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**REVIEW OF THE LOCAL  
GOVERNMENT ACT 1993**

***Issues Paper Question Response***

Submission of:

**The Environmental Defenders Office (Qld)  
Inc. and**

**The Environmental Defenders Office of  
Northern Queensland Inc.**

October 2007

Lodged on behalf of both Queensland offices by Jo Bragg, Principal Solicitor of EDO Qld and Adam Millar, Principal Solicitor of EDO NQ

EDO Qld and EDO NQ are independent public interest environmental legal offices.

## **Executive Summary**

This submission responds to the relevant Questions contained in the Issues Papers 1-8 in the *Local Government Act 1993* ('the Act') Review process.

We welcome the comprehensive Local Government Reform Program which represents a statewide restructure of Queensland's local government system. We are pleased that this reform aims to provide a number of key improvements.

However, we stress the need for legislative changes for increased transparency and accountability, the consideration of environmental impacts and climate change in all (council) decisions, public enforcement of local laws and breaches of the Act, strict adherence to penalties and Codes of Conduct, caps on electoral spending by candidates and parties and closer scrutiny of local government elections.

We are also very concerned about the Crime and Misconduct investigations of the Gold Coast Mayor Ron Clark and Councillor David Power and David Power's Court hearing and the relations that were disclosed. We do not agree that developers or business interests associated with commercial operations regulated by Council ought to be able to contribute to electoral campaigns at all. This runs counter to the idea of independent decision-making by our elected representatives.

In this submission, we urge that you consider a number of proposals that are necessary in improving upon the current system. Legislative amendments are required to achieve consistency and certainty and these are outlined in this submission.

## **Response to Issues Paper 1: Structures and Functions of local governments**

*Question 1.1 What do you consider the purpose of the Queensland system of local government to be?*

### **RESPONSE**

We agree with the Objects of the Act contained in Section 2, endorsing: "an effective, efficient and accountable system of local government";

*Question 1.2 How should the system differ under new local government legislation from the present?*

### **RESPONSE**

Under new local government legislation:

- The system should be more open and accountable so ordinary citizens have a fairer chance to influence and judge councillors.

We applaud the amendments to the *Local Government Act* made by the *Local Government Amendment Bill 2006 (now passed)* to improve transparency and accountability in local government elections. We note that the Bill includes several suggestions that EDO Qld previously made to the Department regarding local government reform in March 2006.

- The system should ensure the best possible public access to information, by making information available on the internet free of charge as well as in hardcopy at Council offices.

Currently a person must request access to the register of councillors' interests or register of electoral gifts in writing by letter to the CEO, and attend Council offices in person to inspect the registers. The register of councillors' relations' interests is not open to the public at all. Access to the register of interests of the CEO (and their relations), senior executives and other employees of Council (as decided by Council) is also not available to the public. Section 1139(2) of the *Local Government Act* should be amended to require every local government to keep a register of interests of Council employees in the development assessment team. That register, along with the register of the CEO's interests, should be accessible to the public in hardcopy on verbal request and online - on the Department's website where a council does not have its own website.

We note the *Local Government Amendment Bill 2006 (now Act)* proposes to make information about gifts received, hospitality benefits received and memberships of organisations mandatory inclusions on the councillors' register of interests which must be made available on verbal request at the Council office or, if a Council has a website, displayed as soon as practicable after it is received on that website. These are excellent improvements but should be extended so that the entire contents of the councillors' register of interests plus the information listed below are available both by verbal request at Council's office and online through a simple search by any member of the public:

1. whether a person or a company has donated funds to a particular councillor or party and how much;
  2. sources and quantities of funds donated or provided to a councillor or party;
  3. the declared personal financial interests of any councillor or associated person;
  4. when any councillor has declared a "material personal interest" or a "conflict of interest" and if that councillor voted on a matter before council; and
  5. on a matter before council, how councillors voted and who declared a "material personal interest" and a "conflict of interest".
- The system should make provision for public enforcement of local laws and breaches of the *Local Government Act*.

There is currently no provision for public enforcement of breaches of a local law or of the *Local Government Act*. Many modern pieces of legislation enable the community to seek civil remedies such as an enforcement order to stop or remedy a breach of legislation, often in an own-costs jurisdiction like the Planning and Environment Court. Public enforcement rights promote accountable government and ensure access to justice by the community. There is no evidence of a floodgate of public enforcement applications flowing from the inclusion of such rights – indeed they have been used sparingly, though effectively, to date in Queensland.

Frequently Councils do not have the resources to ensure that a breach of a local law is adequately detected and penalised, either by imposition of a fine or by prosecution.

