



## CRIME AND CORRUPTION COMMISSION

### TRANSCRIPT OF INVESTIGATIVE HEARING

10 CONDUCTED AT LEVEL 2, NORTH TOWER, 515 ST PAULS TERRACE,  
FORTITUDE VALLEY WITH RESPECT TO

File No: CO-16-1664

HEARING NO: 17/0001

DAY 1 - TUESDAY 18 APRIL 2017  
(DURATION:2HRS 08MINS )

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#### LEGEND

PO Presiding Officer – ALAN MACSPORRAN QC  
CA Counsel Assisting – GLEN RICE QC  
30 HRO Hearing Room Orderly – JESSICA WINTERS  
W Witness – WALTER VAN DER MERWE  
LR Legal Representative – N/A

PO This is a hearing of the Crime and Corruption Commission conducted under section 176 of the *Crime and Corruption Act 2001*. Before I commence with the formalities of the hearing, there are some housekeeping matters I need to attend to.

10 In terms of evacuation procedures, in the unlikely event that the building fire alarm activates, we request that you remain seated and await instructions. If evacuation is required, please follow the directions of the fire wardens, who will be able to be identified by their red or yellow safety hat. You will be directed to the fire stairs outside the room and then to the evacuation points outside the building. If you have any mobility concerns, please identify those to the fire warden, and assistance will be provided to you. Signs outlining the evacuation procedures have been placed in the public gallery around you today.

The Commission has published a number of practice guidelines on the CCC website, and I will come to some of those in a moment.

20 In addition to these, I ask that you please observe the following rules, or the rules that were displayed as you walked in, but, in particular, can you please follow the direction of CCC staff and Queensland Police officers who are present.

Do not disturb or interrupt the hearing, and switch your mobile phones off or to silent or any electronic devices you have to silent, and refrain from moving around the room while the hearing is in progress.

30 Everyone should be aware that we are live streaming the proceedings today and everything that happens here will be recorded throughout the proceedings.

The Commission resolved on 20 March this year to hold public hearings in relation to Operation Belcarra, an investigation of allegations relating to the local government elections held in March last year for the Gold Coast City Council, the Ipswich City Council and the Moreton Bay Regional Council.

40 The hearing is conducted in the context of a corruption investigation, and, as Chairperson of the Commission, I will be presiding.

Mr Glen RICE QC has been appointed as Counsel Assisting the inquiry. I nominate as the hearing room orderly Ms Jessica WINTERS to administer an oath or affirmation, as the case may be, to any witness who appears at these hearings.

50 Pursuant to sections 5 and 5C of the *Recording of Evidence Act 1962*, I direct that any evidence to be given and any ruling, direction or other matter be recorded by recording equipment and that Kathy ROBERTSON and Traccee HUNTER will be the recorders for the purposes of today's hearing.

I draw your attention to practice guideline 1, which, as I mentioned, is published on our website. All witnesses in this public hearing may be legally represented while they are giving evidence without seeking further leave.

I would ask that once the witness has been called to the hearing, if you are legally representing that witness, you announce your appearance.

10

Could I also remind you, because it is being recorded and the transcribers have to take down everything you say, that when you do announce your appearance or whenever you wish to say something, you identify yourselves so the record can note who you are and the recorders will have no difficulty identifying who is speaking, because you will be speaking from different parts of the various Bar tables.

Counsel Assisting will then give a very short precis of the relevance of the witness's evidence, and the witness will then be sworn or make an affirmation, as the case may be.

20

For some witnesses, it will be necessary to consider whether a partial or blanket protection should be provided to the witness in terms of the privilege against self-incrimination. As you would all know, I am sure, witnesses who are called here are required to answer all questions asked of them, even if those answers might tend to incriminate the witness.

30

It seems to me that a sensible procedure to adopt in those circumstances will be for my giving a direction to all witnesses who are called here throughout the hearing that they can regard any evidence they give or documents or things produced on request to be regarded as having been given or produced on objection by the individual. That therefore brings them within the purview of section 197(5) of the Act, which, in effect, means that you are covered in a blanket way and whatever you say cannot be used against you in any proceedings after you give the evidence or produce the document.

To save time and to save you having to make a claim of privilege before you answer, you can be satisfied that I have compelled the answer and you therefore have the protection of the Act for everything you say or produce to the inquiry.

40

No evidence may be tendered or adduced in chief other than by Counsel Assisting and must be accompanied by a statement and provided in advance to the Secretary. If you wish to have some evidence led from a particular witness, you need to notify Counsel Assisting and produce the evidence you wish to lead. Counsel Assisting will, in the ordinary course, determine whether he wishes to lead that evidence. If he declines to lead it, you can make application to me directly and I will consider your application and submissions accompanying it.

50

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. So if we need you to make any submissions on any particular topic, you will be advised well in advance and you will be given a timetable for the provision of that material.

In relation to practice guideline 2, which deals with the conduct of public hearings, it is proposed that witnesses will give evidence on oath or affirmation and will be examined in the first instance by Counsel Assisting and then by their own legal representatives. Whether

there will be any cross-examination of any witness by a legal representative for another witness will be a matter for leave on a case-by-case basis. Should any cross-examination be permitted, the legal representative for that witness and then Counsel Assisting will be permitted to further examine the witness.

