

Crime and Corruption Commission

A corruption investigation into allegations of breaches of the Local Government Electoral Act 2011 during the 2016 Local Government elections (Operation Belcarra) and an examination of issues or practices that are relevant to the identification of actual or perceived corruption risks in relation to the conduct of candidates and third parties at local government elections, including issues or practices relating to groups of candidates, independence of candidates, election gifts and funding, declaring and dealing with conflicts of interest or material personal interests by councillors (the Inquiry).

The Chairperson, Mr Alan John MacSporran QC, is the Presiding Officer for the hearing and will be referred to hereinafter as the Commissioner.

PRACTICE GUIDELINE 1

Part A. Introductory matters

1. This document sets out general practice guidelines relating to the conduct of the Inquiry. It should be read in conjunction with the *Crime and Corruption Act 2001* ("the Act") and the Terms of Reference available on the Commission's website. Further practice guidelines, including particularly in respect of the procedure to be employed for the purposes of the Commission's public hearings, have also been published. This document and any other or future practice guidelines may be subject to variation, change or replacement at any time.

2. Notice of new or varied practice guidelines, and notices relating to the conduct of the Inquiry generally, will be provided via the Commission's website. The website will be updated regularly.

3. The Commission will commence public hearings on 18 April 2017, at which it is anticipated that:

- (a) the Commissioner will make general introductory remarks concerning the nature and scope of the Inquiry;
- (b) oral submissions may be sought in respect of any written applications for leave to appear and/or leave to be represented, which have not been resolved on the papers in accordance with Part D below;
- (c) Counsel Assisting will provide a summary of the evidence intended to be adduced and the organisation of future public sittings;
- (d) an indication will be given, to the extent possible at that stage, of intended future public sitting dates.

Part B. Communications with the Commission

4. To the greatest extent possible without unfairness to any person (meaning herein natural person or legal entity) affected by the work of the Commission, with the exceptions noted in paragraphs 6(a) and 7 below:

- (a) written communications from and to the Commission will occur only by email (unless other means are notified by the Commission) or, where the Commission provides general notice of procedural matters, via the Commission's website;

(b) witness statements including exhibits, other evidentiary documents, and submissions provided to the Commission by any person will be available to others only electronically by email or via the Commission's website as set out below.

5. For the purposes of paragraph 4(a) above, any person communicating with the Commission should do so initially by email to the attention of Secretary via Belcarra@ccc.qld.gov.au. The Commission will assume, unless another return email address is specified or subsequently notified to the Secretary, that all communications from the Commission to the person may be directed to the email address from which the person's communication is received.

6. All witness statements including exhibits, other intended evidentiary documents, and submissions provided to the Commission must be provided (unless otherwise specified by the Commission):

- (a) in hard-copy format, with one copy lodged; and
- (b) electronically, in full text-searchable, multi-page PDF format.

7. The Commission may make exceptions to the above protocols as it considers appropriate. Any person seeking an exception or assistance in meeting the protocols should notify the Secretary.

Part C. Submissions generally

8. In referring to "submissions", this Guideline distinguishes between documents setting out factual matters within any person's knowledge or belief (that is, evidence) and documents setting out arguments or assertions as to the conclusions the Commission should reach in relation to all or any part of the investigation.

9. In this regard, the Commission does not invite, and does not propose generally to receive, submissions on any matter relating to the Terms of Reference except as directed during the course of the Inquiry.

10. However, any person who considers that they have a sufficient knowledge of or interest in the subject matter of the Terms of Reference to be able to provide assistance to the Commission, by submissions, should seek leave to appear in accordance with the protocol below.

11. Any person who seeks to make submissions in respect of the subject matter of the Terms of Reference, but does not intend to seek leave to appear, should contact the Secretary to outline the subject matter of the proposed submissions. The Commission will then indicate to the person in due course whether the proposed submissions will be accepted.

Part D. Leave to appear and legal representation at public sittings

12. A person summonsed to attend and give evidence before the Commission may, if they choose and without any further grant of leave, be legally represented before the Commission while they are giving evidence. Otherwise, appearances and representation before the Commission will only be allowed by leave.

13. Leave to appear entitles a person to whom it is granted to participate in the proceedings of the Commission, subject to the Commissioner's control and to such extent as the Commissioner considers appropriate. Although this subject is addressed

in Practice Guideline No. 2, any person's leave to appear will be limited by reference to:

(a) a requirement that no evidence may be tendered or adduced in chief other than by Counsel Assisting, so that any such evidence which a person with leave to appear seeks to have admitted must be included in a witness statement provided by or on the person's behalf and provided in advance to the Secretary for the attention of Counsel Assisting;

(b) restrictions concerning the topic or topics on which the person (or their representative) may cross-examine any witness or witnesses, and make any submissions;

(c) restrictions on the ability of any person (or their representative) to make oral submissions.

14. Any person (or group of persons) wishing to be granted leave to appear should forward to the Secretary, as soon as possible after 21 March 2017 and in any event by 4pm on 7 April 2017, a written application of no more than four pages (double spacing) in length:

(a) identifying the person who seeks leave to appear;

(b) specifying the parts of the Terms of Reference in which the applicant is interested or in respect of which they consider that their interests may be materially affected by the Inquiry;

(c) explaining (by reference to the Terms of Reference) the basis on which it is said that the applicant's interests are sufficiently connected with or likely to be materially affected by the work of the Commission so as to require leave to appear;

(d) if it is proposed that a lawyer or other person will represent the applicant if leave is granted, naming the proposed representative (including, if applicable, counsel);

(e) providing an email address for correspondence, in accordance with paragraph 6 above.

