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Crime and Misconduct Commission
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Submission to the Queensland Crime and Misconduct Commission
On the Local Government Electoral Process

Our submissions are listed and identified by the Discussion Paper headings.

• **Unique disclosure provisions for local government**

Disclosure provisions for local government elections should be different from those for state elections.

In most local government elections, candidates are not standing as members of groups or political parties: donations are normally made directly to an individual candidate, rather than, in a state election, to the group or political party, which then distributes funds in such a way that no donation to a candidate can be linked to a particular supporter. In a local government election it is essential that the identities of donors to an individual candidate are publicly known.

• **False or misleading statements of candidates**

The current law is inadequate

Section 394(2) of the LGA should be strengthened to ensure that it is clear that candidates are prohibited from making false statements about themselves.

The penalty should not be simply a fine, which can be covered by further donations to the candidate: forfeiture of a seat won on council and, perhaps, imprisonment should be likely.

• **Electoral bribery**

The current law appears to be adequate, except that the penalty for a councillor should include disqualification from office.

The penalty should not be simply a fine, which can be covered by further donations to the candidate. It is noted, with approval, that imprisonment is a possible penalty.

• **Periods in which election gifts have to be disclosed**

The period in which candidates must disclose election gifts should be changed.

Candidates at the previous election should disclose gifts throughout the four years leading up to the new election. New candidates should be required to disclose gifts received from 30 days after the previous election (as in Victoria).

Candidates should have to disclose gifts received up until 30 days after an election.

• **Fundraising**

Proceeds of raffles, dinners and other similar fundraising activities should be disclosed.

Where a candidate is a member of a group, the same limit should apply to the candidate's share of proceeds (i.e. \$200) as to other gifts which must be disclosed.

• **Lodgment date for returns**

It is essential that gifts be disclosed before an election.

It is recommended that a candidate should register within three days receipt or promise of a gift once a candidate has nominated; that a candidate at the previous election must disclose, within three days after nominating, any gifts received or promised throughout the four years leading up to the new election; and that new candidates must disclose, within three days after nominating, any gifts received or promised from 30 days after the previous election.

It is recommended that no donation be accepted for 12 months after an election.

The current method of inspection by the public of a gift register needs to be changed.

Having to apply in writing to the CEO for permission to inspect the register; and then to wait for a reply specifying time and place of inspection is a major disincentive.

The Ontario procedure of posting on the internet is a major improvement. A further improvement would involve a requirement that advertising material and how-to-vote cards include a listing of gifts for an individual candidate or a group. Gift registers should also be available for inspection, without prior application to the CEO, at the council office and in council libraries.

The gift register should clearly record the names and addresses of all donors.

For example, the names and addresses of the principals of private companies should be listed: in the gift register for the 2004 Livingstone election one donor gave three gifts to a candidate, one in his own name, and a further two in the names of companies. Most members of the public did not know that he was associated with the companies.

- **Groups of candidates**

Candidates who share election funding should be required to be part of an identifiable group of candidates.

- **Donations via solicitors'/accountants' trust accounts**

In section 414 of the LGA "relevant details" for a trust fund, including solicitors' or accountants' trust accounts, should include the names and addresses of the principals who made the donations to the fund or account as well as the names and addresses of the trustees.

- **Origin of candidates' donations**

Candidates should know the true source of all donations they receive when they receive them. These details should be disclosed along with the other details of the gifts.

- **Anonymous donations**

Section 428 of the LGA should be changed.

Adoption of the provisions in New South Wales, Victoria and South Australia whereby a breach of the section leads to a payment twice the value of the anonymous gift appears appropriate.

- **Third parties and parallel campaigns**

Third parties should have to disclose expenditure as well as donations received.

The threshold for declaration of donations to a third party should be \$200.

Third parties should lodge a return before an election.

The return should be readily accessible for inspection, e.g. on the internet (See "Lodgment date for returns").

- **Limits on election expenses**

There should be limits on the expenditure possible during an election campaign.

The New Zealand and UK models, where the limit is linked to the local government population appear appropriate.

New candidates should be allowed to spend more than incumbent councillors.

Perhaps a ratio of 1.5 would be appropriate.

Because advertising and other expenses are predictable, it should be possible to disclose projected expenses at the same time before the election that donations are disclosed.

Because it is more difficult to hide advertising expenses than to hide donations, it should be easier for an outsider to check on expenses than on donations.

- **Loans to candidates**

The LGA should require disclosure of loans as in the Queensland Electoral Act.

- **Enforcement**

The listing in the New South Wales model of the records to be kept appears to be appropriate.

Oversight of disclosure of donations by an agent independent of the local government is desirable.

For a CEO acting as returning officer to enforce the requirement that gifts received by a powerful mayor be disclosed may be risky for him in terms of his future employment.

The New South Wales model in which the returning officer is appointed by the Electoral Commission, with powers of inspection, is more appropriate than the current Queensland practice.

- **Penalties**

Current LGA financial penalties are inadequate.

Because a penalty of a fine alone would simply require a candidate to secure an additional donation (probably not to be disclosed), it is essential that automatic disqualification from office should be retained as part of any penalty.

For deliberate and serious offences, the possibility of imprisonment should be considered.

- **Conflicts of interest**

The empowerment of the property development industry through donations to candidates for councillor is a serious problem in Queensland. The current provisions of the LGA are inadequate.

It is vital that drastic measures be introduced to control the damage caused by these donations.

All four of the possible mechanisms listed in the discussion paper for a councillor to avoid conflict of interest should become mandatory.

Failure of a councillor to resolve a conflict of interest should be an offence under the LGA.

An adverse vote by a councillor on a proposal by one of his donors is so unlikely an event that it may safely be ignored.

If a quorum can not be raised because a majority of the councillors, being members of a group which has received a donation, cannot attend a debate because of conflict of interest, these councillors should be disqualified from office. They could be replaced by means of a fresh election or an administrator could be appointed by the Local Government Department. This solution appears to be drastic and possibly expensive, but it would act as a severe deterrent to the property development industry if donations to a group of councillors are wasted because the group is disqualified from office as a result of the donations. An alternative, but less satisfactory, solution to the problem of loss of a quorum would be to limit the total number of candidates who can form a group to one fewer than the number of councillors needed to form a quorum.

• Donations through political parties

Local government candidates endorsed by registered political parties should be required to disclose election gifts and donations.

One of the mayoral candidates in the 2000 Livingstone election has reported that he was offered financial support by a political party. The public should be aware of any such support.

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