10 Each witness, as you know, is entitled to legal representation, and it is then a matter if the legal representative for that witness desires to be present for more than just the evidence of that witness. Anyone who has leave to appear can feel free to stay as long as you wish throughout the course of the entire inquiry, if you so desire.

In relation to practice guideline 3, I note that some legal representatives have been given leave to represent more than one witness on the condition that there is no known conflict of interest in representing both witnesses, and should one arise -- that is, a conflict -- the legal representative will immediately inform the Commission.

20 For those legal representatives who have already communicated with the Commission about leave to represent more than one witness and have been advised that it is approved, there is no other formal leave required during the hearing.

I would simply ask that if any of you are in that category -- and I know some of you are -- you be very conscious of the possibility of conflicts arising and try to deal with them in advance rather than let it get to a situation where it is after the event. That would be undesirable, in my view.

30 In terms of sitting hours, we propose to commence at 10 o'clock each day, sit through until about 11.30 or thereabouts, depending on what stage the evidence has reached, and have a short morning break of 15 or 20 minutes, and then the lunch break will be between 1 pm and 2 pm, and we propose to conclude the hearings each day at 4 o'clock. Those times might change marginally, but that is the general framework for the hearings proposed.

40 It is proposed that at the end of each day of proceedings, any exhibits tendered during the course of the proceedings will be published on the CCC website. Some exhibits have had personal information redacted.

If there are any other concerns about the publication of any of the proposed exhibits or parts thereof, the witness or their legal representative should make a submission before the end of the day in relation to that matter. So if you have any concerns about privacy issues or material you don't want published, I am prepared to hear any submissions you want to make about that. Otherwise, ordinarily each exhibit that is tendered will be placed on the website at the end of each day's proceedings

50 It is also proposed that a transcript of each day's proceedings will be available on the website by about 8 o'clock each evening after the hearing day.

Mr RICE?

CA Commissioner, the public hearings that we are embarking upon are being

held as part of a Crime and Corruption Commission investigation which is ongoing in nature. Information is still being obtained and examined. Therefore, some unforeseen information or circumstance may arise so that it may not always be possible to follow the procedure that I am about to mention. However, at the current stage, it is envisaged that between 20 and 25 witnesses will be called during the hearings. They are expected to be held between today and Friday and then to resume between 26 and 28 April.

10 Where possible, each witness has been provided an audio copy and transcript of his or her own interview which has previously been conducted with Commission officers.

PO Thank you, Mr RICE. Are there any preliminary matters before we get under way? Do you wish to tender the terms of reference? You should formally do that, I think.

CA Yes. I tender the terms of reference signed by you as Chairperson.

20 PO Thank you. I will make that Exhibit 1 in these proceedings.

Mr RICE, before you call the first witness, it might be helpful, certainly to me and to those present in the public gallery, if you were to make some sort of brief opening statement about the course the inquiry might take.

CA Yes, certainly.

30 Transparency and openness are widely and properly recognised as being paramount to the political process. Local government elections in Queensland are carried out as regulated by the *Local Government Electoral Act 2011*, supervised by the Electoral Commission of Queensland.

Under section 3, the purpose of that Act is to ensure the transparent conduct of elections of councillors.

40 Following the local government elections on 19 March 2016, the Crime and Corruption Commission received a number of complaints about the conduct of candidates for several councils. Unlike state and federal elections, the majority of candidates who contest local government elections run as independent candidates, that is to say, not endorsed by a political party. This is consistent with the general absence of formal party politics in Queensland local government, the exception to this being the Brisbane City Council.

50 The complaints were wide ranging but had a number of themes. In general terms, allegations were made that some Gold Coast, Ipswich and Moreton Bay candidates, some of whom were elected or re-elected to council, had purported to be independents but were in fact part of an unregistered group of candidates that shared campaign resources and funding sources; secondly, had failed to properly declare donations that they had received; thirdly, had misled voters by not openly revealing funding from certain sources; and, fourthly, had real or perceived conflicts of interest because they had received donations from property developers with business interests subject to council consideration.

Such complaints are not new. Similar issues have been the subject of inquiries by the Crime and Misconduct Commission in Queensland, the Crime and Corruption Commission in Queensland in 1991 and 2005 and also in other Australian jurisdictions in the past 15 years.

10 Complaints of this kind are recurring, despite increased regulation and oversight of local government elections and political donations over time. This highlights their inherent potential to cause concerns about corruption and adversely affecting public perceptions of, and confidence in, the transparency and integrity of local government.

The Crime and Corruption Commission commenced Operation Belcarra in September 2016 to investigate these allegations. Complaints about the 2016 local government elections related to a number of practices that give rise to potential corruption risks or may otherwise undermine transparency, integrity and public confidence not only in the election process but in local government more generally.

20 These complaints relate to three broad areas. The first area concerns groups of candidates. The *Local Government Electoral Act* imposes particular requirements on any group of candidates that is formed to promote the election of group members or to share in the benefits of fundraising.

As a transparency measure, any such group must provide a record of its membership to the Electoral Commission of Queensland, so that it can be known to the public.

