

REDCLIFFE



CITY COUNCIL

SUBMISSION

CRIME AND MISCONDUCT COMMISSION

“the local government electoral process:
discussion paper”

As an outcome of a Councillor Workshop conducted on Tuesday 31 January 2006, the following comments are provided in relation to the Crime & Misconduct Commission's discussion paper "*the local government electoral process*".

1.1 Unique disclosure provisions for local government

Should the laws relating to the disclosure of election gifts for candidates at local government elections differ from those applying to candidates at state government elections?

This Council is of the opinion that whilst the current disclosure provisions are not adequate as referred to later in the submission, such provisions should be the same as those that apply to State and Federal election candidates.

1.2 False or misleading statements of candidates

(a) Is the existing law prohibiting false statements of fact about the personal character or conduct of a candidate adequate to safeguard the integrity of local government elections?

No. This Council considers that the current provisions are inadequate and do not protect the personal character and reputation of candidates who may be subject to vexatious, frivolous or mischievous statements during the election campaign.

(b) If the current law is inadequate, what changes should be made?

It is suggested that due to the serious nature of this activity that the current legislation should be changed to increase the penalties, even to the point where ouster provisions be invoked.

Also, that provisions be strengthened to make it clear that they apply to statements made by candidates about themselves or others; therefore, the penalty should apply not only to the subject candidate to whom the statements are attributed but also to the person authorising such election material.

It is considered that the enforcement of this legislation should be the responsibility of an appropriately resourced and structured organisation or agency such as the CMC or other external agencies and not the Returning Officer.

1.3 Electoral bribery

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

It is suggested that the legislation should be amended such that legitimate funding or discussion regarding funding are not caught by legislation.

1.4 Periods in which election gifts have to be disclosed

(a) Should the period in which candidates must disclose election gifts be changed?

Yes. It is suggested that there should be some parity between the disclosure period for candidates who are existing councillors and new candidates.

It is suggested that both current councillors who are standing for election, and new candidates should have to disclose any funds received in support of their campaigns for a period of 12 months prior to an election.

It is suggested that in the case of existing councillors any funds received prior to 12 months out from an election would probably be caught by other legislation and subject to CMC investigations.

(b) Should candidates have to disclose election gifts received at any time before an election?

It is suggested that the candidates be required to advise the Returning Officer of any election gifts received and are promised, 14 days before the Election Day to enable the Returning Officer to publish the detail of election funding received or promised to each candidate in a newspaper circulating in the local government area.

(c) Should the period after an election in which candidates have to disclose gifts be increased?

It is suggested that 30 June in the year of the election (provided the election was conducted in March) or a 90 day period following any by-election, be applicable for the final date for the completion of reporting period for receipt of election gifts.

This Council suggests that the \$150 nomination fee be increased; however, it is mindful of the need to ensure the nomination fee is at a level that does not preclude anyone from having the ability to nominate, and therefore a nominal increase was suggested to an amount of \$200-\$300 being appropriate.

It was also suggested that the nomination fee should be non-refundable and funds received should be utilised towards the cost of the election, including the publication of the information required in relation to election gifts prior to the election.

1.5 Fundraising

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

In relation to fundraising, it is recognised that at times there is difficulty in separately identifying contributors to a fundraising event; however, this should not leave the way open for abuse of the legislation and the opportunity for people to hide donations from parties that they think may reflect badly on their campaign chances.

It was further considered that the Canadian example provides a practical guideline for strengthening of legislation into fundraising activities associated with campaigns in that it assesses the fair price for goods or services received and compares this with the 'ticket' price with the difference being a donation/gift.

However, it is also recognised that this suggestion may not adequately address “bogus” auctions and whilst this is recognised as a potential flaw in the legislation, it is suggested that if fair market values are applied, there may be the opportunity to identify “donations/gifts”.

1.6 Lodgement date for returns

(a) Before an election, should candidates have to disclose elections gifts they have received?

See comments under 1.4 (c) above.

(b) Should candidates be prohibited from accepting election gifts for a period after the disclosure deadline. If so, for how long?

As suggested in 1.4 above, there would need to be two deadlines, obviously not all donations or promises of donations will have been received by the interim report referred to above.

It is suggested that the majority of these should then be caught by the 30 June or 90 days after election day, and any further gifts received after these dates again considered to be subject to investigation by the CMC or similar as they would appear more to be an inducement for a public official to act a certain way as opposed to a contribution to a campaign.

(c) If candidates are prohibited from accepting election gifts for a period after the disclosure deadline, what other provisions should be introduced to prevent abuse of this prohibition?

Refer to comments above.

1.7 Groups of candidates

(a) Should any person who is not a member of candidate’s campaign committee be allowed to solicit funds on behalf of the candidate?

No. The only persons who should be allowed to solicit funds on behalf of a candidate or group of candidates are persons duly authorised by the candidate or each and every member of a group of candidates.

(b) Should candidates who share election funding be required to be part of an identifiable group of candidates?

Yes. This election funding has been sourced from parties other than the candidates themselves and has been provided because of a like-thinking or common intent of that group of candidates.

However, it is also noted that there could be a situation where candidates pool their own funding merely for resourcing purposes and not because of any significant commonality in policy and in such cases it would be misleading for them to be identified as a group.