This is especially so in respect of smaller, ‘poorer’ Councils (such as those in regional and remote centres in Queensland), which more often than not results in local residents being able to do little more than stand back and watch breaches of local laws occur (and continue) with little or no responsive enforcement action taken.

Breaches of local laws and any major breach of the *Local Government Act* should be able to be enforced by any person via enforcement orders in the Planning and Environment Court.

- The system should consider environmental impacts and climate change liability in all council decisions.

Local government used to have a broad ‘deliberative obligation’ to consider the adverse environmental effects of its decisions in the *Local Government (Planning and Environment) Act 1990*. However that provision was not rolled into the *Integrated Planning Act 1997*, on the (wrong) basis that IPA dealt with environmental issues adequately and the provision was not needed. EDO Qld, EDONQ and many of our respective community clients would like to see this provision restored, and placed in the *Local Government Act*, so that environmental impacts of every council decision must be considered, and the detail and extent of that consideration included in Council minutes. This should include the consideration of the climate change impacts (and Council liability for such impacts<sup>1</sup>) of all decisions, including decisions to fund particular projects, or approve development applications or amendments to the planning scheme.

This proposal could easily be incorporated into the *Local Government Act*, and would broadly complement proposed new section 461A of the Act which requires councils to provide a statement of reasons if they fail to adopt the recommendation of an officer/consultant and the decision is inconsistent with policy or previous practice. EDO Qld and EDONQ strongly support that proposed amendment, as contentious local government decisions, including those which have the potential to compromise the environment, will have to be fully explained – facilitating greater government transparency and providing aggrieved persons with a clear starting point if they wish to take further action in relation to the decision.

***Question 1.4 The LGA review is informed by the following principles:***

- ***Effective representation for all citizens***
- ***Autonomy of local governments***
- ***Relevance of legislation for modern government***
- ***Diversity of local government***
- ***A preference for regional state service delivery***
- ***Strong accountability and transparency***
- ***Effective collaboration between State and local governments***
- ***Modern legislation that is simpler to use***

***Are there other principles that should be included in this list?***

**RESPONSE**

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<sup>1</sup> For more information on Council liability regarding decisions which contribute to climate change see Dr Philippa England’s paper “Climate Change: What Local Governments are Responsible for” at [www.griffith.edu.au/centre/urp/urp\\_publications/Issues\\_Papers/URP\\_IP6\\_ENGLAND\\_Climate\\_LocGovt\\_final.pdf](http://www.griffith.edu.au/centre/urp/urp_publications/Issues_Papers/URP_IP6_ENGLAND_Climate_LocGovt_final.pdf).

A comprehensive review of the LGA should also be informed by environmental considerations and the increasingly pertinent issue of climate change.

## **Response to Issues Paper 2: Local Government and its place in the wider framework of government**

### ***Question 3.1 How can the new legislation be designed to assist community participation?***

#### **RESPONSE**

- **Public enforcement of local laws and breaches of the *Local Government Act***

There is currently no provision for public enforcement of breaches of a local law or of the *Local Government Act*. Many modern pieces of legislation enable the community to seek civil remedies such as an enforcement order to stop or remedy a breach of legislation, often in an own-costs jurisdiction like the Planning and Environment Court. Public enforcement rights promote accountable government and ensure access to justice by the community. There is no evidence of a floodgate of public enforcement applications flowing from the inclusion of such rights – indeed they have been used sparingly, though effectively, to date in Queensland.

Frequently Councils do not have the resources to ensure that a breach of a local law is adequately detected and penalised, either by imposition of a fine or by prosecution.

Breaches of local laws and any major breach of the *Local Government Act* should be able to be enforced by any person via enforcement orders in the Planning and Environment Court.

## **Response to Issues Paper 3: Roles and powers of councillors and officers**

### ***Question 1.1 How can these roles be made clearer:***

- a) Mayors?***
- b) Councillors?***
- c) Officers?***
- d) The differences between councillors and officers?***

#### **RESPONSE**

In order to clarify these roles to the public, the *Local Government Act* should ensure the best possible public access to information such as the register of councillors' interests or register of electoral gifts.

Access to the register of interests of the CEO (and their relations), senior executives and other employees of Council (as decided by Council) is also not available to the public. Section 1139(2) of the *Local Government Act* should be amended to require every local government to keep a register of interests of Council employees in the development assessment team. That register, along with the register of the CEO's interests, should be accessible to the public in hardcopy on verbal request and online - on the Department's website where a council does not have its own website.

***Question 2.2 How can legislation address concerns that councillor understanding of and adherence to the standards of behaviour of the Code and LGA may not be as required?***

**RESPONSE**

The introduction of a Councillors' Code of Conduct, including the penalties for breach of the Code, will address such concerns and was welcomed by EDO Qld and EDONQ.

