the circumstances. The maximum penalty for a 'minor breach' is a written reprimand and suspension from one ordinary meeting of the local government. The maximum penalty for a 'statutory breach' is a written reprimand and suspension from two consecutive ordinary meetings of the local government. The penalty to be imposed is decided upon by the local government itself.

A local government's annual report must include [s. 534(1)(n)(i)–(ii), LGA]:

- the total number of breaches of the local government's code of conduct committed by councillors as decided during the year by the local government
- the name of each councillor decided during the year by the local government to have breached the code
- a description of how the councillor breached the code
- details of any penalty imposed by the local government on the councillor.

In the Commission's view, councillors would not have to grapple with some conflicts of interest involving donors if they did not knowingly compromise themselves in the first place. For example, Pforr told the inquiry that he would not participate in any council decisions involving companies owned by John Fish, because he had received gifts of \$10 000 and \$1000 from Fish. Presumably Pforr made this decision because he believed there might be a perception that he had

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<sup>12</sup> NSW Department of Local Government, *Model code of conduct for local councils in NSW*, p. 14, <[www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)>.

a conflict of interest in participating in decisions involving Fish's companies after receiving generous gifts from Fish.

Similarly, sitting councillors Baildon, Power and Crichlow accepted gifts from the Ingles Group in 2004. Given the Ingles Group's involvement in developing housing estates on the Gold Coast, these councillors should have seen that accepting a gift from the Ingles Group could raise a perception of a conflict of interest relating to that gift when any matters involving the Ingles Group came to council. Crichlow told the inquiry that if a matter directly concerning the Ingles Group came before a council meeting in which she was in attendance, she would declare a conflict of interest and leave the meeting. It is concerning that some candidates and councillors chose to accept gifts in the knowledge that the acceptance of these gifts would prevent them from performing their public duty on occasion.

Dealing with conflicts of interest appropriately is an additional obligation to that imposed on councillors by section 244 of the LGA, which requires a councillor to exclude themselves from a meeting where the councillor has a 'material personal interest' in a issue being considered by the meeting. This provision excludes a councillor from participating in decisions where the decision may lead to the councillor or an 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 *Local Government Act 1995 (WA)*, 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 persons with whom they are closely associated. In Western Australia, the definition of such close associates includes anybody who has given a notifiable gift to the councillor in relation to the election at which the councillor was last elected or since the councillor was last elected.

## Submissions

Two discussion points were put forward in the CMC discussion paper (2005):

- that councillors be prohibited from participating in council matters that involve a person who gave an election gift to the councillor, and
- that a failure on the part of a councillor to appropriately resolve a conflict of interest be an offence under the LGA.

The LGAQ did not support either of these propositions. It made the following submission:

The LGAQ accepts the proposition that the present perception of how a Councillor handles a conflict of interest needs improvement. To this end, and as noted in the discussion paper, for those Councils that adopt the Model Code of Conduct for Councillors, an additional duty is imposed on Councillors to advise the chairperson of the meeting of the existence of the conflict. This will, it is submitted, improve the public perception of how conflicts are handled.

In addition, the LGAQ proposes that all Councils be required to better publicise all Councillors' election gifts return and entries in the register of interests.

The Urban Development Institute of Australia (UDIA) submitted that the maximum penalty under a council's code of conduct for failure by a councillor to deal appropriately with a conflict of interest (suspension for up to two consecutive ordinary council meetings) was inadequate. The UDIA also noted that the

punishment would be imposed by a defaulting councillor's colleagues and was not a truly independent process.

The UDIA submitted that the dividing line between personal interests within section 229(3) of the LGA and material personal interests which are potentially subject to condign punishments is blurred and unclear. The UDIA stated that the gap between minor disciplinary punishments and sanctions for criminal offences should be closed.

The UDIA suggested that there was, perhaps, a role for an independent tribunal in Queensland such as the Local Government Pecuniary Interest and Disciplinary Tribunal operating in New South Wales.

Mr Brian Hurst, Managing Editor of the *Redland Times/Bayside Bulletin*, made this submission:

The current provisions relating to conflict of interests and the declaration of material personal interest could be improved by the register of interests and register of election donations being cross linked with any matters before council. That is, when an application is before councillors, the Council CEO (or representative) would search the database of material personal interest and elections donations and match them to any councillors or senior Council officers.

Under this system, the onus of discovering any potential conflicts of interest is taken away from a councillor declaring the interests at a meeting and incorporated in assessment procedure of any application or agenda item. The action of abstaining from voting would be up to the councillors, in accordance with current provisions.

Ray Stevens (a former Albert Shire Mayor and now a GCCC employee) submitted that councillors inevitably support sectional interests from time to time and, in turn, these sectional interests may support a councillor at election time. Stevens submitted that it would be unfair to prohibit a councillor from participating in a decision-making process affecting a councillor's constituency.

Pine Rivers Shire Council submitted that it did not consider the current provisions of the LGA in relation to conflicts of interest to be adequate in that, unlike the material personal interest provisions, there is insufficient guidance to councillors on the course of action required. Pine Rivers suggested that the LGA should be more prescriptive and set out how conflicts of interest should be dealt with. For example, Pine Rivers pointed out that there is no stipulation that a council must record declarations that a councillor has a conflict of interest in its meeting minutes.<sup>13</sup> Pine Rivers has included a clause in its code of conduct which includes the requirement that a councillor declare to the chair the existence and nature of the conflict and take steps to have the conflict of interest recorded in the meeting minutes.<sup>14</sup>

The Logan City Council submitted that the issue of managing conflicts of interest was a decision best left to a councillor, who can decide the course of action that best serves the public interest.

Views from councillors differed on the conflict of interest topic. Some considered that contributions to an election campaign should be considered a conflict of interest in a future debate that involves the interests of the donor. Others

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13 Sections 448 and 461 of the LGA require a local government to keep minutes of its meetings that must include the names of councillors or committee members present at the meeting and if a division is called on a question, the names of all persons voting on the question and how they voted.

14 *Code of conduct for councillors – Pine Rivers Shire Council*, s. 2.3.2.1, <[www.pinerivers.qld.gov.au](http://www.pinerivers.qld.gov.au)>.

submitted that gifts to a councillor over a certain amount should be deemed a material personal interest, and the failure to declare the conflict and abstain from participating in a meeting considering matters affecting that donor could be dealt with via section 244 of the LGA. On how conflicts of interest should be managed, some suggested that councillors could declare a conflict and participate in the debate but not vote. Others suggested that it would be impractical to make a rule prohibiting a councillor from participating in meetings on all matters affecting all donors to a candidate.

In the Commission's view, given that a councillor may later be held accountable for the manner in which a conflict of interest is managed, it is important for councils to keep a record of any declaration made by a councillor about a conflict of interest, the nature of the conflict, how the councillor dealt with the conflict and, if the councillor votes on the matter giving rise to the conflict, how they voted.

## **CAN CONFLICTS OF INTEREST BE MANAGED UNDER A COUNCIL'S CODE OF CONDUCT?**

The Commission has considered whether failure to deal appropriately with conflicts of interest should be the subject of legislative sanctions, rather than being dealt with under codes of conduct. It would be relatively straightforward to legislate to provide that a councillor must not be present at or take part in a meeting while an issue concerning a person who has made a gift to the councillor above a certain amount is being considered or voted on. However, some difficulty might arise in deciding whether gifts to a 'group of candidates' affected the whole group or just selected members.

The New South Wales Independent Commission Against Corruption (ICAC) has recently released a paper — *Corruption risks in New South Wales development approval processes* — that discussed providing councillors with mandatory guidelines on how gifts to councillors should be managed, given the significant perception problems associated with political donations. The ICAC has proposed that, if a councillor receives a gift above a certain monetary limit, the councillor should be required to abstain from voting on any matter before council involving the donor. The ICAC is of the view that this would assist in providing councillors with greater certainty about how to manage the conflicts of interest that arise from political donations and would ensure uniformity in approach across councils.

It is hard to quantify how valuable a gift has to be before its receipt by a councillor raises a perception that a councillor has a conflict of interest in relation to the donor. It is also arguable that councillors should not be accepting gifts of any amount from a person where it is reasonably foreseeable that issues concerning the person may come before council.

Prohibiting a councillor from being present at or taking part in a meeting while an issue concerning a person who has made a gift to the councillor is being considered or voted on assumes that a councillor is most influential in formal meetings.

However, the Commission considers that a councillor who is minded to advocate on behalf of a donor who has a matter being considered by council could well seek to influence the council decision before the matter came to be formally considered at a meeting of the council or committee. Furthermore, if councillors were required to abstain from voting on any matter involving donors contributing above a certain amount, one could envisage a situation where a donor who is of a mind to attempt to influence the outcome of a vote at a council meeting

pursues a strategy of making gifts over a specified amount to certain uncooperative councillors to eliminate these councillors from voting.