30 Some candidates engaged in behaviours that were interpreted by others as evidence of the candidates campaigning as part of an unregistered or undeclared group. These behaviours included receiving campaign donations from the same source, using the same campaign resources, whether it be campaign managers or volunteers, to hand out How to Vote Cards or other resources, issuing joint How to Vote Cards with other candidates, advertising alongside other candidates, for example, on billboards, and having close personal and professional connections to other candidates.

40 Secondly, the independence of candidates. Some candidates who ran as independents were perceived to have been aligned with a major political party without appropriate transparency of any such alignment. These perceptions were based on behaviour such as candidates receiving donations from the party or its members, having worked for one of the party's members of parliament, being current or former members of the party, using party volunteers to hand out How to Vote Cards on polling days, and distributing How to Vote Cards that contained the party's branding, for example, colours and logo, or part of the party's name.

50 These types of behaviours raise questions about what it means to be an independent candidate and whether political party links can undermine public confidence in the local government electoral process or raise concerns about voting blocs in councils.

The third area concerns election funding. This has two often-intertwined elements. First, some candidates received campaign donations through

a trust or company rather than directly from donors, giving rise to concerns about the true source of a candidate's campaign funding being obscured.

Second, some candidates received a substantial amount of their campaign funding from property and construction companies, giving rise to concerns about real or perceived conflicts of interest for councillors.

10

Given the potential effects of these practices, the Crime and Corruption Commission has decided to explore them in more detail in a public hearing being undertaken as part of Operation Belcarra.

20

The objectives in conducting the hearing are, firstly, to investigate whether there may have been breaches, even inadvertently, of the *Local Government Electoral Act* in the Gold Coast, Moreton Bay and/or Ipswich 2016 local government elections by way of candidates forming an undeclared group of candidates, or furnishing inadequate electoral funding and financial disclosure returns to the Electoral Commission, or candidates not operating a bank account dedicated to campaign purposes as required by section 126 of the *Local Government Electoral Act*.

The second objective is to examine 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, the independence of candidates, election gifts and funding and conflicts of interest.

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The third objective is to examine strategies or reforms to prevent or decrease actual or perceived corruption risks in relation to the conduct of candidates and third parties at local government elections.

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Canvassing these topics in a public forum provides a unique opportunity to educate councillors, candidates, donors and the general public about corruption risks. The hearing provides an opportunity to openly and transparently discuss options for reform, with a view to the Crime and Corruption Commission reporting on ways to prevent possible corruption in local government and to improve perceptions of, and public confidence in, the integrity of the electoral process.

50

Over the course of the hearing, evidence will be called from stakeholders in council elections for the Gold Coast, Moreton Bay and Ipswich Councils. These include the Electoral Commissioner for Queensland, the mayors of the councils, a number of councillors and candidates, and third parties involved in the funding of campaigns for certain candidates or in the provision of campaign resources. Later there will also be evidence from a number of expert commentators.

There is no preconceived outcome of the hearing, but it is anticipated that the witnesses will provide evidence illuminating the issues referred to, including the extent to which they may have substance and whether there may have been breaches of the *Local Government Electoral Act*. The evidence will also assist to identify deficiencies in the *Local Government Electoral Act* and ways in which they might be addressed.

In due course, the Commission will prepare a report on its investigation

and make recommendations, the content of which will depend on the evidence.

PO Thank you, Mr RICE. Are you in a position to proceed with your first witness?

CA Yes, I am in a position to call the first witness, Mr Commissioner. I call Walter VAN DER MERWE, who is the Electoral Commissioner for Queensland.

10

PO Thank you. Good morning. Do you prefer to take an oath or make an affirmation?

W I'll take an oath.

PO The Bible is there. Can you administer the oath to the witness, please.

HRO Please stand and repeat after me. The evidence.

20

W The evidence.

HRO Which I shall give.

W Which I shall give.

HRO In these proceedings.

W In these proceedings.

30

HRO Shall be the truth.

W Shall be the truth.

HRO The whole truth.

W The whole truth.

HRO And nothing but the truth.

40

W And nothing but the truth.

HRO So help me God.

W So help me God.

PO Thank you, Mr RICE.

CA Sir, is your name Walter VAN DER MERWE?

50

W It is.

CA Are you the Electoral Commissioner of Queensland?

W I am.

CA Could you explain your role as Electoral Commissioner in relation to local

government elections carried out in 2016?

W I'm happy to do so. As the Electoral Commissioner of Queensland, I have a responsibility not only to run state electoral events but also local government electoral events. My responsibility is administering the legislation as it applies to running an event.

10 CA Basically the Electoral Commission of Queensland ran the 2016 quadrennial elections for local governments, as I did in 2012, that is, from the beginning to the end, from the announcement of the electoral events through to assisting candidates in terms of their nominations and the polling day, which happened in March, and the confirmation of the candidates who were elected.

CA You have Commission staff to assist you in that function?

W I do, yes.

20 CA How many full-time staff are in the Commission?

W As of today, I have 43 FTEs.

CA You mentioned, I think, when you were speaking a moment ago, about an electoral event or an election event?

W Yes.

CA What do you mean by that term?