However, we have had reports that the Code is being inappropriately used by some councillors to maliciously target other councillors, rather than being effectively targeted at genuine wrongdoers. This should be examined in the review of the Act.

We support the proposed amendments to the *Local Government Act* by the *Local Government Amendment Bill 2006* (now Act) to establish a code of conduct for candidates, who may sign a publicly viewable register stating that they will comply with the code. However, compliance with the code should be mandatory and enforced through legislation, to ensure a greater level of compliance and strengthen public trust.

***Question 2.3 If necessary, how can the review panel process, and consequences of breaches be improved?***

**RESPONSE**

EDO Qld and EDONQ strongly support increased penalties and prosecution of those seeking to deceive the electorate. Those convicted of electoral fraud should be removed from office and prevented from standing for election at any time in the future. The holding of public office (such as is the case for councilors) is a privilege which should be respected, not least of all by those holding such office. Electoral fraud by those holding public office is an act which disrespects and taints positions of public office in such a manner and to such a degree that those responsible for it should be prevented from being blessed with that privilege again at any time in the future.

We support the proposed amendment to section 385 of the *Local Government Act* by the *Local Government Amendment Bill 2006* to create a penalty for asking for or receiving a bribe, and the increase in penalty for giving a bribe, and the amendments which specify that designated electoral offences are indictable criminal offences to be dealt with under the Criminal Code.

***Question 2.4 How can the conflicts of the role of the CEO outlined above be prevented?***

***Question 2.5 How should councillor compliance with the legislation be enforced? What kinds of penalties should apply for breaches of the LGA?***

**RESPONSE**

In enforcing councillor compliance with legislation, provision should be made for public enforcement. There is currently no provision for public enforcement of breaches of a local law

or of the *Local Government Act*. Many modern pieces of legislation enable the community to seek civil remedies such as an enforcement order to stop or remedy a breach of legislation, often in an own-costs jurisdiction like the Planning and Environment Court. Public enforcement rights promote accountable government and ensure access to justice by the community. There is no evidence of a floodgate of public enforcement applications flowing from the inclusion of such rights – indeed they have been used sparingly, though effectively, to date in Queensland.

Frequently Councils do not have the resources to ensure that a breach of a local law is adequately detected and penalised, either by imposition of a fine or by prosecution.

Breaches of local laws and any major breach of the *Local Government Act* should be able to be enforced by any person via enforcement orders in the Planning and Environment Court.

## **Response to Issues Paper 4: Local Government Elections**

### ***Question 1.1 How should the conduct and administration of local government elections be improved?***

#### **RESPONSE**

- **Disclosure of election advertising expenditure**

EDO Qld and EDNQ recommend the imposition of new obligations on publishers and advertisers to lodge returns identifying amounts paid by councillors or parties for political advertisements. Publishers and advertisers should also provide details of any free advertising provided in their publications to candidates. This enables cross checking on whether the amounts declared by councillors as donated appear to be correct.

These proposals would complement amendments by the *Local Government Amendment Bill 2006* (now Act)

- new section 430A, which requires third parties that incur expenditure (including radio or television advertising and gifts) of more than \$200 for a political purpose during the disclosure period to provide a return to the CEO within 15 weeks that states the total value and purpose of the expenditure and when it was incurred; and
- new section 431A, which requires donors who make a gift over the disclosure amount in relation to the election to a candidate during the disclosure period to provide a return to the CEO within 15 weeks.

- **Increased penalties for electoral fraud or non-disclosure**

EDO Qld and EDNQ strongly support increased penalties and prosecution of those seeking to deceive the electorate about the source of their funding or backers. Those convicted of electoral fraud should be removed from office and prevented from standing for election in the future. The holding of public office (such as is the case for councilors) is a privilege which should be respected, not least of all by those holding such office. Electoral fraud by those holding public office is an act which disrespects and taints positions of public office in such a manner and to such a degree that those responsible for it should be prevented from being blessed with that privilege again at any time in the future.

We support the amendment to section 385 of the *Local Government Act* by the *Local Government Amendment Bill 2006* (now Act) to create a penalty for asking for or receiving a bribe, and the increase in penalty for giving a bribe, and the amendments

which specify that designated electoral offences are indictable criminal offences to be dealt with under the Criminal Code.

***Question 2.4 What changes should be made to local government legislative provisions to improve voting arrangements and ensure that they are flexible enough to provide for the next decade?***

#### **RESPONSE**

- **Proportional representation voting system for local government elections**

Proportional representation voting in local government elections would address the concerns of many of our clients, who complain that pro-development councils ignore their legitimate environmental concerns simply because they are a small section of the community. Mandating proportional representation would democratically ensure that all the voices of the community are heard by enabling the representatives they vote for to be elected to represent them.