As mentioned above, a councillor who fails to avoid, resolve or disclose any conflicts of interest in a way that protects the public interest can be dealt with under a council's code of conduct. The maximum penalty for a breach of a council's code of conduct (a written reprimand and suspension from not more than two consecutive future meetings of the local government and all local government's committees of which the councillor is a member, with the maximum period of suspension not to include more than two consecutive ordinary meetings) is not, in and of itself, much of a deterrent. However, if the more open disclosure regime recommended above is adopted, the Commission considers that greater public scrutiny of gifts received by candidates and councillors in conjunction with the new codes of conduct will improve councillors' conduct in identifying, avoiding and properly managing conflicts of interest.

In the circumstances, 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.

## **Recommendation 2**

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**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**

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**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

**Chapter 16 considers whether candidates and councillors should disclose proceeds of fundraising activities such as dinners, raffles, auctions etc.**

### IS BUYING A TICKET GIVING A GIFT?

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. Power 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. Section 414 of the LGA 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 the Commission's view 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 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 elections purchased attendance tickets totalling more than \$200 in value, with one company purchasing tickets to a function totalling \$5000 in value.

The DLGPSR publication *Disclosure of election gifts: guidelines for candidates and councillors for local government elections* states on 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 (ECQ) 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 (ECQ 2005, p. 9).

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

EARC (1992, p. 55) recommended that political parties and candidates not endorsed by a registered political party should have to disclose fundraising proceeds, and this recommendation was endorsed by the Parliamentary Committee for Electoral and Administrative Review (1993, p. 28). The legislative provisions drafted by EARC included a requirement for a candidate to disclose in their return the amount representing the net proceeds of fundraising activities carried out by, or

on behalf of, a candidate [clause 126M(2)(c)]. This clause was not included in the Electoral Amendment Bill 1994 (Qld), which inserted the election gift disclosure provisions in the *Electoral Act 1992* (Qld).

## Submissions

Submissions generally supported the proposition that candidates should have to disclose monies received through fundraising activities. Some council submissions stated that they were supportive of the disclosure of fundraising monies by candidates only if it also applied to candidates at state government elections.

The LGAQ supported a proposal to sensibly clarify the disclosure requirements for monies received through fundraising activities. However, it did not support any attempt to modify the definition of 'gift' to include the profit margin associated with fundraising activities such as raffles, campaign lunches and campaign dinners. The LGAQ stated that it would support amendments that require the gross takings of such functions to be disclosed, if that gross exceeds the relevant prescribed amount.

The Commission agrees there are risks in requiring candidates to calculate and declare a profit margin from fundraising activities. La Castra raised \$10 900 at a fundraising dinner and calculated the cost at \$4200. However, La Castra claimed he only netted about \$900 because he performed at the dinner and a performer of his calibre would normally cost \$5000. This is an example of how a councillor or candidate could attempt to manipulate a requirement to declare a profit margin.

On the other hand, there is little point in declaring the gross takings of fundraising activities if those making contributions over a prescribed amount are not identified. The point of all election disclosure provisions is to identify donors who give more than a prescribed amount to a candidate.

The same issues would seem to arise with other fundraising activities such as auctions and raffles. These allow objects (e.g. autographed photographs of a candidate or sporting memorabilia) to be auctioned or raffled for large sums of money, and facilitate large donations being made in a way that does not have to be publicly disclosed.

## Recommendation 4

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**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.**

That is, if a person pays \$200 to attend a lunch, \$200 is deemed to be the amount of the fundraising gift, not \$200 less the true cost of the lunch. The provisions should ensure that cumulative amounts are included; for example, if a company buys 100 tickets at \$195 per ticket, they should not avoid the disclosure provisions because each ticket is under the \$200 limit.

## GROUPS OF CANDIDATES

**Chapter 17 discusses whether the definition of a ‘group of candidates’ in the LGA requires amendment to improve the disclosure of financial or political relationships between candidates.**

### WHAT IS A ‘GROUP OF CANDIDATES’?

This inquiry has heard that in 2003 and 2004 two Gold Coast councillors, Power and Robbins, solicited donations either directly or through developer Brian Ray and solicitor Tony Hickey from various companies and used these funds to provide cash or campaign services to selected candidates for the March 2004 Gold Coast City Council election. Several of the candidates involved in this scheme have told the public hearings that at all times they maintained their independence, and that no conditions were placed on the provision of funding. The candidates who received funding have stated that, as far as they were concerned, no obligation attached to the funding they received.

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. Section 426 of the LGA defines ‘a group of candidates’ as a group of candidates 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 (s. 427A). 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 of the gifts received by the group
- how many persons made the gifts
- the relevant details for each gift made by a person to the group if the total value of all gifts made by the person to the group during the disclosure period is the prescribed amount of \$200 or more.

The practical effect of this provision is that a candidate who is part of a group of candidates has to submit a return declaring all gifts the candidate received both individually and as a member of the group.

Being part of a ‘group of candidates’ can also be relevant for the purposes of how-to-vote cards. Under section 392A of the LGA, a how-to-vote card may be authorised for a group of candidates by one of the members of the group. (For the purposes of this section, a group of candidates means a group of candidates, within the meaning given in section 426, that has a name.) A how-to-vote card authorised for a group of candidates or for a candidate who is a member of a group of candidates must state the group’s name.

The fact that certain candidates received money at the discretion of Power and Robbins 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. The candidates involved who have given evidence at the public hearings have denied that they were part of a 'group of candidates' and said that they did not consider that they had to lodge a group return.

It is impossible to say whether the candidates who received election funding at the discretion of Power and Robbins were conscious of owing any obligation to them. Presumably, if a councillor hoped to again obtain election funding from similar sources, or at the very least not face an election opponent funded by these sources, that councillor would want to stay in Power's favour.<sup>15</sup> Power himself recognised that there might be, at least, a perception that candidates who received funds at his and Robbins's behest would be beholden to them if elected. Power's way of dealing with this perception was to attempt to hide his and Robbins's involvement in the fund through having Barden put his name to it. As outlined in Chapter 4 of this report this was a superficial change that would not in any way have reduced the public perception that candidates might feel obligated to Power and Robbins, if the full truth about the arrangements became public. It also would not have removed any obligations that the candidates might feel, consciously or subconsciously, as they knew that Power and Robbins were responsible for arranging their funding, whatever name might be given to the fund.

It should be borne in mind that the aim of disclosure provisions:

... is not to tell parties and candidates what they can do, but to require them to tell the public what they are doing.<sup>16</sup>

## Submissions

The CMC discussion paper (2005) sought comment on whether:

- any person who is not a member of a candidate's campaign committee should be allowed to solicit funds on behalf of the candidate
- candidates who share election funding should be required to be part of an identifiable group of candidates
- there should be a registration requirement for groups of candidates
- the definition of a 'group of candidates' requires amendment.

Several submissions provided comment on the issue of groups of candidates, although they generally did not go into a lot of detail about the issue. There was some support for the propositions that a person who is not a member of a candidate's campaign committee not be allowed to solicit funds on behalf of the candidate and that candidates who share funding should be required to be part of an identifiable group of candidates.

Brian Hurst, Editor of the *Redland Times/Bayside Bulletin* since 1989, said that in his experience there had been a number of elections in which so-called independent candidates were loosely aligned as part of a team, but never identified as such. Hurst said that in some cases the associations were informal while in others candidates shared funding.

There were also views expressed that the soliciting of election gifts did not need regulation, and that the issue was the receipt and disclosure of funds by candidates. Several submissions pointed out that some candidates currently pool

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15 Cr Robbins died in November 2004.

16 NSW Parliament, Progress Report from the Joint Committee of the Legislative Council and Legislative Assembly upon Public Funding of Election Campaigns together with the Minutes of Proceedings, 1980, p. xi cited in *Report of the inquiry into the disclosure of electoral expenditure conducted by Sir Clarrie Harders, O.B.E. at the request of the Commonwealth Government*, 1981, p. 9.

money to pay for election expenses; however, these candidates did not consider themselves part of a group.

## IS REFORM OF THE LAW NECESSARY?

The Commission does not agree that the soliciting of funds on behalf of candidates is an area that is less in need of regulation than the receipt and disclosure of funds by candidates. The LGA already recognises through its third-party provisions that the identity of a person who solicits or receives funds from others on behalf of, or for the benefit of, candidates is a matter that should be disclosed.

The Commission has considered possible amendments to the definition of a 'group of candidates' in the LGA to attempt to tie together candidates who share funding for election-related expenditure or who solicit funds for others. However, it may be difficult to change the definition to pick up the sort of arrangements that operated in this case without picking up other instances of shared funding or services that could not, on any view, make the recipients a 'group of candidates'.

The present definition of 'group of candidates' is broad and 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 DLGPSR.

In the Commission's view, if the more open disclosure regime for councillors, candidates and third parties recommended elsewhere in this report is adopted, that may sufficiently expose financial connections between candidates.

There are currently no requirements for a candidate to self-identify as a member of a group of candidates on nomination. Also, section 427A(2)(b) of the LGA suggests that a group of candidates could remain nameless if they chose to.

A candidate endorsed by a registered political party is identified as a party-endorsed candidate on nomination. A candidate who is a member of a group of candidates should also have to self-identify as part of a group of candidates on nomination. This would assist in monitoring gift disclosure for groups of candidates in the period leading up to an election.