30 W If we run, say, for example, local government quadrennial elections, we term that as an event. We employ close to 10,000 temporary staff to assist with that. We also employ a number of returning officers, who are responsible for each local government area. So it's not all run by my 43 permanent full-time equivalents in Mary Street. I rely on a number, a significant number, of temporary staff.

CA You mentioned 10,000, being a very large number --

40 W It is.

CA -- of temporary staff. What function would they perform, firstly?

W They work in the polling booths. Every polling booth will have a polling booth supervisor and a raft of support staff. That's in every jurisdiction or every council, so wherever there is a polling booth. Every local government council, I appoint a returning officer, who basically is my representative on the ground and they are responsible for managing the staff in their electorate, in their council.

50 CA Just so that I can be clear, you mentioned the returning officer. That is an office provided for, I think, in section 9 of the Act.

W Yes.

CA Is there one or more than one for an election event such as the 2016 council elections?

- W Every council area will have a returning officer.
- CA So one per council election?
- W Yes, yes.
- CA How many council elections were there in 2016?
- 10 W Could I refer to some notes, if that's all right?
- CA By all means.
- W In 2016, we had 1,787 candidate nominations for the council elections -- more than ever before. There were 438 separate electoral events, delivering 668 results for that day. These were comprised of 77 mayoral ballots, 218 councillor ballots for divided council areas and 284 council elections for 54 undivided council ballots, and that was separate from the 89 referendum ballots that we held.
- 20 CA How does an event of that size compare, say, with a state government election?
- W The state government election, we focus on 89 electoral districts. A local government election is, as you can see by the numbers, a lot more complex and challenging because we're dealing not with 89 candidates; we were dealing with 1,787 candidates.
- CA What are the additional challenges of scale?
- 30 W In terms of the sheer quantum of dealing with a significant number of candidates, it does put additional pressure on my returning officers, my poll booth workers. It impacts on How to Vote Cards. We don't just have 89 or a similar number of that. Every candidate has an opportunity to prepare and produce a How to Vote Card. They have to be authorised. They have to be submitted to the Commission. So to best describe the difference between a state election is that the quantity of the work is significantly more than running a state election in terms of administering it for the day.
- 40 CA I would just like to return to the role of the returning officer. How would you describe the role of the returning officer?
- W The returning officer is my representative in the field. I appoint them. They administer what happens in the local council in terms of accommodation for the returning officer's office. They are responsible for overseeing the polling booths and the staffing of the polling booths. They are responsible for determining elector visits and ensuring that polling booths and that don't run out of ballot papers on the day. They are basically -- how could I frame it? -- the office manager to ensure that the election in the council area actually goes according to due process.
- 50 CA In carrying out that role, do they work locally, that is to say, in the geographical location where the election is taking place?
- W Yes. They are based in the council area.

- CA Are they drawn from your full-time staff or not?
- W No. There may be one or two, but generally no. I have a pool of in excess of 90 who I call upon. Returning officers for the local government election often work as returning officers for state electoral events. They do a very similar role.
- 10 CA How do you, as Commissioner, qualify them to carry out that important role?
- W They go through training, and a number of them have many years' previous experience in doing a returning officer's role. They are supported by head office. We have a number of contact officers, who are specifically assigned a number of returning officers to look after. If they have any questions or if they're not sure of anything in terms of what should be done or they are seeking a different -- or seeking assistance in fulfilling their duties, they use the contact officer as a conduit in terms of assisting them. But, yes, they are trained. They have manuals in terms of what needs to be done.
- 20 CA Was 90 enough returning officers for the --
- W That is sufficient for local government, yes. I always keep a few spare because people do -- yes, they have to vacate the job for whatever reason, due to ill health or whatever, so I always have a few spare.
- CA There is another position provided for in the Act, in section 11, being a presiding officer. How would you characterise that role?
- 30 W An officer who is on hand at the polling booth, who reports through to the returning officer. It is all part of a support mechanism to ensure that the poll or the electoral event is run and administered effectively. It's fair enough appointing a returning officer to oversee and manage the overall local council, but, there again, they can't do all the work themselves. They have to be supported, and that's what a presiding officer does.
- CA Take charge of a particular booth?
- 40 W Or maybe a couple of booths, depending on the proximity and the geographical breakdown of the area.
- CA Do you appoint those persons also?
- W That is done via an expression of interest in terms of who we appoint. So, yes, indirectly I do appoint them, yes, but a slightly different process to appointing a returning officer.
- CA Tell me, did the Electoral Commission receive complaints subsequent to the 2016 elections concerning practices and conduct of candidates?
- 50 W I did.
- CA What level of complaint compared, say, to the preceding election?
- W Compared to the 2012, I believe the level of complaints was significantly

higher. Those complaints arose -- or were made about alleged funding and disclosure matters and How to Vote Cards which they believe shouldn't have been used. But, yes, after the 2016 electoral event, the number of complaints was significantly higher than I experienced in 2012.

CA Is there any reason you could discern from the nature and content of those complaints?