15. Where an application for leave to appear is received in accordance with the above procedure, the Commissioner will by 4pm on 12 April 2017 either:

(a) decide the application on the papers and notify the person or nominated representative accordingly; or

(b) notify the person or nominated representative that they will be required to appear before the Commission at the initial public sitting on 18 April 2017, or a subsequent specified date, for further consideration of the application.

16. If any person wishes to seek leave to appear after 4pm on 7 April 2017, not having made written application in accordance with the above protocol, they or their proposed representative should contact the Secretary urgently to make arrangements for their application to be received and considered.

17. Any leave to appear or be legally represented before the Commission may be varied or withdrawn by the Commissioner or made subject to additional conditions at any time.

Part E. Summonses/requirement notices and witness statements generally

18. On and after 21 March 2017, the Commissioner will issue summonses requiring persons to attend and/or produce documents before the Commission.

19. Unless otherwise directed by the Commissioner, the primary evidence of witnesses before the Commission (whether summonsed or not) is intended to be given in the form of sworn testimony at the public hearing.

20. A witness may be directed by the Commissioner to give primary evidence (whether summonsed or not) in the form of a written statement. If directed by the Commissioner to provide a witness statement it:

(a) must be either in affidavit form or verified as statutory declarations under the *Oaths Act 1867*;

(b) must set out comprehensively, and so far as possible, in chronological order, the evidence which the witness can give in relation to each aspect of the Terms of Reference;

(c) must contain only statements of factual matters within the direct knowledge of the witness, unless (d) below applies;

(d) may contain statements of factual matters of which the witness has been informed, or believes, if the source of the information or basis for the belief is clearly identified in the witness statement;

(e) must exhibit (in chronological order) all documents or true copies of documents which relate to the evidence given by the witness or otherwise to the Terms of Reference which are in the witness' possession or control, or describe as precisely as possible any such documents which are not in the witness' possession or control and, in that case, state where the witness believes the document to be located;

(f) should be prepared by a witness' representative where leave to appear and be represented has been granted;

(g) where a witness has no legal representative, may be prepared by the witness with the assistance of staff of the Commission by arrangement between the witness and (initially) the Secretary.

21. Following the receipt of a witness' primary statement, Commission staff may request or require the witness to:

(a) attend an interview concerning the contents of the statement or any aspect of the Terms of Reference;

(b) provide a supplementary statement or statements in respect of any matter relating to the Terms of Reference.

22. In some instances, the Commission may require persons to attend to provide information to, and answer questions asked by, Counsel Assisting and/or Commission staff, concerning any matter relating to the Terms of Reference, before any witness statement has been prepared.

Part F. Publication and confidentiality generally

23. Subject to further practice guidelines, including in respect of the possible requirement for some hearings or parts thereof to be closed to the public, all hearings of the Commission will be publicly live-streamed via the Commission's website and transcripts of the hearings will be posted on the website for public access when available.

24. Subject to the protocols for confidentiality set out below, witness statements including exhibits, and other evidentiary documents including documents produced on summons, which are provided to the Commission will be accessible:

- (a) where the material has been lodged but has not yet been admitted into evidence, only to persons with leave from the Commissioner to have this access; and
- (b) once any witness statements and exhibits thereto have been admitted into evidence by the Commissioner at a public hearing, to the public at large via the Commission's website; and
- (c) in the case of evidentiary material which is admitted into evidence other than witness statements and exhibits thereto, usually only via the Commission's website (subject to the Commission's further consideration in light of the public importance and quantity of such material).

25. A person who wishes to apply for confidentiality (or non-publication) in relation to the fact of their provision of the material, or the whole or any part of the material:

- (a) should, if they consider it necessary to address confidentiality before provision of any material, contact the Secretary to discuss arrangements to proceed in that regard;
- (b) subject to alternative arrangements pursuant to (a) above, when the material is provided to the Commission, provide it under cover of a written notice stating:
 - (i) the part of the information or material in respect of which confidentiality is sought;
 - (ii) whether the confidentiality is sought in respect of the world at large or subject to acceptance of publication to some person or categories of persons; and
 - (iii) the grounds on which such confidentiality is asserted to be necessary and appropriate despite the public nature of the Inquiry;
- (c) again subject to alternative arrangements, organise the material provided in such a way as to indicate on its face where confidentiality is sought, for example by including the words "Proposed Confidential Material" in a witness statement prior to setting out that material, or on an exhibit cover-sheet or exhibit index referring to the material.

26. Where confidentiality is sought by any person pursuant to the paragraph immediately above, in relation to material provided to the Commission, the Commissioner will either:

- (a) decide the application on the papers and notify the person or nominated representative accordingly; or
- (b) notify the person or nominated representative they are required to appear before the Commission on a specified date for further consideration of the application, in which case the material or information in question will be kept confidential until (and in accordance with) the Commissioner's decision following that appearance.

27. Nothing in this practice guideline should be taken as limiting the Commissioner's powers, whether at the request of any person or on the Commissioner's own initiative, to treat any material or information as confidential and to take any steps in respect of the preservation of such confidentiality.

Alan John MacSporran QC

20 March 2017