Phone:

SUBMISSION ON COUNCILLOR COMPLAINT REVIEW

The opportunity to comment on this matter is welcome. I agree entirely with the Independent Councillor Complaints Review Panel that the current system is cumbersome and complex. I contend further that the present system does nothing to raise the standard of councillors' behaviour. I have had the privilege of serving as a councillor and mayor in a small rural shire in another state where all councillors were motivated by no other desire but to serve their community for the reward of a very modest honorarium. Misconduct was never once an issue. In contrast I have had the displeasure to observe overpaid professional councillors performing a mediocre service, with, it would appear, loyalties placed elsewhere, particularly in the larger Queensland councils.

This submission covers the following matters:

- Changing the culture of local government so that the opportunity and temptation for councillors to do illegal or unethical things is reduced. This is believed to be the key to reducing complaints.
- A redefinition of the local government councillor offences based more on principles or guidelines of acceptable conduct rather than a codified system.
- Recommendations on the procedure for investigating complaints against councillors.
- Some recommendations on punishments for offending councillors.

The culture of local government

Although these comments may be outside the scope of this enquiry, it is quite obvious that if there is less opportunity and less temptations; and if the risk of apprehension is high; then conduct will be more compliant, and there will be far less complaints to be dealt with. For example, if the Mayor is elected annually from among the councillors then there is little point in corrupting this official whose tenure is potentially so short. Some other steps which could positively improve the ambience of local government are listed below:

- Make a severe reduction in the criteria for holding closed meetings and an insistence that all decisions made in secret are fully reported back to and adopted by an open meeting. An environment of secrecy is an environment of deals and favours. Exposure to public and media scrutiny is a proven method of curbing questionable behaviour.
- Likewise, some councils have adopted the practise of "workshopping" important decisions. These workshops are usually held in secret, outside the protection of the Local Government Act, so that normal standards of disclosure are not mandatory. A slippery path indeed. This should be stamped out.
- A general reduction in the size of councils and their budgets. Big councils equal big dollars equal big temptations. In big councils more and more is

delegated to the staff with less and less scrutiny by councillors. There are many opportunities for councillors and others to establish unhealthy relationships with staff members who are making major delegated decisions.

- An improvement in the internal audit functions of councils. An audit committee should be an integral part of the committee system, and councillors should scrutinise a significant portion of payments made. The involvement of councillors in audit establishes an environment of husbanding resources and guarding against fraud.
- Greater involvement of the public in managing certain council functions and council assets. For example a council owned sporting complex could be managed on behalf of the council by a committee of citizens with, say, one councillor and one staff member included. The presence of "outsiders" tends to discourage inappropriate dealings.
- One of the council committees should be tasked with reviewing every complaint.
- The appointment of the CEO and the CEO's annual performance should be carried out by the whole council, not the mayor. The opportunities for a corrupt mayor to bully the CEO [and through the CEO, the whole staff] are very clear. Likewise, if the mayor and CEO establish a cosy working relationship then there is every likelihood that the council will merely become a rubber stamp for the decisions made by the mayor and CEO.
- The system of election fund donations, third party declarations and councillors' interest declarations is a sham and a shambles. The opportunities to "buy" the support of a councillor are obvious, and the cost is trivial in comparison with the benefits to developers and others whose livelihoods depend upon council decisions. The donations must be declared in "real time" and there must be limits on election expenditure. Very low limits. Elsewhere donations by developers are illegal.
- I understand that police checks are not needed on councillor candidates.
- Better arrangements need to be put in place so that the public and the media is aware of the agenda and can read all of the reports one week before every meeting. Nothing prevents inappropriate conduct more than exposure to public scrutiny.
- In bygone days people became councillors as their civic duty, their contribution to their community. They were paid little more than out of pocket expenses, so councillors were not full-time professional politicians: they had a "real" job and were not dependent on their councillor salaries. For some reason, that class of councillor never seemed to be tempted to break the rules or to help "mates" with favourable council decisions.
- Planning decisions and relationships with developers are the major area of temptation and opportunity for corrupt activities by both councillors and staff. "Code assessment" and "negotiated approvals" are fruitful areas for

misconduct because both are done outside of public scrutiny. In some councils the council decides upon a certain level of developer contributions and subsequent to that decision the contributions are substantially reduced without reference back to councils. That too would seem to be a potential for temptation and opportunity.