10 W Not really. As I said, the number of candidates for 2016 was higher than we had for 2016 [sic], and a number of those complaints weren't necessarily against all council areas. They were focused predominantly down the coast and in Ipswich, so Moreton Bay, Ipswich and the Gold Coast. As I said, there were allegations which were made to me. I operate on the basis that I'd rather hear about it than not hear about it, and some of those allegations, I thought, were reasonably significant, but they needed further investigation and review and I think that's why we are here today.

20 CA I want to discuss with you some of the structure of the *Local Government Electoral Act* and some of the requirements that are imposed on candidates. It might assist you, if we work through that, just to show you this extract. It is not the whole Act but some parts of it.

W Thank you.

CA First of all, you would be aware, would you not, Mr VAN DER MERWE, that section 3 of the Act identifies that the purpose of it is to ensure transparent conduct of elections with respect to local government elections?  
30

W I'm aware of that.

CA Is that in fact something that guides you in the performance of your function?

W Oh, it is. Not only for local government but all electoral events that are run, it needs to be transparent. I need to ensure that the people of Queensland have confidence in the electoral events that are being conducted which impact on them, be they state or local government.  
40

CA One section which is not in that bundle I have just shown you, but I think you would be aware of it, section 27, provides for the nomination of persons to be candidates. It provides, alternatively, for an endorsed candidate of a registered political party?

W That's correct.

CA Or, alternatively, a person who becomes a candidate by nomination of six electors; correct?  
50

W Yes.

CA Of all of the candidates that contested the council elections in 2016, with what preponderance are persons who are endorsed by political party as opposed to those who are not endorsed?

- W Off the top of my head, yes, I would need to take that one on notice, if I may, please?
- CA Would it be right to say that with the exception of the Brisbane City Council, most candidates are not endorsed by political parties?
- W That is correct. As we know, Brisbane City Council is largely party driven. Candidates in local governments are basically individual candidates endorsed by six other electors.
- 10 CA Does the Act use the term "independent" with respect to a candidate in a local government election, do you know?
- W I would have to look into that, sorry.
- CA We will have look at it ourselves. There is provision, is there not, for the Commission to receive a record of membership of a group of candidates?
- 20 W There is. If --
- CA Does that happen frequently?
- W Yes. If candidates wish to run as a group, they need to advise the Commission. There was one group in Moreton, I believe, that ran as a group, and, as far as I'm concerned, the documentation and the process followed there was legitimate and met the requirements. There were candidates up north as well that ran as a group.
- 30 CA You can call to mind a couple of examples as you speak. Can you tell us whether that is common or not common for candidates to run as a group?
- W It's not overly common, but it is -- it's becoming more of a practice. We had a number up in northern Queensland. Off the top of my head, I can't tell you who they were, but, as I say, we had one in Moreton, which, as far as I am concerned, satisfied all the legal requirements to run as a group and they were acknowledged as that, and their How to Vote Card reflected the fact that the candidates were part of a group.
- 40 CA Is such a group required to notify the Electoral Commission of its existence?
- W Yes, that's correct.
- CA And who is a member of it?
- W That's correct.
- CA And there are certain other obligations when it comes to disclosure of gifts and so forth?
- 50 W That is right.
- CA As those requirements pertain, effectively, to a group as opposed to an individual candidate?

- W An individual candidate, yes.
- CA The expression "group of candidates", I think, has a particular definition, being a group formed either to promote the election of candidates or to share in the benefits of fundraising to promote the election of the candidates?
- W Yes, that's as it's described in the legislation.
- 10 CA In the bundle that I have given you appears Part 6 of the *Electoral Act*. Do you see that?
- W Yes.
- CA Page 87.
- W Yes.
- 20 CA Part 6 regulates disclosure of gifts and loans; is that the case?
- W That's correct, electoral funding and financial disclosure, yes.
- CA Section 107 deals with gifts. They can be either money or in some other form; correct?
- W That's correct.
- CA Provision of a service, for example?
- 30 W Yes.
- CA There is provision in section 108 for the valuation of gifts?
- W Yes, that's correct.
- CA That is easily done where it's money?
- W The challenge is, if you're providing labour or a service like that, to assign a dollar value to it.
- 40 CA So what is the guide as to the value of the gift in terms of its value?
- W I think if you are going to put a dollar value to it, it has got to be a realistic, say, cost of labour. Say, for example, if you are hiring or you are being given three or four people to set up a fundraising event, what would that cost you if you went to a labour firm to hire those three people? It is not very precise, and I think that's what I'm getting at. I am not able to comment on the legislation, but if that were to be tightened up, it certainly would make my life a lot easier and my staff a lot easier in terms of identifying what the actual value is.
- 50 CA Who is the onus on to determine the real value of the gift which is not in money terms?
- W The candidate needs to make an informed decision in terms of what the perceived value of the service is.