(c) Should there be a registration requirement for groups of candidates?

Yes. There should be registration of any groups standing at local government elections.

(d) Does the definition of a 'group of candidates' require amendment?

No. It is suggested that the current legislation adequately describes a group.

1.8 Donations via solicitors'/accountants' trust accounts

Should there be specific reference to solicitors' /accountants' trust accounts in the LGA? If so, in what form?

Yes. The Act should be amended to make it clear that solicitors and accountants "trust accounts" are not as per the Local Government Act definition.

1.9 Origin of candidates' donations

(a) Is there any good reason for allowing candidates to accept donations from unincorporated associations, trust funds or foundations that have sourced donations from individuals or companies?

The onus should be on candidates to be able to identify any funding that they have received towards their campaign, provided that these sources can be identified there should be no problem irrespective of the structure/legal standing of the source.

(b) Should candidates be allowed only to accept election gifts directly from the person making the gift?

No. Provided that the foregoing can be met ie that any source is identifiable by that candidate.

1.10 Anonymous donations

(a) Is the current penalty for accepting anonymous donations adequate?

No. Current level of penalty is considered inadequate and it is considered that an amount similar to that prescribed in the Western Australian legislation (\$5,000) should be applied.

(b) Should the acceptance of anonymous donations above the prescribed amount be an offence?

Yes. It should be maintained as an offence. If legislation was softened it would be anticipated that there may well be a rush of anonymous donations to campaign funds throughout the State.

1.11 Third parties and parallel campaigns

(a) Should a third party have to disclose its expenditure as well as donations received?

Yes. The legislation should be amended for third parties to disclose expenditure even though they may not have been provided to the candidate, it may still have been for the benefit of the candidate or candidates.

It is recognised that whilst the objectives of this suggestion are “noble” the impracticalities are also recognised with significant extra burden being placed on the Returning Officer and election staff in monitoring any form of third party support.

It is suggested that the application of such proposed legislation should only be placed on the Returning Officer where it has been brought to his attention by a written advice or some other reasonable trigger.

(b) Should the \$1000 threshold above which donations have to be declared be lowered?

It is suggested that the threshold for third party donations should be the same that is applicable to election gifts and should be set at \$200.

(c) Should third parties have to lodge returns before an election?

The same provisions should apply to third parties as suggested above and application for candidates ie advice to Returning Officer two weeks prior or 30 June (if the election is conducted in March) or 90 days after election day (if a by-election).

(d) Should election advertising instigated by a third party that is not an individual have to identify the third party as well as the individual who authorised the advertisements?

Yes. Similar provisions should apply to such advertising as it does for any election material and the person authorising that material should be noted thereon.

1.12 Limits on election expenses

(a) Should there be limits on election expenditure in Queensland local government elections?

No. It is suggested that any such move may well limit people’s rights to exercise democratic freedom.

(b) If so, should first-time candidates be allowed to spend more than incumbent councillors, to take account of the incumbent’s natural advantage in relation to voter recognition?

No. Sometimes it should be recognised that the incumbent will not have a natural advantage, it may be a disadvantage as the community will be aware of actions and policies, and an incumbent may need to spend more than a new candidate to dispel electorate concerns about their policies or direction.

Also it would be undemocratic to allow different levels of expenditure for candidates thus giving the perception of favouring some candidates over others.

(c) If there were to be limits on election expenditure, how would a candidate's expenditure be audited to ensure compliance?

As indicated above, it is suggested that there be no limits on expenditure.

1.13 Loans to candidates

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

Yes. It is suggested that if a candidate was to receive a loan from a "supporter" to enable that candidate to conduct a campaign, such a loan should be disclosed to the electorate as it is not dissimilar to an election gift and it would be unclear as to what repayment terms, interest rates, etc, were applicable. This legislation should not include loans obtained by candidates from bona fide financial institutions in arm-lengths transactions.

1.14 Enforcement

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

It is suggested that the current provisions be tightened to make enforcement simpler and to ensure that there is greater incentive for all candidates to lodge the necessary returns.

1.15 Penalties

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

It is considered the current penalties in relation to election returns is inappropriate and the amount should be increased as follows:

- failure to lodge a return - \$5,000
- false or misleading information in return - \$10,000

1.16 Conflicts of interest

(a) Are the current provisions of the LGA in relation to conflicts of interest on the part of councillors sufficient? If not, what improvements should be made?

Yes. It will always be difficult to prove a conflict of interest. It is considered that the current provisions are adequate.

(b) Should councillors be prohibited from participating in council matters that involve a person who gave an election gift to the councillor?

Yes. If an election gift is received from that party it would be perceived, and rightly so, that there would be a conflict of interest in voting on that matter.

(c) Should failure by a councillor to appropriately resolve a conflict of interest be an offence under the LGA?

Theoretically yes; however, again difficult in proving conflict of interest.

1.17 Donations through political parties

Should local government candidates endorsed by registered political parties have to disclose election gifts received by the candidate's campaign committee, and donations received by the party's central office where the candidate is aware that the donation was made for the candidate's benefit?

Yes. It is considered that all candidates should be treated equally, their full disclosure of election gifts should be made whether nominated as individual or by a registered political party.