

The Gold Coast City Council Inquiry Crime and Misconduct Commission

By email: mailbox@cmc.qld.gov.au

Please accept this submission in response to the CMC's Discussion paper on **The local government electoral process**.

Please note that I give consent for my submission to be publicly displayed.

Please note that I am willing to attend a public hearing.

My submission regarding electoral reform is quite straightforward. I believe that as a community we are now at a crossroad. Having been made aware of significant shortcomings in the existing legislation, particularly arising from the current CMC Inquiry into the Gold Coast City Council, we now have the opportunity to either:

- Seek to strengthen the provisions of the legislation, particularly as they apply to funding of candidates, or;
- Simplify the legislation and provide a more robust and manageable framework.

The principal focus of the CMC's Discussion Paper relates to the *funding* of election candidates. We only have to review the 'Issues for Consideration' to recognise that fact. Each and every one of the Issues relates to funding, viz:

- Disclosure provisions (of election gifts) for local government candidates
- False or misleading statements of candidates (in regard to the source and extent of candidate funding)
- Electoral bribery
- Period in which election gifts have to be disclosed
- Fundraising
- The lodgment date for (election gift) returns
- Groups of candidates (in regard to soliciting and sharing funds)
- Donations via solicitors' or accountants' trust accounts
- The origin of candidates' donations
- Anonymous donations
- Third parties and parallel campaigns (in regard to donation amounts and declarations thereof)
- Limits on election expenses
- Loans to candidates
- Enforcement (in regard to the declaration of funding)
- Penalties (in regard to the declaration of funding)
- Conflicts of interest (as they may arise in regard to election funding)
- Donations through political parties

We can seek to amend and strengthen and broaden all of the varying provisions of the Act and the Regulations, and that is certainly a sound and necessary objective, but I ask "*Is this approach addressing the fundamental issue?*"

An alternative suggestion, which I make very strongly, is the simplification of the Act by:

- Outlawing election donations and gifts of any kind;
- The provision of public funding for eligible candidates;
- Placing a limit on election expenditure;
- Mandating the full declaration of campaign expenditure prior to taking oath;
- Strengthening penalties for breaches (i.e. the acceptance of gifts, or the failure to declare all expenses).

Election donations and gifts have been an established practice in Australia for many years. They are also the cause of much concern to our community, viz:

- They are the root of real or perceived conflicts of interest;
- They cause - in some circumstances - the need for elected persons to disengage from the debating and decision making process, thereby disenfranchising their community from proper representation;
- The soliciting of funds can place people (e.g. candidates or their supporters) in compromising situations;
- They provide an opportunity for the election process to be distorted, whereby heavily financed candidates can overwhelm the community and gain support to the exclusion of, perhaps, more genuine, qualified or 'unaligned' candidates.

The complexities surrounding donations and gifts are evident. What is a suitable lower limit for disclosure? Should a loan be declared? What is an effective way of declaring the donation or gift? What period of time should be covered by the disclosure? When should the donation be declared? By whom? Should new candidates have to declare donations and gifts for the preceding four year period, or just Councillors seeking re-election? What constitutes a bribe? Is the tax deduction for candidates adequate?

There are, of course, many valid suggestions as to ways to tighten up the evident loopholes, and many good suggestions in this regard have been made, I believe, in submissions from the UDIA and Pine Rivers Shire, for example. Some likely measures to improve the legislation would include:

- The declaration of gifts prior to election;
- The prohibition of receiving gifts for twelve months after an election;
- The requirement to fully declare proceeds from raffles and fundraising lunches etc;
- The removal of inequities whereby the lower limit for declaration of a gift to an individual is \$200 and the lower limit to a Trust is \$1000.

Again, I reiterate that these measures would improve the current legislation, but still do not adequately address issues such as potential conflicts of interests, and matters related to third party declarations.

There are strong arguments to support the notion that the election funding and disclosure rules that bind Council candidates and Councillors should be different to those applying to Federal and State candidates and elected persons. The most significant of these is the fact that Councillors not only determine policy and law, but they decide on its implementation and application. As Professor Daley stated in his Second Report on the Tweed Shire Council Public Inquiry:

The difference with Local Government elections is that the elected representatives are responsible for the plans that make various types of development possible, they are personally responsible for the operation of the development application system, and they have the authority to approve or deny consent to development projects.

The CMC Discussion paper (p6) also articulates the nature of relationships and influence that can undermine the integrity of local government:

The nature of local government is such that a donor can achieve more influence with less money at a local level than at a state level.

The solution I have identified would include provisions such as:

Outlawing election donations and gifts of any kind. This provision is straightforward to define in legislation. It would be an absolute requirement.

Providing improved transparency by publication of a candidate's interests. The issue of transparency would be further aided by the public pre-election declaration of non-election related gifts and benefits, assets and interests. Under the existing legislation a Councillor must submit details of such interests for recording on a Register of Interests. Such registers are available on request to the CEO of a Council. If the material is intended to be accessible to the public, in the public interest, then surely provisions can be made to publish that material - as it applies to candidates and Councillors - prior to an election.

The compulsory successful completion of a course by candidates prior to their nomination being accepted. This course could be offered through the Department of Local Government or institutions like the Open Learning Institute, and might comprise modules in topics such as:

- the legislative requirements of a candidate;
- the legislative requirements of a Councillor;
- some principles of financial management (e.g. how Councils get their revenue and how they must manage that resource).