- CA Does the Commission have the means to second-guess any estimate of value?
- W We would have a look at it, but if it was totally unrealistic, we would certainly challenge it.
- CA And if it is not totally unrealistic?
- 10 W To the best of my knowledge, I don't think I have ever or my staff have ever challenged it, to be honest.
- CA There is a regime, is there not, for provision of disclosure returns by candidates and groups?
- W There is.
- CA And there are certain kinds of information that have to be included in the disclosure return?
- 20 W Yes.
- CA Section 109 sets out some details of that?
- W Yes.
- CA There are a number of options provided for, I think you will see in section 109: firstly, where the gift is made by members of an unincorporated association, and the kind of information that is required involves not only the name of the association but the names and residential or business addresses of members of the executive?
- 30 W That's correct, yes.
- CA Would you expect, in the ordinary course, that that would be a post office box or a street address?
- W I would expect it to be a street address.
- 40 CA The next option, in paragraph (b), relates to gifts made out of a trust fund, where the relevant information comprises the names and residential or business addresses of the trustees or any other person responsible for the funds of the foundation?
- W Yes.
- CA And the third option is for any other category of donor, being a real person?
- 50 W Yes.
- CA Whose name and residential or business address ought be given?
- W Yes.
- CA There is a timeframe which dictates the content of the disclosure return?

- W That's right.
- CA Is that the disclosure period referred to in section 114? Is that the timeframe which dictates the content?
- W That is the timeframe that we would work in, yes.
- 10 CA Can you explain for us what the disclosure period is for a person who has previously conducted -- previously contested an election?
- W Do you mind if I just refer to some notes?
- CA Yes, sure.
- 20 W All right, if I may respond. As far as the disclosure period is concerned, for a candidate who was previously a candidate for a local government election within the last five years, the disclosure period starts 30 days after polling day for the most recent election that the candidate contested and ends 30 days after the polling day for the current election.
- CA And what about for a new candidate?
- W For a new candidate that hasn't stood as a candidate in the past five years, the disclosure period starts the earlier of the day the person announces their candidacy or the day the person nominates as a candidate in the election and ends 30 days after the polling day for the current election.
- 30 CA And gifts that have been made to a candidate during the period you have just identified, ought they then find their way into the disclosure return?
- W Yes, they ought to.
- CA Including what are described as the relevant details for the purpose of section 109?
- W Yes, I believe that's the case.
- 40 CA Could you tell us when such a return is required to be lodged? You have given us the period that dictates the content of the return, but when is the return for a candidate who has received gifts required to be lodged?
- W Candidates and groups of candidates in an election must provide a disclosure return to the Commission within 15 weeks after polling day.
- CA Can I ask you this: does that regime of submission of a disclosure return up to 15 weeks after polling day assist an elector to know who has funded a candidate's campaign before they lodge a vote?
- 50 W Possibly not.
- CA Why do you say "possibly"?
- W It depends on the information that has been provided, that it's in a timely manner. I think if the government or the parliament was of a mind to make it more -- what's the word I'm looking for? -- precise in terms of

when the lodgement is, that may assist in making it transparent in terms of where the funding is coming from.

CA In the way this is structured, it would be correct to say, wouldn't it, that all of the disclosure returns are lodged after the election?

W That is correct.

10 CA Just getting back to the framework of requirements imposed with respect to gifts, there is provision, is there not, in section 119 that prohibits receipt by a candidate of gifts in certain circumstances?

W That's correct.

CA Is it correct to say that the nub of it is that the candidate receiving the gifts should know the names of persons behind gifts of \$200 or more?

W They should.

20 CA That is perhaps not necessarily the donors; it could be the trustees of the trust that receives money from donors?

W That is absolutely correct.

CA But the candidate should know the names of the person from whom the money is being received?

W They should, that's right.

30 CA And should not receive a gift otherwise?

W They should not receive it if they don't know where it is coming from.

CA Where it is coming from includes the name of the person providing it?

W That's correct.

CA And not only the name, the residential or business address of that person?

40 W That's right, the particulars.

CA That links back, does it not, to the relevant details described in section 109?

W It does.

CA There is a similar provision with respect to disclosure of loans received from candidates. Is that less common than gifts, in practice?

50 W To my knowledge, it is less common, loans, in terms of gifts.

CA Likewise, however, with respect to loans received, the details of the loan have to be declared in the disclosure return?

W They do.

- CA Including similar details as for a gift?
- W Particulars need to be, yes.
- CA That is to say, the name and business or residential address of the person providing the loan?
- W That's right, and that all adds to the transparency of where the funding is coming from.
- 10 CA As we saw with respect to particular gifts that are not to be received, in section 119 -- we discussed that a moment ago -- there is similar provision prohibiting receipt of loans without being aware of the relevant details?
- W That is correct.
- CA Including the identity of the --
- 20 W Identity and the address, yes.
- CA And so forth?
- W Yes.
- CA I notice that section 122 provides for the Electoral Commissioner to give reminder notices about returns. I take it that occurs in practice?
- W It certainly does.
- 30 CA That reminder is within 10 weeks of polling day?
- W Yes, I think that's correct, yes. Yes, we do follow up if we haven't received them.
- CA So there is some cross-check carried out as to whether disclosure returns are made?
- W There is. And if I can maybe mention something that the Commission is embarking on which would certainly assist with this, in January this year we introduced an electronic disclosure system in terms of funding and disclosure where, at the moment, it's for state elections where money received is acknowledged in real time, within seven days, and money that goes out is also received electronically. There is currently a Bill before the House in terms of following those same processes on to local governments. If the Bill is passed, we will have the same sort of regime there, which makes it very transparent in terms of money in to the dedicated account and what is actually going out of the dedicated account in terms of gifts and expenditure.
- 40
- 50 CA What do you call that new system? Does it have a name?
- W Electronic disclosure system. I would be happy to provide the committee with the relevant information and detail. It's only relatively new, but in terms of the advances that we have made over the last couple of weeks, it does add a lot of transparency into funding and disclosure.