### Recommendation 5

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**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.**

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 of interests so all group members do not have to report all donations received by the group. Under the new disclosure scheme recommended in Chapter 14 of this report, gifts given for the benefit of a group will have to be disclosed to a council's CEO within three business days in the same way as gifts given to an individual candidate.



## ANONYMOUS DONATIONS AND DONATIONS THROUGH THIRD PARTIES

**Chapter 18 discusses the sources of gifts to candidates and councillors, and makes recommendations to clarify from whom they can accept gifts. It also makes recommendations that would require third parties to declare their funding and expenditure before an election.**

### DEALING WITH ANONYMOUS DONATIONS

To ensure that candidates are able to identify donors of a gift valued at more than the prescribed amount, section 428 of the LGA makes it unlawful for candidates to accept gifts of that value without knowing the identity 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, a breach of section 428 is not an offence under the LGA.

EARC (1992, p. 47) recommended that the acceptance of anonymous donations above the prescribed amount should be an offence. This recommendation was endorsed by the Parliamentary Committee for Electoral and Administrative Review (1993, p. 18). EARC recommended that the penalty for a political party, or a person acting on behalf of a political party, accepting an anonymous donation above the prescribed amount be 200 penalty units, and the penalty for a candidate or person acting on behalf of a candidate accepting an anonymous donation above the prescribed amount be 40 penalty units (p. E48: clause 175G). These recommendations were not included in the Electoral Amendment Bill 1994 (Qld), which inserted the election gift disclosure provisions in the *Electoral Act 1992* (Qld).

#### Submissions

The CMC discussion paper (2005) asked whether the current penalty for accepting anonymous donations was adequate and whether the acceptance of anonymous donations above the prescribed amount should be an offence [s. 428(2)].

Paul Tully from the Ipswich City Council submitted that the mere acceptance of an anonymous donation should not be an offence. Tully said if there were to be an offence in respect to anonymous donations, it should relate to the failure of a candidate to pass an amount equal to the value of the gift on to the CEO. Dale Dickson, CEO of the Gold Coast City Council, was also concerned that a candidate who has no control over the receipt of an anonymous donation could risk an offence.

However, submissions that addressed this issue generally supported the proposition that there should be a harsher penalty for a candidate accepting an anonymous donation.

## Recommendation 6

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**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.**

This recommendation is in keeping with Recommendation 1.

## DONATIONS THROUGH A SOLICITOR'S OR ACCOUNTANT'S TRUST ACCOUNT

This inquiry has heard that some candidates at the March 2004 Gold Coast City Council election received election gifts channelled through solicitors' trust accounts.

Section 414 of the LGA requires candidates who receive gifts made 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 departmental 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/accountant's trust account are not to be treated as though the donation came from a trust fund. The guidelines state (p. 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 ECQ 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. The booklet 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 candidates at the 2004 GCCC election who received donations via a solicitor's trust account listed the solicitor as the donor on their election return. Clearly, the instruction given by the DLGPSR and ECQ handbooks is to remind candidates that the legislation is not intended to allow a candidate to hide the identity of a donor by simply passing donations through a solicitor's or accountant's trust account.

Submissions generally did not provide a great deal of comment on this issue. What can be taken from the submissions is a view that, if there is some ambiguity in the LGA, the LGA should be amended to clarify the matter.

## Recommendation 7

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**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

Local government candidates endorsed by a registered political party generally submit nil returns following 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<sup>17</sup> or the party itself. These gifts do not have to be disclosed by the candidate. Instead, these gifts are included in the political party's annual return, which is submitted to the ECQ at the end of the financial year. The annual returns are not available for public inspection until February the following year and the returns do not necessarily give any indication as to what candidate or what level of government donors supported. The practical effect of this is that one cannot easily determine, if at all, who has supported local government candidates endorsed by registered political parties.

For example, if a company gave a donation of over \$200 to the campaign committee of candidate A, who was an independent candidate in a local government election, and a donation of over \$200 to the campaign committee of candidate B, who was a party-endorsed candidate in a local government election, candidate A would have to disclose the donation on their election return. Candidate B would not have to disclose the gift on their return. This is because candidate B's gift is said to have gone to the party and is included on the party's return. This may be so even though candidate B knows that the donor gave the gift to directly support their election. It does not state on the party return that the gift was received for the benefit of candidate B. Furthermore, the donor would be identified only if the amount received from the donor by the political party was over \$1500,<sup>18</sup> not \$200 as applies to the independent candidate.

A situation could also arise where a councillor not endorsed by a registered political party is censured by their colleagues under the council's code of conduct for participating in a matter before council involving a person who gave a gift to the councillor's campaign committee. However, a party-endorsed candidate whose campaign committee also received a gift from this donor could escape scrutiny of their conduct because the councillor's colleagues never knew of the gift.

As previously mentioned, the disclosure provisions of the *Commonwealth Electoral Act 1918* are replicated in the *Electoral Act 1992* (Qld), which in turn are mostly replicated in the LGA. To lessen the administrative burden on the parties, the rules concerning the disclosure of donations by political parties, including campaign

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17 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 s. 426, LGA.

18 Section 314AC in the schedule — *Electoral Act 1992* (Qld).

committees, are different from those applying to individual candidates. This is in recognition of the fact that most candidates in state and federal elections are endorsed by three registered political parties.

Most, but not all, submissions supported the same disclosure provisions applying to all candidates, regardless of whether they were endorsed by a registered political party. There was very little argument provided on this issue.

No submissions were received from political parties.

There are arguments that 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.

Firstly, they have to abide by the party's platform, wishes of their party colleagues and the party membership as well as their constituents. Secondly, party-endorsed candidates/councillors are not totally reliant on direct donations for campaign assistance. They can also rely on assistance from the party central office and from local party workers. This report has emphasised the importance of a candidate's and councillor's funding sources being available to public scrutiny and the importance of councillors declaring and managing conflicts of interest, in particular in relation to persons who have given gifts to a councillor. In the Commission's view, these arguments apply equally to all candidates/councillors and some should not enjoy lesser scrutiny simply because they are endorsed by a registered political party, despite the arguments to the contrary.

## Recommendation 8

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**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.**

## SHOULD CANDIDATES AND COUNCILLORS HAVE TO DECLARE LOANS?

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

The *Electoral Act 1992* (Qld) requires candidates for state government elections to disclose any loans they have received other than from a financial institution during the disclosure period and, for loans above \$200, certain details about the origin of those loans (ss. 304A, 306A in the schedule). The amendments to the Electoral Act requiring the separate disclosure of loans were inserted in 2002 and followed similar amendments to the *Commonwealth Electoral Act 1918*.<sup>19</sup> One of the reasons given for these amendments was to close the loophole created where a loan is forgiven and thus becomes a gift, and to prevent loans from being received from anyone other than a registered financial institution unless certain information, such as the terms and conditions of the loans, was provided.<sup>20</sup> This would allow gifts masquerading as loans provided on uncommercial terms to be identified.

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19 The Electoral Act 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).

20 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.

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

The Department of Local Government and Planning 2004 publication *Disclosure of election gifts* advises candidates that they do not have to report loans in their election return so long as they are evidenced as loans (p. 15). The term 'evidenced as loans' has some relevance in the state and federal context as loans have to be declared separately. The term has no relevance to local government elections.

Submissions generally were neutral or supportive of the proposition that candidates should be required to disclose details of loans received.

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

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**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 TO CANDIDATES AND COUNCILLORS

The CMC inquiry and the Tweed Shire Council Public Inquiry heard that syndicates were established before the 2004 elections in those local government areas to collect and distribute money to certain candidates. In the case of the Tweed Shire, the syndicate was named Tweed Directions. The syndicate operating in the Gold Coast City Council election was known by several names including the Power and Robbins Trust and the Lionel Barden Trust. There is evidence that these entities were established in an attempt to separate the true source of the donations from the candidates. The Tweed Shire Council Public Inquiry (Daly 2005a, p. 31) heard evidence that candidates were told they should only accept election funds from Tweed Directions, and:

There are no circumstances under which any Candidate accepts a donation directly. Such a donation is a certain path of political oblivion as it ties the Candidate directly to the donor. (Memo to candidates from Tweed Directions 11 February 2004)

Similarly, candidates at the 2004 Gold Coast City Council election have told the public hearing that the Power and Robbins Trust – Lionel Barden Trust Fund was set up so that candidates were not in a position to know the true identity of donors, and this would protect the councillors from being influenced by having received funds from those donors. However, the requirements for third parties to lodge returns meant that candidates would eventually learn who the donors to the Power and Robbins Trust – Lionel Barden Trust Fund were. The donors' identities could not lawfully be hidden for ever.

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 also disclose:

- a) the name and residential or business address of the person<sup>21</sup> who made the gift or

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21 A reference to a person generally includes a reference to a corporation as well as an individual, s. 32D, *Acts Interpretation Act 1954* (Qld)

- b) 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
- c) 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 persons responsible for the funds of the foundation and the title or other description of the trust fund or the name of the foundation.<sup>22</sup>

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

The wording of the Queensland provisions is taken from the *Electoral Act 1992* (Qld),<sup>23</sup> which is in turn taken from the *Commonwealth Electoral Act 1918*.