Due to the known (legislated) timing of local government elections in Queensland, such a course could be run throughout the twelve-month period before the quadrennial election. The duration of the course might be in the order of 20 hours contact time, or by other means (e.g. correspondence) in remote areas. Such a course need not be intensive, so as to disqualify or discourage people who do not have an aptitude for courses, but would give some measure of confidence to the community that the candidate, if elected, has the capacity not only to understand his or her legislated obligations but also has the capacity to tackle issues that do confront Councillors. Currently the Department does offer opportunities for candidates to become aware of some issues, but as has been demonstrated starkly at the CMC hearings into Gold Coast City Council candidates either did not attend or took no notice of what they were being told.

Surely there is a broader benefit to our community also by having many candidates better aware of these types of topics. Many failed candidates continue to pursue an interest in local government, as members of community or lobby groups, and this improved knowledge can only contribute positively to public comment and debate on issues.

Public funding of candidates. Eligible candidates would be entitled to receive funds after nomination, or be reimbursed after the completion of the election. To provide a safeguard against non-genuine candidates standing, the public funding would only be made available to candidates who secure 5% of the vote. This ensures the candidate assumes the financial risk, rather than the community doing so. The maximum amount of money able to be expended would be directly related to the number of enrolled electors in a Division (or Local Government Area where there are no Divisions or the person is a Mayoral candidate) - i.e. a set rate of money per elector. All candidates would be required to provide evidence of expenditure. Unaccounted for or unspent funds would be repaid, as would funds made available to candidates who fail to

achieve 5% of voter support. Non-repayment would deem a candidate ineligible to stand at future elections.

Whereas one point of view about limiting election expenditure is that the incumbent Councillor has an advantage over new candidates, I believe that my suggestion would achieve the closest situation to a 'level playing field' and would discourage overly wasteful expenditure on campaign material. It also provides no significant advantage to candidates of political parties.

And whereas public funding might be criticised, it offers (subject to other provisions I have outlined herein) a very expedient and efficient and uncomplicated means to achieving the election of Councillors who are in no way tainted by real or perceived conflicts arising from their sources of funding, or who must (or must not) declare conflicts of interest, and must (or must not) submit certain details about their donors by a certain time. It is a small price to pay for the significant peace of mind of the community - and the Councillors - that can eventuate.

Public funding clearly avoids the circumstances that prevailed at the 2004 Tweed Shire election, wherein funding from development interests entirely dominated the outcome, and provided an opportunity for the public interest to be undermined.

(It needs to be said, I believe, that the predominant 'interest group' in a local government area might not necessarily be that related to property development. In some areas, for example, a mining industry might be prominent, or in another a section of rural industries such as cane growing. Each interest group does, however, have the capacity in an area to 'buy itself votes on the Council'.)

Based on my experience and my assessment of Council election campaigns I believe that the level of funding for Council candidates does not need to be high. To achieve a reasonable level of exposure and understanding of a candidate's policies and background, a candidate should only require something like two leaflets distributed throughout his or her Division or area, 'How to Vote' cards (although there is strong merit in doing away with How to Vote cards at election booths and, instead, allowing the placement of a single sheet per candidate within the voting booth), and possibly a simple website. In areas such as Gold Coast City Divisions a sum of \$20,000 would be more than adequate. This equates to just over \$1 per enrolled elector. A typical quadrennial election at a Divisional level would involve three or four candidates. The cost of around \$5 per elector every four years seems a small price to pay. It might also encourage a greater proportion of electors actually voting - *"I'm paying so I'll have my say"*.

Additional legislative reform I suggest should be adopted includes:

- the need for the public record of Council meetings to highlight any changes to officer's recommendations that are made at the committee or Council level, and the stated reasons for those changes;
- prohibition of the publication or distribution of election material that is not endorsed and approved by a candidate;
- enabling the Minister to sack individual councillors on specific grounds;
- prohibition of sacked Councillors from seeking re-election
- broadening the application of provisions that relate to 'misleading voters'. The current scenario, as established by legal precedent, is much too restrictive. There is ample evidence that many voters throughout the Gold Coast would have voted differently if they knew the truth about the campaign funding of candidates. This is a significant issue that strikes at the heart of democratic principles. The provisions for misleading voters need to be widened to encompass something along the lines of the South Australian Local Government (Elections) Act.
- more stringent penalties for offences.

I do not support the notion that Councillors should not take part in the decision making for development proposals. This suggestion places emphasis on the development proposal without recognising that Councillors also take part in decisions such as formulating or amending the Planning Scheme of a local government, or the implementation of Planning Scheme Policies such as Infrastructure Charges. If potential 'influence' or conflict of interest is to be avoided by removing Councillors from the assessment of development proposals then they must also be removed from making decisions on other matters such as I have mentioned.

Clearly it is not desirable for elected representatives of the people to be removed from making such decisions. It is my opinion that development proposals generate the greatest level of public conjecture and debate at the local government level, thereby reinforcing the need for local representatives to be the decision makers.

Clearly, my suggestion to remove the potential for conflict of interest, vis-à-vis public funding of candidates, ensures that the representatives of the people actually do represent them.

Please do not hesitate to contact me for any clarification or expansion on these matters.

Yours Sincerely

Peter Young
Councillor for Division 5
City of Gold Coast