- Incumbent councillors appear to have an unchallenged right to use ratepayer funded vehicles, stationary and offices during election campaigns and many make use of discounts available from council contractors and suppliers. Such temptations could be removed.
- Many substantial consultancies and contracts are awarded without tenders, because the councillors make that decision. There is an opportunity for deals and favours.
- The purchase and disposal of real estate, and speculation by the council is quite loose in Queensland. In NSW, for example, public land cannot be sold without a referendum of ratepayers. There are many allegations here of disposal of council land to "mates" or purchase of land from other mates without public tenders. A tightening of the rules will eliminate temptation and opportunity.
- I have on a number of occasions written to ask the Queensland Auditor General for an opinion as to whether a certain council expenditure was lawful, prudent or sound. The QAG, it seems, does not see itself as a watchdog overseeing council expenditures other than in a book-keeping sense. Perhaps if this office exercised greater scrutiny there might be a greater deterrent against improper behaviour and unwise financial decisions.
- There are a number of opportunities for misapplication of the rules for declaration of pecuniary interest, and so some councillors take advantage of the looseness of the rules. A recent example: Developer A makes a donation to Trust Fund B set up to obtain the re-election of a group of candidates. Trust Fund B makes a substantial donation to the campaign funds of mayoral candidate C. Mayoral candidate C makes a donation to the campaign funds of councillor candidate D. C and D are elected. An application from developer A comes before the council. C declares an interest while D does not. Confused?
- There are many other activities and aspects of Queensland local government which offer opportunities and temptations for improper conduct; activities and aspects that can be quite simply eliminated. In general, better conduct will follow if there are more opportunities for public and media scrutiny.

Offences

There is a tendency to list more and more offences, to try to forestall every type of bad behaviour before it occurs. A codified approach is not recommended because any behaviour which is not listed is by definition, legal. The Military overcomes this problem with a "catch all" offence: "Conduct to the prejudice of good order and military discipline". "Conduct" is defined to include failure to act and neglect when

good order and military discipline required the accused to do a certain duty. Such a broad offence allows Commanding Officers and Courts Martial, when trying cases, to exercise their military knowledge and experience. Such a broad offence requires a set of principles to assist in determining what is acceptable [or unacceptable] good order and military discipline. In the case of local government Sect 4 does set forth some principles, but not quite in the format that would be useful to a tribunal dealing with alleged offences. I read from the Panel's initial views that this approach could be favoured, and I support that approach.

Investigation of alleged offences

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Any investigation of a councillor by a mayor is 100% inappropriate. I assume that justification of those statements is not required. Two models are therefore possible:

- All investigation and determination of allegations could be carried out by the department, or
- Regional boards dealing with lesser offences and with lesser powers of punishment and able to refer as necessary to a state board which serves in a similar way to a higher court and as a court of appeal.

It is envisaged that each model will have three person boards: a legally qualified person to ensure that natural justice, the rules of evidence etc are observed; a person with extensive local government experience and a selected ratepayer.

As with the current system, the board must initially determine whether the complaint is genuine and in the public interest to be considered. They must also decide whether publicity of the allegations is desirable and whether the hearings should be public or in camera. The rules of procedure should emphasise the inquisitorial role rather than an adversarial or prosecution role. The boards will need to have the ability to engage the police, forensic accountants and others as necessary with the skills to investigate and to present evidence. Each level of adjudication will need to be established by legislation and the punishments available specified. The right of appeal must be preserved. The court system should remain as the third tier because with certain offences a term of imprisonment is the appropriate sentence. Such extreme punishment should be the prerogative of the courts. At present the Governor, on the advice of the minister may terminate a councillor's appointment. As councillors are elected by the people, that method of removal should remain. My observations and hearsay about the CMC [now CCC] give little confidence that it has any place in dealing with councillor allegations, so it is a possibility that the CCC could cease dealing with local government issues. It appears that it would run in parallel with any proposed system and cause confusion if it remained in the system.

Punishments

Some councillors may be thoroughly corrupt and know full well the risks and rewards they may encounter. The majority of erring councillors, particularly those in their first term will be ignorant or neglectful and although technically guilty of an offence, they have made no

personal profit or have immediately refunded what they have gained. These offenders will generally benefit from counselling and retraining. The investigation by one of the boards will be such an experience for most that they will be shiny clean for the rest of their local government service. The proposed boards will be composed of experienced, mature people who are well equipped to judge when a reprimand, counselling or re-training is appropriate. The boards need to decide if an accused councillor should be suspended during the investigation and whether the complaint should be made public. It is envisaged that the first tier boards will have the power to order a reprimand and/or attendance at specified training. If they judge that a harsher punishment is required then they would refer the case to the senior board where harsher punishments are available.
The second tier boards will need to be endowed with a graduated raft of punishments appropriate to varying offences and circumstances. If dismissal is recommended then the matter would be referred to the Minister. If imprisonment is contemplated then the department would be asked to bring charges in the courts. Suspension for a period is not an appropriate punishment as it deprives the councillor's ratepayers of representation.

Conclusion

I have recommended that the best cure for councillor misconduct is prevention i.e. reducing the opportunities and temptations by establishing an environment, an ambience in local government where such offences are not considered as a possibility. I recommend that this is best achieved by shining the light of public and media scrutiny on every aspect of council activity.
I have recommended that councillor offences be defined loosely [rather than exhaustively codified] in terms of principles of acceptable and unacceptable conduct.
I have recommended the establishment of two tiers of Local Government Boards for investigating and adjudicating complaints against councillors; with the courts as a third tier for more serious offences.

I wish the Panel success in its work, and thank you for considering my submission,

Ken Park