## Submissions

The CMC discussion paper (2005) sought comment on the proposition that candidates should know the true source of all donations they receive when they receive them. It asked whether candidates should be allowed to accept donations from unincorporated associations, trust funds or foundations that have sourced donations from individuals or companies, or should be limited to accepting donations directly from the person making the gift.

Submissions from councillors and councils that provided comment on this issue generally expressed the view that, if the candidate and third-party disclosure provisions were adhered to, any further restriction on who candidates could accept donations from should be unnecessary.

Submissions from members of the public generally expressed the view that candidates should not be allowed to accept donations from unincorporated associations, trust funds or foundations that have sourced donations from individuals or companies. However, none provided any detailed or cogent argument to support this proposition.

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.

The only reason this 'trust' existed was to hide the identity of donors from candidates and, in its latter manifestation as the Lionel Barden Trust, to hide the involvement of Power and Robbins. In the Commission's view, trusts such as this serve no public good and contribute nothing of value to the electoral process.

As mentioned elsewhere, the sources of gifts to candidates and councillors should be available for public examination. Any law designed to achieve this will fail if candidates can accept gifts from entities that have no clear legal identity. An interested party cannot examine the pedigree of a donor that has no legal existence.

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<sup>22</sup> Definition of 'relevant details', s. 414, LGA.

<sup>23</sup> Section 304 in the schedule, *Electoral Act 1992* (Qld).

## Recommendation 10

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

### THIRD PARTIES AND LOCAL GOVERNMENT ELECTIONS

The term 'third party' refers to 'a person (other than a political party, an associated identity or a candidate for the election) that receives gifts and incurs expenditure for a political purpose about a local government election' [s. 430, LGA].

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. For example, this inquiry has heard that, during the period leading up to the March 2004 GCCC elections, a fictitious group called Southport Citizens for Change circulated material critical of the councillor in Division 6 to households in that division.

The Tweed Shire Council Public Inquiry reported that the third party that participated in the 2004 Tweed Shire Council elections, Tweed Directions, spent \$307 000 on negative parallel campaigns attacking candidates they did not support, as well as funding candidates to run positive campaigns (Daly 2005a, pp. 18, 20, 271). It may be said that it would have been in the public interest for voters to know when making their choice that a third party representing specific interests was responsible for certain campaign advertising.

In Queensland, if a third party spends more than \$1000 and receives any prescribed gift over that amount for a political purpose about an election, they have to provide a return three months after the conclusion of the election disclosing the gifts received in the period from 30 days after the last election until 30 days after the current election.

For example, Lionel Barden lodged a third-party return after the 2004 Gold Coast City Council election. The return listed gifts received from 13 donors, all of whom have interests in the property development industry. The return does not require a third party to list how the donations received were spent. From looking at the 'Lionel Barden' return, one could not know that, of the \$150 000 listed as received, \$35 000 was given to Rowe, \$28 673 was given to Scott, \$34 914 was given to Pforr and \$28 978 was given to Betts. The candidate returns would also have been no help in identifying the third party 'Lionel Barden' as a funding source. Rowe listed his source of funds as the 'Common Sense Trust', Scott listed hers as the 'Hickey Lawyers Trust Account' and Pforr listed 'Hickey Lawyers'. Only Betts listed the 'Lionel Barden Trust Fund' on his return.

As there were no third-party returns from 'Common Sense Trust', 'Hickey Lawyers Trust Account' or 'Hickey Lawyers', the true source of the generous funding to Rowe, Scott and Pforr was undetectable from the returns. Had the 'Lionel Barden' return correctly listed its expenditure, Rowe, Scott and Pforr could have been called to account to explain why they had not listed 'Lionel Barden' as the source of their funds, and their links to the donors to the 'Lionel Barden' fund would have become known. That is, after all, the point of election disclosure laws — to allow a candidate's funding sources to be open to examination.

Nor could one know that some of the 'Lionel Barden' money was used to pay \$33 000 in consultancy fees to Quadrant to assist certain candidates, that \$5200 was paid to Robert Janssen, President of the Nerang Chamber of Commerce, to conduct a negative campaign against Young, or that \$7011.51 was spent on a

negative campaign against Crichlow. New South Wales is the only other state with specific provisions requiring third-party disclosure in relation to local government elections. 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).<sup>24</sup> The \$1000 threshold may tempt some donors to split donations among family members or employees or different companies. The LGA partly addresses this issue by providing that bodies corporate that are related to each other shall be regarded as a single corporation for the purposes of determining whether a corporation has made a donation above a prescribed amount (s. 417, LGA).

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 of their funding sources and expenditure before an election.

Even if third parties did 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 the publication. The publication only has to identify an individual who authorised the advertisement, handbill, pamphlet or notice. This could make it difficult for the public to know what third parties are behind parallel campaigns.

For example, the negative campaign material put out by Janssen to support Rowe's campaign was authorised by 'A Wise' on behalf of the 'Community Electoral Alliance'. Evidence before the inquiry showed that Wise had nothing to do with the campaign, and was not even known to Janssen at the time. Wise was asked to put his name on the material as the authorising person so that Janssen could distance himself from the campaign.

## Submissions

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.

Submissions from councillors and councils also generally supported the proposition that election advertising instigated by a third party who is not an individual should have to identify the third party, as well as the individual who authorised the advertisement.

Opinions were more varied on whether a third party should have to disclose its expenditure as well as donations received.

Some felt that compliance might be a problem, as there was a reasonable prospect many third parties would be ignorant of their disclosure obligations and that the CEO might not be aware of the existence of third parties that should lodge returns. Another compliance issue raised was the extra burden placed on the CEO in having to check third-party gifts and expenditure in the busy period leading up to the election, assuming third-party declarations were required ahead of the poll.

Redcliffe City Council suggested that, rather than requiring third parties to submit expenditure returns, the CEO be given the power to request expenditure returns from third parties if it was considered necessary.

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<sup>24</sup> Section 305 in the schedule, *Electoral Act 1992* (Qld).

The UDIA submitted that the duty expected of third parties by the LGA was vague and uncertain:

By section 430(1)(a), third parties are simply the residuum of a detailed list of specified persons or bodies who are unaffected by the obligation. Failure to comply is nevertheless an offence under section 436. Nor is it likely that existence of the duty is widely known.

The Commission acknowledges that there are and will continue to be problems in ensuring third parties meet their obligations under the LGA. Some third parties will be unaware that they have to lodge returns. Complicating matters further is the definition of 'prescribed gift' in section 430 of the LGA, which allows third parties to excuse themselves from submitting a return if the third party considers that the gifts it has received were not intended by the giver to be used for a political purpose.

Nevertheless, the Commission is of the view that third parties should continue to lodge returns and that these returns should be lodged before an election. Furthermore, the Commission is of the view that third parties should be required to include in a return itemised expenditure that the third party has incurred or expects to incur before the election. It is important that the public is aware of third-party expenditure such as that incurred by the Power and Robbins – Lionel Barden Trust Fund on consultancy fees and negative parallel campaigns against other candidates. This listing of third-party expenditure directly to candidates will also make candidates more accountable for ensuring the accuracy of their gift registers.

## **Recommendation 11**

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**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 on 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.**



## LIMITS ON ELECTION EXPENSES

**Chapter 19 discusses differing views on whether there should be legislative limits on election expenses for local government candidates, and outlines the Commission's view that legislating for more effective disclosure of gifts will achieve some, if not all, of the aims put forward in support of such limits.**

### LIMITS ON ELECTION EXPENSES IN OTHER JURISDICTIONS

The CMC discussion paper (2005) asked whether there should be limits on election expenditure in Queensland local government elections. Legislated limits on election expenses at the federal and state level exist only in relation to Victorian and Tasmanian upper house elections. However, limits on election expenditure are not new in the Australian context. The first attempt at regulating campaign finance in Australia, the *Commonwealth Electoral Act 1902*, provided that electoral expenses be limited to £100 for candidates for the House of Representatives and £250 for the Senate (Cass & Burrows 2000, pp. 453–4).

The Tasmanian Local Government (General) Regulations 2005 place limits not only on how much can be spent by local government candidates but also on what it can be spent on (r. 22).

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 an election of a councillor, or \$8000 for an election of a mayor or deputy mayor.

The Local Electoral Act 2001 (NZ) places restrictions on election expenditure relative to the population of the local government area. For example, a candidate in a local government area with a population smaller than 5000 cannot have election expenses exceeding \$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.<sup>25</sup> If the New Zealand restriction was applied to the 2004 Gold Coast City Council election the two most affected candidates would be the mayoral candidates Baildon and Clarke, who both reportedly spent over \$200 000 on their campaigns. Three divisional candidates also declared donations of over \$70 000, which they presumably spent on their campaigns: Power, Molhoek and Rowe.