***Question 5.3 What, if any, maximum limits should be imposed on electoral expenditure by candidates and what restrictions should be applied and why?***

#### **RESPONSE**

- **Capping election campaign expenditure**

EDO Qld and EDONQ recommend a modest but enforceable limit on the amount that a candidate and party may spend on an election campaign. With such a cap, there would be no incentive for candidates to cultivate rich donors, such as developers, to surpass the coffers of their opponents. Without a cap, candidates inevitably seek funds from vested interest groups to fund expensive media advertising to ensure their electoral success.

We are also very concerned about the Crime and Misconduct investigations of the Gold Coast Mayor Ron Clark and Councillor David Power and David Power's Court hearing and the relations that were disclosed. We do not agree that developers or business interests associated with commercial operations regulated by Council ought to be able to contribute to electoral campaigns at all. This runs counter to the idea of independent decision-making by our elected representatives.

### **Response to Issues Paper 5: Local Laws**

***Question 3.2 How could legislation assist local governments to improve the quality and enforceability of local laws, so that complaints from the public are avoided?***

#### **RESPONSE**

- **Public enforcement of local laws and breaches of the *Local Government Act***

There is currently no provision for public enforcement of breaches of a local law or of the *Local Government Act*. Many modern pieces of legislation enable the community to seek civil

remedies such as an enforcement order to stop or remedy a breach of legislation, often in an own-costs jurisdiction like the Planning and Environment Court. Public enforcement rights promote accountable government and ensure access to justice by the community. There is no evidence of a floodgate of public enforcement applications flowing from the inclusion of such rights – indeed they have been used sparingly, though effectively, to date in Queensland.

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## **Response to Issues Paper 6: Assets, financial and infrastructure management**

NO RESPONSES

## **Response to Issues Paper 7: Performance reporting and compliance**

### ***Question 1.1 How can performance reporting be improved, rationalised and made more meaningful?***

RESPONSE

- **Conflict of interest defined narrowly**

Conflict of interest is still an ongoing problem and many of our clients are concerned that the legal definition of conflict of interest is too narrow. We support proposed new section 246A (to be inserted by the *Local Government Amendment Bill 2006* once passed) which gives some further clarity to the definition of conflict of interest by stating it can be pecuniary or non-pecuniary including having received a donation to be used for electoral purposes, and arises when there is a conflict between the councillor’s private interest and the honest performance of the councillor’s role of serving the public interest, not including a conflict arising out of a material personal interest the councillor has in the issue (which must already be disclosed). We support that proposed provision’s requirement that the councillor must declare the conflict of interest to the meeting and that the minutes must reflect the nature of the conflict, how the councillor dealt with the conflict and how or if the councillor voted on the issue.

### ***Question 5.1 What are the most effective ways to enforce the provisions of new legislation?***

RESPONSE

- **Public enforcement of local laws and breaches of the *Local Government Act***

For effective enforcement of new legislation, provision should be made for public enforcement. Many modern pieces of legislation enable the community to seek civil remedies such as an enforcement order to stop or remedy a breach of legislation, often in an own-costs jurisdiction like the Planning and Environment Court. Public enforcement rights promote accountable government and ensure access to justice by the community. There is no evidence of a floodgate of public enforcement applications flowing from the inclusion of such rights – indeed they have been used sparingly, though effectively, to date in Queensland.

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Breaches of local laws and any major breach of the *Local Government Act* should be able to be enforced by any person via enforcement orders in the Planning and Environment Court.

In addition, the State needs to ensure that sufficient resources are set aside for the State to be able to take action (investigation, enforcement etc.) so that the burden of enforcement and compliance is not one borne solely by the relevant local government and/or members of relevant local government electorate.

### ***Question 6.3 Are there other ways accountability in local government could be enforced?***

#### **RESPONSE**

- **Openness and accountability - public access to information**

The *Local Government Act* should ensure the best possible public access to information, by making information available on the internet free of charge as well as in hardcopy at Council offices.

Currently a person must request access to the register of councillors’ interests or register of electoral gifts in writing by letter to the CEO, and attend Council offices in person to inspect the registers. The register of councillors’ relations’ interests is not open to the public at all. Access to the register of interests of the CEO (and their relations), senior executives and other employees of Council (as decided by Council) is also not available to the public. Section 1139(2) of the *Local Government Act* should be amended to require every local government to keep a register of interests of Council employees in the development assessment team. That register, along with the register of the CEO’s interests, should be accessible to the public in hardcopy on verbal request and online - on the Department’s website where a council does not have its own website.

### **Response to Issues Paper 8: Role of the department responsible for local government**

NO RESPONSES