- CA The information received under that new electronic system, is that examinable by the public?
- W One hundred per cent. Anybody can log on to our system. They can identify a candidate. They will see what moneys they have received, where they have spent it. It's of great interest to the academics, the media, political parties, opponents. It's 100 per cent transparent. The information is there.
- 10 I think that is definitely the way we should go as far as local governments go, because it will assist with the transparency of funding and disclosure, but that's a matter for the parliament. As I say, we have a system up and running for states. It is in the Bill at the moment, and if it gets passed, it will make my life and my staff's life a lot easier in terms of monitoring and managing and checking up on funding and disclosure.
- CA And so far as electors are concerned?
- 20 W They can also have a look.
- CA They would have the means, then, to ascertain, if they were interested --
- W Yes.
- CA -- what gifts had been received by a candidate?
- W One hundred per cent.
- 30 CA Before casting a vote?
- W Yes, within seven days of them receiving it. We had to settle on seven days because real-time instant wasn't going to work. In legislation, the real-time is limited to seven days, so that will alleviate some of the uncertainty and the guesswork in terms of where money has come from and where the money is being spent.
- CA I have mentioned a couple of times now that electors under the framework of the *Local Government Electoral Act* can't see the disclosure returns until after polling day.
- 40 W That's correct.
- CA Is that true also of other candidates, competing candidates? Is there any means, formal means, by which a competing candidate could be aware of donations made to another candidate?
- W I don't think there is. I can find out, but I don't think that's the case. They can't - they're treated the same, but if there is anything to the contrary, I will let the review know.
- 50 PO Mr RICE, just excuse me one moment.
- Mr VAN DER MERWE, you said real-time disclosure wouldn't work. Is that a logistical technology issue, or why do you say it won't work, real-time disclosure?

- W Because when a gift is made, it is done all electronically. It goes on to the system. By way of example, if I give candidate A X amount of money, I can put that on as a gift. Candidate A actually needs to receive that because if it is not reconciled, there could be some question as to the validity of where the money came from, is it a gift, or something like that. So the parliament decided on let's wait seven days and then it will be published. But it is a lot better than publishing it after the event.
- 10 PO I suppose it is still open to -- "abuse" might not be the right word, but circumvention of the intent of it, transparency wise, by people donating within the seven days prior to the polling day so that that donation will not be disclosed?
- W You are correct.
- PO One way around it, I suppose, would be to prohibit the receipt of donations within that seven-day period?
- 20 W Within seven days of polling day.
- PO In that way, everything that was donated would be in fact disclosed prior to the polling day?
- W That's correct, but if I was given a system to operate -- I purely administer the system, but that has got to be a policy decision by the government.
- PO I understand.
- 30 W But certainly if that was a recommendation and it was adopted, it would be very easy to implement.
- PO Thank you.
- Thank you, Mr RICE.
- CA Just continuing to work through the disclosure requirements of the *Local Government Electoral Act*, there is also provision, is there not, for a form of disclosure by third parties to candidates, donors to candidates?
- 40 W Yes, they can. There is a provision to disclose.
- CA That is section 124?
- W Section 124, third party expenditure, political activity, yes.
- CA So a donor who is contributing towards the political activity of the candidate should, in certain circumstances, make a return of that?
- 50 W That's correct.
- CA What are the criteria?
- W I think it's the \$200.
- CA A \$200 limit?

- W Yes.
- CA Section 125 also applies to donors to a third party?
- W Yes, gifts received by third parties, yes.
- CA Well, a donor to a receiver, who then makes it available to a candidate?
- 10 W Passes it on, yes.
- CA Is that the way it works?
- W Yes, yes.
- CA And a gift by a donor to a receiver, who then makes it available to a candidate, should also lodge a return?
- 20 W Yes.
- CA Where the value is, in this case, \$1,000?
- W That's correct.
- CA So there could be various kinds of third party disclosure returns?
- W That is correct.
- CA I take it that happens in practice?
- 30 W It does, but, you know-
- CA Reliably, as you perceive it?
- W From what I have seen, yes, it is reliable. I've got to take it on face value that this is actually taking place. I don't have a network of investigators out there to find situations or examples where it hasn't taken place. There is an element of trust and goodwill in terms of the legislation. Third party members, candidates, et cetera, should make themselves fully aware of the legislative requirements that they operate in.
- 40 CA It might assist you to go to section 130 at page 106. It provides for a person to make a query about the content of disclosure returns?
- W Yes.
- CA A query could take the form of a complaint, I suppose?
- W It could.
- 50 CA Does that happen?
- W It does. I am obliged, then, to investigate it. I can't turn a blind eye to it because there could be some element of truth in the allegations. So it needs to be looked at, and we do.