The Representation of the People Act 1983 (UK) also places expenditure limits on individual candidates in local government elections in the United Kingdom. For mayoral candidates outside London the limit is £2000 plus 5p per elector and for ordinary candidates £600 plus 5p per elector.<sup>26</sup> Per elector means the number of people on the electoral role for the electoral area.<sup>27</sup> The number of electors in local government areas outside London range from less than 2000 to several hundred thousand in the larger cities.<sup>28</sup> Applying this measure to the 2004 GCCC elections would have allowed mayoral candidates to spend approximately \$30 000 on their campaigns and divisional candidates approximately \$3400.<sup>29</sup>

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.<sup>30</sup>

The inquiry heard evidence that incumbent councillors do not have to spend as much money on their election campaigns, because they 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 allow them some chance of winning an election.

## Submissions

The LGAQ submitted that limits on election expenses were unnecessary, because the amount a candidate spends promoting their election does not have much bearing on the candidate's chances of being elected. However, the LGAQ also submitted that local government election candidates should receive public funding and more generous tax concessions.

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25 Queensland Government, Office of Economic and Statistical Research, *Estimated resident population by local government area*, <[www.oesr.qld.gov.au](http://www.oesr.qld.gov.au)>.

26 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 Parties Elections and Referendums Act 2000 (UK) controlling expenditure by political parties.

27 *Ibid.*, p. 47.

28 Office of National Statistics (UK), *Electoral Statistics (UK) — Parliamentary and Local Government Electors*, December 2004 <[www.statistics.gov.uk](http://www.statistics.gov.uk)>.

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

30 See for example Chapter 5 of the Elections Canada document *Election handbook for candidates, their official agents and auditors* available at <[www.elections.ca](http://www.elections.ca)>.

Logan City Council disagreed with any proposal to limit election expenditure, citing the difficulty and cost of monitoring expenditure. Logan City Council also submitted that it did not believe that the amount of money spent was the real issue, citing the more important issues as the source of funds and appropriate disclosure.

Submissions from other councils on this issue did not support limits being placed on election expenses.

Other submissions expressed the view that making the local government election process more prescriptive would lead to covert and deceitful practices.

There were several submissions from councillors and members of the public that proposed different electoral models but shared the premise that donations to candidates should be prohibited. These submissions suggested that there should be public money made available for campaign advertising and that election expenditure should be limited to this publicly available money. The advantages of these proposals were said to be severing the connection between donors and councillors, limiting election expenditure and providing a more level playing field for candidates.

## **NO LIMITS ON ELECTION EXPENSES AND THE REASONS WHY**

The Commission does not consider it appropriate to recommend legislative changes to limit a candidate's election expenses. In the Commission's view, there is little point in introducing such reforms without the creation of a statewide entity to monitor compliance. The Commission is reluctant to make a recommendation that would, if properly implemented, require a significant amount of public money to be spent, without a closer examination of exactly what such measures are intended to achieve and whether the outcomes of these reforms would be desirable.

The arguments put forward in support of an expenditure limit are generally that it lowers the cost of election campaigns and provides a more level playing field for competing candidates.

If the Commission were to recommend limitations on election expenses, it would have to be determined what amount candidates would be allowed to spend. In making that decision, the amount would need to be set at a high enough level to allow candidates competing in large electorates, like those on the Gold Coast, to spend enough to at least tell voters who they were and what they stood for. For a city the size of the Gold Coast, this may be somewhere between \$5000 and \$10000. This may level the playing field among those who are able to gather together this amount, but it is not going to be of any help to those candidates with little or no money. Of course, this is what the proposal for public funding is meant to overcome. However, since public funding is only ever going to be paid to certain candidates after an election, it will not redress the imbalance during a campaign.

A spending limit will advantage incumbents who have received press coverage and been involved in official duties for the last four years over new candidates who may struggle to make themselves known. It could also advantage those candidates who are endorsed by a political party over an independent candidate, as party-endorsed candidates will be able to call upon large numbers of volunteers who could, for example, save a candidate postage costs by doing letterbox drops.

EARC (1992, pp. 93–4) considered the issue of limits on electoral expenditure and noted there were three commonly cited problems with campaign expenditure limits:

- 1 Setting realistic limits

- 2 Determining the period outside which spending would not be included in the limit applied
- 3 Closing loopholes so that limits cannot be evaded.

EARC ultimately found no convincing evidence for the specification of a maximum limit on election expenditure.

The Commission is of the view that legislating for more effective disclosure of gifts will improve the integrity of the local government election process and in turn achieve some, if not all, of the aims put forward in support of election expenditure limits. Further, it may be that the continuous disclosure provisions recommended above will, if adopted, result in candidates and councillors accepting fewer donations. Candidates and councillors who want to be seen as truly 'independent' and not beholden to any interest groups may attempt to make a virtue of the fact that they have not received any significant gifts.

## OTHER OFFENCE PROVISIONS

**Chapter 20 examines whether the law relating to electoral bribery and misleading statements by candidates needs amendment.**

### DOES THE LAW RELATING TO ELECTORAL BRIBERY REQUIRE CHANGE?

The inquiry 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 prohibits a person from asking for, receiving, offering, or agreeing to ask for or receive any property or benefit or offering another person any property or benefit for the purpose of affecting the way in which the person votes at an election, the person's nominating as a candidate for an election or the person's support of, or opposition to, a candidate or a political party at an election. There are similar electoral bribery provisions in relation to state and federal elections.

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 a candidate spends during a campaign and their chances of winning an election, a candidate 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.

Submissions generally did not suggest amendment to section 385 of the LGA. An exception was the Logan City Council submission, which cited recent media reports concerning attention given to councillors in Queensland and Tasmania<sup>31</sup> who promised to donate a proportion of their salaries to charity if they were elected.

Logan City Council submitted that the LGA should be clarified either to support candidates in their attempts to donate a proportion of their salary to charity or to make this practice an offence.

Several submissions put forward the view that, if the law were to be changed, it should not prohibit a prospective candidate sounding out potential donors in an attempt to gauge what level of financial support might be available to the candidate.

There are obvious difficulties in interpreting section 385 of the LGA (and the corresponding state and federal provisions) because it seems broad enough to

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<sup>31</sup> Launceston's mayor, who is also a member of the Tasmanian Legislative Council, said he would donate his mayoral salary to charity if he was elected; he was subsequently charged with electoral bribery.

cover a range of common and accepted political behaviour. Earlier reference has been made to the opinion of Messrs Gotterson QC and Butler SC obtained by the Commission when considering the equivalent bribery provisions under the Electoral Act 1992 in its 'Report of 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' (CJC December 1996). Counsel's opinion was that those provisions had to be read narrowly so as not to prohibit 'conventional democratic conduct'. While it may be that the scope of the electoral bribery provisions in the LGA could be clarified by amendment, care would have to be taken to ensure that any such amendment did not prevent prosecution action in appropriate cases.

## FALSE OR MISLEADING STATEMENTS OF CANDIDATES

The Commission was required to consider whether candidates made public statements denying they were receiving donor funding for their election campaigns, knowing these statements to be untrue when they were made, and whether candidates were independent of one another or independent of a common funding source as some publicly claimed to be.

As detailed earlier in this report, one candidate at the March 2004 Gold Coast City Council election admitted to the inquiry that, in the period leading up to the election, he told the media he had been funding his own campaign, when the evidence disclosed he had received thousands of dollars in election gifts through the Power and Robbins – Lionel Barden Trust Fund.

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. The maximum penalty for a breach of section 394 is 40 penalty units — \$3000.

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, and 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 (Daly 2005a, p. 96).

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 *Local Government (Elections) Act 1999* (SA) 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.

## Submissions

Redcliffe and Logan councils submitted that the LGA should be amended to clarify that section 394(2) also applies to statements candidates make about themselves. Redcliffe also believed the penalty for a breach of section 394 was inadequate.

Other submissions from members of the public commented that the penalty for a breach of section 394 seemed inadequate.

The LGAQ submitted that to attempt to amend section 394 of the LGA in any way to give it a wider application was unlikely to be workable. The LGAQ submitted that other provisions comparable to section 394(2) have been treated by the courts as dealing with defamatory statements or statements with a direct analogy to defamation, and that section 394(2) does not apply to statements candidates may make about themselves.

The UDIA submitted that because most candidates run as independents they are more likely than candidates 'backed by an experienced party organisation to produce silence or obfuscation with respect to not only their own interests but also to financial or other support *before* electors have their say'.

The UDIA suggested that the Commission should consider a draft resolution discussed at the Local Government Association of New South Wales' 2005 Annual General Meeting, proposing that each candidate be required to sign a statutory declaration of business and property interests at the time of nomination and that such declarations should be posted on public display in polling booths.

## HOW-TO-VOTE CARDS

The issue of how-to-vote cards attracted some comment.

Pine Rivers Shire Council believed section 394(1) of the LGA was deficient with regard to policing information that can be included on how-to-vote cards. Pine Rivers cited the comments of Holmes J in *Tris Van Twest v. Monsour*<sup>32</sup> in relation to the application of section 394(1) and misleading material on how-to-vote cards. The facts in *Tris Van Twest v. Monsour* were that a local government divisional candidate included a photograph of the mayor on her how-to-vote card. The layout of the how-to-vote card conveyed a suggestion that the divisional candidate had the support of the mayor, which was not the case.

Holmes J said:

...the legislation as it stands does not make provision for a situation in which I think the ordinary voter would expect it to; and that is one where a person presented with a how-to vote card would be misled as to the nature of the support of the candidate. One can envisage any number of inaccuracies which could appear on a how-to-vote card so as to mislead voters about whom they should vote for, which simply do not appear to be covered by this provision.

Pine Rivers noted that there was no provision in the LGA similar to section 161B of the *Electoral Act 1992* (Qld) that requires candidates to lodge how-to-vote cards for approval before use at an election. Pine Rivers submitted that the insertion of the Electoral Act provisions in the LGA in relation to the approval of how-to-vote cards would be an improvement, but would not resolve all the issues in relation to the inclusion of misleading material on how-to-vote cards. Pine Rivers also questioned whether the penalty for a breach of section 394 of the LGA was sufficient.

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<sup>32</sup> Supreme Court, Brisbane, 27 March 2004 (unreported).

The DLGPSR discussion paper *Queensland council elections*, released in late 2005 as part of the department's review of rules relating to local government elections, has noted that there is no requirement to lodge how-to-vote cards with a returning officer before a council election, and proposes that the requirement for lodgment of how-to-vote cards be aligned with the state requirements.

Section 161B of the Electoral Act provides how-to-vote cards must be lodged with ECQ before an election and that the ECQ or returning officer must reject a how-to-vote card received under that section that does not comply with section 161A of the Electoral Act. Section 161A of the Electoral Act is largely replicated by section 392A of the LGA, the latter differing to the extent that it also takes account of the possible participation of 'groups of candidates' in local government elections. Section 392A of the LGA provides that during the election period for an election, a person must not distribute, or permit or authorise another person to distribute, a how-to-vote card that does not state:

- (a) the name and address (not a post office box) of the person who authorised the card and if the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates, the authorising person must be a member of the group.
- (b) if the card is authorised—
  - (i) for a registered political party or a candidate endorsed by a registered political party—the party's name; or
  - (ii) if (i) above does not apply and the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates—the group's name;
  - (iii) otherwise the candidate's name and the word 'candidate'.

These particulars must appear

- (a) at the end of each printed face of the how-to-vote card; and
- (b) in prominent and legible characters in print no smaller than—
  - (i) if the card is not larger than A6—10 point; or
  - (ii) if the card is larger than A6 but not larger than A3—14 point; or
  - (iii) if the card is larger than A3—20 point.

It is an offence under the LGA for a person to distribute, or permit or authorise another person to distribute, during an election period a how-to-vote card if the person knows, or ought reasonably to know, that any of the particulars mentioned above on the card are false.

The proposal to insert a provision similar to section 161B of the Electoral Act in the LGA will not provide a remedy for the mischief discussed in *Tris Van Twest v. Monsour*. Holmes J said that none of the particulars required by section 392A applied in that case. Therefore, inserting a provision to require how-to-vote cards to be lodged with a returning officer before use, and requiring that the returning officer reject how-to-vote cards that do not comply with section 392A, would not stop the inclusion of some blatantly misleading information on how-to-vote cards. Something more would be required.

Some submissions questioned the need for how-to-vote cards at all. For example, Cairns City Council submitted that it would like to see a change to the legislation such that how-to-vote cards were not distributed outside the polling booth but rather the names of the candidates (including the mayoral candidates) should be listed in order of ballot at each of the actual polling booths. The Commission sees some merit in this proposal; however, it is outside the scope of this inquiry to recommend its adoption.

## **Why no change to section 394 is proposed**

It is clear from cases referred to earlier in this report and the case cited by the Pine Rivers Shire Council submission that the ambit of section 394 is quite limited. It is apparent that the section does not operate in a manner expected by both the general community and many of those directly involved in local government, largely because it does not prohibit as much as it appears to prohibit. For example, it allows one candidate to knowingly misrepresent the policy position of another candidate, or one candidate to falsely claim the support of another candidate. This report has also concluded that it does not preclude candidates lying about their funding sources.

The very narrow application of section 394, and the fact that the maximum penalty for a breach of this section is a \$3000 fine, limits its regulatory effect.

Nevertheless, it is the Commission's view that a law generally requiring honest conduct on the part of election candidates would be unworkable. It would not be desirable to outlaw every single dishonest statement a candidate might make about any matter. However, it would be very difficult to draft a legislative provision that attempted to make only some dishonest statements by candidates unlawful. It is the Commission's view that an attempt to broaden the scope of section 394 would create a situation not unlike that applying in the case of section 385 of the LGA ('Electoral bribery') where the legislative provision is so broad it has to be read narrowly so as not to prohibit conventional political conduct.

The Commission considers that better disclosure provisions are the best way to deal with candidates who are inclined to lie about their funding source.

However, the issues raised in *Tris Van Twest v. Monsour* concerning the inclusion of misleading material on how-to-vote cards do require attention.

## **Recommendation 12**

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

## **Recommendation 13**

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**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 AND PENALTIES

**Chapter 21 considers whether changes are needed to the way breaches of the LGA are prosecuted, and the adequacy of the penalties that can be imposed.**

### CURRENT ENFORCEMENT REGIMES

Any regulatory system requires some means of enforcing compliance.

The CEO of a local government is responsible for receiving and maintaining a register of election returns. The CEO is also usually the returning officer for a local government election. When the disclosure provisions were put in the LGA it was considered that the CMC (the CJC as it was then) would investigate allegations that a person had submitted a false or misleading return.<sup>33</sup> The CMC has jurisdiction to investigate allegations of criminal conduct by councillors, including alleged breaches of section 436 of the LGA, but more limited jurisdiction to investigate allegations against unsuccessful candidates or third parties.

A council's CEO 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 proceedings 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. The Election Funding Authority is responsible for dealing with, among other things, declarations by parties, groups, candidates and third parties of political contributions received and election expenditure incurred by local government elections. Section 110 of the Election Funding Act provides the Authority with certain powers of inspection to investigate contraventions of the Act.

The LGA requires candidates to keep relevant records, including particulars required to be stated in an election return. The LGA does not prescribe what records are to be kept, as is the situation in New South Wales where candidates are required to 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 payments cash book. Failure to keep these records is an offence punishable by a \$2200 fine.<sup>34</sup>

<sup>33</sup> Hon. D McCauley, Local Government Legislation Amendment Bill 1996, Second Reading Debate, *Queensland Parliamentary Debates*, 28 November 1996, p. 4663.

<sup>34</sup> Section 22, Election Funding Regulation 2004 (NSW).

## Submissions

Submissions from members of the public generally were of 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.

The LGAQ submitted that the LGA should be amended to require an independently contracted third party or, if no such contract can be let, the ECQ, to be the returning officer for local government elections and the entity responsible for administering and enforcing Chapter 5 Part 8 of the LGA ('Disclosure of election gifts').

Some councils submitted that the suggestion that a CEO was responsible for ensuring that election gift returns are completed properly may not be entirely accurate. They suggested that the CEO is responsible for ensuring returns are lodged by the due date but the accuracy of the returns is the responsibility of the candidate. This was the attitude taken by Dale Dickson, CEO of the Gold Coast City Council, who told the inquiry:

From a — from a practical perspective, I take the view that the officers should be diligent in ensuring that the — that the returns are complete, that there are no obvious omissions or errors, that at the end of the day the disclosure obligation rests with the individual or the third party, not the officers concerned. They have a practical delegated responsibility to administer my responsibilities under the Act but the actual disclosure obligation rests with the other party.

The Commission agrees that it is impractical under the present legislative regime to expect a CEO to do more than check for obvious omissions and errors. However, it is questionable whether the candidate returns at the 2004 GCCC elections were checked for even 'obvious omissions or errors'. Rowe, for example, whose disclosure period commenced when he announced his candidacy on 28 November 2003, mistakenly listed on his election return that his disclosure period commenced on 11 February 2004. Despite this, he disclosed gifts he had received in January 2004. Even a cursory examination of Rowe's return should have raised concerns about its accuracy, but it was accepted as submitted.

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 their adequately performing the task of receiving and checking returns in an often highly politicised environment. In the Commission's view, it is desirable for there to be an agency with overriding responsibility for the way in which CEOs complete the task of collecting, checking and maintaining registers of gift disclosures, regardless of what disclosure regime is in place.

## Recommendation 14

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**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.**

## CURRENT PENALTIES

The failure to lodge an election return as required under the LGA can attract a penalty of up to \$1500. The lodgment of an election return with false or misleading information can attract a penalty of up to \$7500 for a candidate or \$3750 for others. A person found guilty of an LGA offence about 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).

Section 222 of the LGA provides that a person convicted of certain offences under the LGA, including an offence related to the councillor's election return, is not qualified to become a local government councillor for four years after the conviction and, if the person is a local government councillor, the person vacates the office. However, section 222 also provides that a court may, by order, direct that the disqualification not apply if the court is satisfied that it would be just to give the direction.

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

	NSW	VIC.	SA	TAS.	WA
Failure to lodge return	\$11 000	\$5115	\$10000	\$3000	\$5000
False or misleading information in return	\$11 000	\$5112.60	\$10000	\$1000	\$5000

The DLGPSR discussion paper *Queensland council elections*, released in 2005 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.

## Submissions

The views of councillors and councils on this issue were mixed. Several submitted that the current penalties were adequate. Others submitted that the current penalties did not act as a deterrent. Logan City Council, Redcliffe City Council and Pine Rivers Shire Council all submitted that the penalties for a breach of section 436 of the LGA should be increased.

Those members of the public who commented on this issue were of the view that penalties should be increased.

The penalty of a maximum \$7500 fine and possible disqualification from office for a candidate who submits a return containing particulars that are, to the knowledge of the person, false or misleading seems reasonably stringent. However, the penalty

in Queensland for failing to lodge a return (\$1500) seems disproportionate to the penalties in other states.

If the other recommendations in this report concerning the way in which gifts are disclosed by candidates and councillors are accepted, the nature of these offence provisions will change. Recommendation 13 called for a review of the adequacy of the penalties for offences in Chapter 5 Part 6 of the LGA. Given this, it would also be appropriate to review the adequacy of the penalties for offences relating to the failure to disclose or the failure to disclose accurately gifts received.

### **Recommendation 16**

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

In 1991 the CJC recommended that there be harsh and enforceable penalties for local government election candidates who fail to disclose gifts received and suggested that the forfeiture of a seat would be the most effective sanction. The CMC shares that view. In the Commission's view if a councillor or a candidate is successfully prosecuted for failing to disclose gifts, the councillor should retain their position, or a candidate retain the right to become a councillor, only in special circumstances. Accordingly, the Commission makes the following recommendation:

### **Recommendation 17**

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**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.**

## HOW COUNCILS OPERATE AFTER AN ELECTION

**Chapter 22 recommends that councils should record their reasons for decisions made contrary to council officers' recommendations, and that a breach of section 230 of the LGA relating to councillors giving directions to local government employees should be made an offence.**

### REQUIREMENT TO GIVE REASONS FOR 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 about how a particular matter should be handled. The reasons for these decisions are not always immediately obvious, as the council has not recorded its reasons.

The Queensland Ombudsman advises public sector agencies that, even if a statement of reasons for a decision is not requested or required by law, giving clear reasons for decisions assists in avoiding misunderstandings, promotes goodwill and acceptance of adverse decisions, and reduces the likelihood of ill-informed complaints and appeals (2003, p. 8).

The Tweed Shire Council Public Inquiry recommended that councillors be required to provide explanations, in an open and minuted council meeting, for their decisions when they are made against the advice of their professional officers.

The New South Wales Independent Commission Against Corruption (ICAC) has recently called for submissions on whether councillors should have to give reasons for their decisions when they approve development applications against the recommendations of staff. The ICAC (2005, p. 19) notes that currently councillors in New South Wales do not have to do so:

Consequently an objector is not entitled to know why his/her submission was rejected by council. This practice goes against the principle of the 'right to reasons' for administrative decisions. It also does not encourage councillors to base their decisions on relevant considerations and acknowledged facts. In the past the ICAC has recommended that councillors be required to provide reasons for their decision when they approve a development against the advice of staff.

Amendments to the *Integrated Planning Act 1997* (Qld), which were recently enacted, will, according to the minister's second reading speech:<sup>35</sup>

- Require reasons to be given for all departures from planning schemes, whether the application is approved or refused.
- Define the grounds on which local governments can depart from their planning schemes. These grounds can only be for a public interest, and not a private interest of an individual owner or interested party.
- Require details of decisions to be published on the council's web site.

<sup>35</sup> Hon. D Boyle, *Integrated Planning and Other Legislation Amendment Bill 2006*, Second Reading Debate, *Queensland parliamentary debates*, 7 March 2006, p. 581.

These amendments would not cover decisions unrelated to development applications, such as the decision by the GCCC to allow Carnriver Pty Ltd a rates discount against the recommendation of council officers. It would also not cover the rejection of a recommendation of a conduct review panel.<sup>36</sup>

### **Recommendation 18**

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**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.**

## **BETTER 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 section 230(2). It could be dealt with as a breach of a council's code of conduct, the maximum penalty for which would be a written reprimand and suspension from not more than two consecutive future meetings of the local government and all local government's committees of which the councillor is a member, with the maximum period of suspension not to include more than two consecutive ordinary meetings.

In the Commission's view, if councils have to minute reasons for decisions that go against the advice of professional officers, there should also be a deterrent to stop councillors who may attempt to direct council employees when the employees are formulating that advice.

The Commission has considered whether section 204 of the Criminal Code would apply to a situation where a councillor directed or attempted to direct a local government employee about the way in which the employee's duties are to be performed. Section 204 states:

- (1) Any person who without lawful excuse, the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.
- (2) The offender is liable to imprisonment for 1 year.

Despite this general offence provision, the Commission considers there would be some uncertainty about the applicability of the provision to a councillor who breached section 230(2) of the LGA, and hence makes the following recommendation.

### **Recommendation 19**

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**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.**

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<sup>36</sup> A conduct review panel advises a local government on whether a councillor has breached the council's code of conduct and, if so, what penalty the local government should apply.

## SOME SPECIFIC SUBMISSIONS

**Chapter 23 looks at specific concerns raised by the Urban Development Institute of Australia (UDIA) regarding the risk of corruption in local government when assessing and determining development applications; and by the Local Government Association of Queensland (LCAQ) about the possible merit of introducing penalties for vexatious complainants.**

### SUBMISSION FROM THE UDIA RE DEVELOPMENT APPLICATIONS

The UDIA<sup>37</sup> made a substantial and well-argued submission to the inquiry to the effect that the assessment and determination of development applications is a risk area for corruption and misconduct, and that changes to the system for assessing and determining development applications could reduce the incidence of corruption and misconduct in local government.

The UDIA submission in relation to development applications can be summarised as follows:

- Approximately 95 per cent of original determinations on development applications are currently made by professional staff on an Australia-wide basis. There is no doubt that a substantial percentage of decisions are currently delegated in Queensland. The practice should be extended and entrenched.
- All development applications should be dealt with under a CEO's delegation powers, either by council staff or by expert consultants. No development applications should be originally decided by councillors.
- The UDIA supports the proposal set out in a document produced by the Development Assessment Forum (DAF)<sup>38</sup> in March 2005 entitled *Leading practice model for development assessment in Australia*.
- The Development Assessment Forum proposal states:
  - Option A — Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council.
  - Option B — An expert panel determines the application.

Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.

37 The purpose of UDIA Queensland is 'to advance the credibility and integrity of the urban development industry whilst attaining the best possible trading position for our members through effective, collective representation' <[www.udiaqld.com.au](http://www.udiaqld.com.au)>.

38 The DAF was formed in 1998 to bring together relevant parties to reach agreement on ways to streamline the processes used for development approval and cut red tape — without sacrificing the quality of the decision-making. The forum's membership includes the three spheres of government — federal, state/territory and local; the development industry; and related professional associations. The DLGPSR is represented on the forum.

The Property Council of Australia (Qld) has also submitted that the CMC should recommend that the DAF proposals be implemented.

The DAF proposals may well allow a more consistent and efficient processing of development applications, but that is not a matter appropriate for comment by the Commission. From the Commission's perspective, however, these proposals merely transfer the risk of corrupt conduct from a councillor to a council employee or a 'private sector expert'.

Accordingly, the Commission does not intend to accede to the UDIA's and the Property Council of Australia's request to make a recommendation about the DAF proposal.

## **SUBMISSION FROM THE LGAQ ON VEXATIOUS COMPLAINTS**

The LGAQ submitted that:

... the CMA (*Crime and Misconduct Act 2001*) should be amended to require a sanction to be imposed on a complainant when their complaint is not further investigated on the grounds that the complaint is frivolous or vexatious.

As your own records will show, the vast majority of complaints against Councillors (by other Councillors or others with political motivations) are not further investigated and, it is speculated, a significant amount of those matters are dismissed on the grounds that the complaint was frivolous or vexatious. Notwithstanding this, the innocent Councillors who were the subject of the complaints would have already been vilified by the media for merely being the subject of a complaint. The damage to the personal reputation of the Councillor involved (and the Councillor's family) is significant.

The current system for making complaints is unfairly skewed against Councillors. In an attempt to restore some balance to the process (and in addition to the previous submission relating to confidentiality of complaints) it is the LGAQ's submission that a person who makes a frivolous or vexatious complaint should be subjected to a sanction such as, for example, reimbursing to the authority that conducted the investigation (i.e. the CMC or the Council) an amount representing the reasonable costs of conducting the investigation. This should go some (if not a significant) way towards discouraging baseless, politically motivated complaints leaving the Commission (and, in appropriate circumstances Council CEOs) free to concentrate their resources on dealing with legitimately founded complaints.

It is not clear what kind of sanction the LGAQ is proposing for those who make baseless complaints. There are already offence provisions in the CM Act in relation to false or vexatious complaints (ss. 216 and 217), and the CMC has in the past taken prosecution action against complainants where appropriate.

It is true that some candidates and councillors attempt to misuse the CMC's complaints processes for political purposes. There have been occasions when political opponents have stated publicly that a complaint has been made to the CMC against a particular candidate in relation to corrupt or improper conduct. Sometimes the complaint is never actually made or, if made, is found to be baseless. This is particularly so in the lead-up to elections. The CMC has written to candidates in the lead-up to the last two local government elections urging them not to involve the CMC in unfair or baseless attacks on the reputations of other candidates.

On the other hand, section 38 of the CM Act places an onus on CEOs to notify the CMC when the CEO suspects that a complaint, or information or matter involves,

or may involve, official misconduct. The Act does not place any qualification on the degree of suspicion that must be held by a CEO. It does not say, for example, that the CEO must suspect on reasonable grounds that official misconduct has occurred. The formation of a suspicion does not require anything in the nature of proof; however, it obviously requires at least a rational basis. A mere allegation of official misconduct may be enough to create suspicion, unless the CEO has information, or there is something about the allegation, that shows beyond doubt that it is not correct.<sup>39</sup>

Some councils' codes of conduct require a councillor to report to their CEO (or directly to the CMC if their CEO is implicated) any fraud, corruption and maladministration of which they become aware.

Given these reporting requirements, the CMC receives many complaints against councillors that come within its jurisdiction. In fact, the CMC considers it healthy for people to feel that they can come forward with complaints.

It seems that the real basis of the LGAQ's concern is not so much the making of a complaint, but the publicising of the fact that a complaint has been made. Unfortunately, the CMC cannot prevent complainants from publicising their complaints, although it takes steps to discourage the practice during election periods.

The fact that a complaint is not substantiated by investigation does not mean that it is necessarily vexatious or frivolous. The CMC assesses and investigates many complaints involving local government where the allegations made may not be substantiated as official misconduct. Experience shows that in most cases where the complaint is unsubstantiated the complainant genuinely believes, albeit mistakenly, that impropriety has occurred. This belief may have been formed because the council concerned had not properly documented how and why decisions were made, it had inadequate policies and procedures, or flawed internal control systems or councillors, or its staff may have failed to properly manage a conflict of interest. Lack of transparency and poor administrative and ethical systems within a council make it harder for the council to easily refute allegations made, and increase the likelihood that complaints will be made, and that those complaints will need to be investigated.

Rather than attempting to create further sanctions against those who make complaints, it may be more productive for those involved in local government processes in Queensland to ensure that their own systems are transparent so as to reduce the perception of impropriety. Clearly, the LGAQ has an important role in providing assistance to councils in this regard. Of course, where there is evidence that a complainant has knowingly made a false complaint, the CMC will investigate the matter with a view to taking prosecution action.

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39 Conrad Lohe, Crown Solicitor, 'Managing disciplinary action: responsibilities of Chief Executives', CEO Breakfast Briefing, 10 April 2003, cited in *Facing the facts: a CMC guide for dealing with suspected official misconduct in Queensland public sector agencies*, p. 22.



# APPENDIX A: WITNESS LIST

WITNESSES	COUNSEL/SOLICITORS	INSTRUCTED BY/FROM
Soheil Abedian	Mr P Nolan of Counsel	Gadens Lawyers
Lionel James Barden	–	Saunders Downing Hely
Gregory James Betts	–	–
Paul Wesley Brinsmead	–	–
Desmond James Campbell	–	–
Malcolm Ion Chalmers	Mr K Howe of Counsel	–
Suk-Fun Joyce Chan	Mr MJ Byrne QC of Counsel	Jacobson Mahony Lawyers
Warren Cheung	Mr MJ Byrne QC of Counsel	Jacobson Mahony Lawyers
Niree Ann Margaret Christison	–	–
Ronald William Clarke	Mr A Glynn SC, of Counsel, Mr C Eberhardt of Counsel and Mr TP O’Gorman	Robertson O’Gorman
Dawn Mary Crichlow	–	–
Anne Cunningham	Mr T Martin SC of Counsel and Mr MP Quinn	Gilshenan & Luton
Susan Louise Davies	–	–
David Harold Thomas Devine	Mr P Hastie of Counsel and Ms KM Hauff	Deacons Lawyers
Dale Robert Dickson	Mr J Webb of Counsel and Mr DF Montgomery	Gold Coast City Council
Colin Dutton	Mr GC Newton of Counsel and Ms KM Hauff	Deacons Lawyers
John Mervyn Thomas Fish	–	–
Jan Elizabeth Grew	–	–
Raymond William Hackwood	–	–
Brent David Hailey	Mr BG Cronin of Counsel	–
Anthony William Hickey	Mr T Martin SC of Counsel and Mr MP Quinn	Gilshenan & Luton
Henry Joseph Hodgson	–	–
Steven Kenneth Hodgson	–	–
Graeme Ingles	Mr BD Bartley	Brian Bartley & Associates
Robert David Janseen	–	–
James Richard Kelly	–	–
Robert La Castra	Mr A Debattista of Counsel	–
Gerald Adrian Lambert	Mr BG Cronin of Counsel	–
John Graham Lang	–	–
Robert Molhoek	–	–
Christopher Lawrence Morgan	Mr A Boe	Boe Lawyers
Constantine William Nikiforides	Mr BG Cronin of Counsel	Primrose Couper Cronin Rudkin
Grant James Pforr	Mr M Reaburn	Reaburn Solicitors
Gregory David Phillips	–	–
David Leslie Power	Mr I Temby QC of Counsel, Mr JJ Murakami, Mr CSJ Nyst and Mr AJ Tiplady	Nyst Lawyers
James Raptis	Mr RG Perrett	Clayton Utz
Tom Daniel Ray	–	–

<b>WITNESSES</b>	<b>COUNSEL/SOLICITORS</b>	<b>INSTRUCTED BY/FROM</b>
Norman Colin Rix	Mr K Howe of Counsel and Mr MF Marshall	Phillips Fox
William Roche		
Brian Phillip Rowe	Mr MD Yarwood	Yarwood Legal and Consulting
Eddy Sarroff	Mr A Boe	Boe Lawyers
Anthony David Scott	–	–
Roxanne Scott	–	–
Edward Lloyd Shepherd	Mr GJ Radcliff of Counsel	
Graham Peter Staerk	–	–
Raymond Alexander Stevens	–	–
Phillip Keith Sullivan	Mr N Macgroarty of Counsel	Minter Ellison
Craig Granville Treasure	Mr P Nolan of Counsel	Gadens Lawyers
Sandra Wild	–	–
Peter John Young	Mr D Boddice SC of Counsel, Mr P Freeburn SC of Counsel and Mr AJ Tiplady	Freehills Lawyers
<b>Other interested party</b>	<b>Counsel/solicitor</b>	<b>Instructed by/from</b>
Local Government Association of Qld Inc.	Mr S Fynes-Clinton of Counsel	King and Company

## APPENDIX B: 'THE AGENDA'

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16 December 2004

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1. Objectives
2. Strategy
3. Consensus on issues
4. The Resource
5. Next action

### **Objectives**

- To achieve consensus among a select group of Councillors and Candidates that acknowledge public concern on (5) key issues that are top of mind across all Divisions. And most importantly to promote a desire on the part of this group to jointly work together to achieve prompt, cost effective solutions.
- To work to re-establishing on the part of the electorate, pride and respect in these Councillors/candidates as a result of their professional conduct and their consensus on solutions they propose to key city issue problems.
- To focus public opinion on these individual Councillors/candidates in that they recognize/understand the frustrations of rate payers and business houses alike and are willing to adopt a joint *common sense* approach to solutions.
- To develop a resource of management & marketing expertise plus funding, that individual candidates can access as required to compliment their own Campaign Committee structures. This combined resource being initially to harness the experience of sitting Councillors and Quadrant's marketing skills and be available only to individuals in the nominated group for the purpose of projecting an agreed position on the 'key city issues'.

### **Strategy**

- The overall plan is comprised of four elements –
  1. group consensus on above objectives;
  2. agreement on a defined 'charter' that can be presented to campaign donors to engender confidence;
  3. an agreed media position once awareness of this resource for 'Campaign for Commonsense in Council' (working title) becomes public and finally...
  4. the development and management of the resource inventory.

### **Consensus on Issues**

Suggested 'key city issue' topics in no particular order are:

- Environment
- Growth management
- Crime / public safety
- Water -Conservation/supply
- Water – Flood prevention
- Public transport
- Roads
- Any other 'key topic' not included?

### **The Resource**

The extent of the Resource will naturally depend on the size of the funding achieved. Where various jobs can be combined, costs efficiencies can apply. The Resource could potentially include:

- Research (city wide and by division)
- Professional graphic art & design resource
- Professional copy writing resource
- Photography co-ordination
- Advertising & public relations
- Corflute signage & brochure printing e.g. 'how to vote' literature

- Campaign strategy development
- Pre election planning e.g. door knocking
- Booth worker recruitment and management
- Election Day check list

**Next Action**

- Consensus on Objectives
- Consensus on key city issues
- Attitude to eventual Media position
- Funding
- Resource requirements

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