- CA If you have a query or a complaint concerning the content of a disclosure return, what is the means by which you investigate that further?
- W We will have a discussion with the individual, the candidate or whoever put the return in and ascertain is it correct. We will also allow them to put in an amended return if they realise they have made a mistake. So, yes, they are afforded the opportunity to explain the full content of their return, and I would certainly accept an amended return as long as it was accurate and truthful.
- 10 CA The Act requires you to keep a register of these returns; correct?
- W A register, yes.
- CA I think we see that in section 128 or section 129. You do that?
- W Yes, we keep a register of all returns.
- CA By that means, the public can scrutinise --
- 20 W They can.
- CA -- or opposing interests of a candidate or an elected person can scrutinise their returns?
- W I have to make it available. That's correct.
- CA Such person could also look at third party returns?
- 30 W Yes.
- CA Are they available for scrutiny also?
- W They would be, yes.
- CA They are required, I think, amongst other things, to be kept on your website; is that right?
- W Yes. We publish them.
- 40 CA How long do they stay posted on the website?
- W Off the top of my head, I'd have to get back to you on that one. We're in the process of looking at that in terms of what we are doing with the EDS.
- CA Is the timeframe, say, the four years up to the next election or shorter than that?
- W It will be a number of years. Sorry. It's not just we'll post it one day and take it down the next, no.
- 50 CA It is there for --
- W It will be, like, an electoral cycle, yes. Sorry.
- CA Some years, you think?

- W Yes, I would hope.
- CA The records are available for physical inspection also?
- W You can make an appointment, and we will provide you with a hard copy to inspect.
- 10 CA Obviously it's more convenient these days to just go to a computer?
- W To do it over the net, yes.
- CA Anyone who wants to do that, go to a computer, can look it up on your website?
- W They can.
- CA Check candidate X's disclosure return?
- 20 W That's right.
- CA Find out who has made donations?
- W Who has made the -- yes.
- CA So far as the completeness or accuracy of returns is concerned, leaving aside the query or complaint scenario, is there any means that the Commission has or employs to verify returns?
- 30 W We do random sampling for local government where we will do an audit of the return. Due to the sheer quantum, we don't audit every single one. We wouldn't just focus on the south-east corner. We would do some in the rural areas as well to try to ascertain that generally the quality of the returns are good. But, yes, we don't audit every single return.
- CA You refer specifically to the quality of the return. What do you mean by the quality?
- 40 W The information that is being shown to -- say, the funds received versus the outgoing funds in terms of a reconciliation to make sure that it is justifiable and correct. That's what I mean by the quality.
- CA Do you check that what are set out in the Act as relevant details are provided?
- W Yes. If there is something that we might suspect warrants a closer look, say, for example, you know, we could follow up with a donor or a person who gave the gift just to ascertain that this was the case. But with the electronic disclosure system, there is an automatic reconciliation before it publishes to the web. So everyone will be, essentially, audited and it won't just be on a random basis in terms of the quality of the -- and the accuracy, rather than the quality, of the return in terms of information coming out.
- 50 CA You refer to automatic reconciliation. Reconciliation as between what are you referring to?

- W What has come into the ledger and what has gone out in terms of, if they receive a gift, who the gift was from. There has to be an acknowledgement that, yes, I had given candidate A \$200, and candidate A has actually said that the money actually came from me. So that reconciles it out.
- 10 If, say, for example, somebody was being mischievous and said, "All right, I'm going to pretend I am maybe part of a union or something propping up the coffers of, say, a right wing politician in terms of that", there has to be that reconciliation, "Yes, I gave it", "I received it." The electronic disclosure system will get rid of all that shenanigans because you have to actually agree that you have received it with the person who has given it to you. So again it's just adding integrity into the system in terms of what's in and what's out and what has been received.
- CA Does this electronic disclosure system allow reconciliation between candidates' disclosure returns and third party returns?
- 20 W If the third party -- I might take that one on notice because it hasn't been phrased in that term before. But, no, I appreciate your question. If I may take that one on notice?
- CA Okay. More pertinent, perhaps, to the circumstances of 2016 and of that election, the Act, as we are seeing, provides for provision of a paper return -- it is a paper return?
- W It is a paper return, yes.
- 30 CA No electronic lodgement, or, rather, at least the form has to be in hard copy?
- W The form has to be in hard copy, yes, and then it can be sent.
- CA Can it be provided to you electronically once it has been completed?
- W Yes. It reflects a form, a paper-based form.
- 40 CA Does the Commission have the means to go about a comparison and reconciliation of candidate returns as opposed to what is disclosed on third party returns -- to see whether they match, in other words?
- W There is a capacity to do it. We don't do it all the time. As I say, we do sample reconciliations and reviews of returns in local government.
- CA You mentioned a little while ago the audit, potentially, of a candidate's return.
- 50 W Yes.
- CA Or a sample.
- W Or a sample, yes, yes.
- CA Just to be clear, does that audit include going back to the declared donor to confirm the accuracy of the detail?

- W It could do, yes.
- CA How, though, do you ascertain whether all donations are in fact listed?
- W It would be very difficult to ascertain that.
- CA Is that reliant on the honesty of the candidate?
- 10 W I have to take it on good faith of the candidate and the person submitting the return.
- CA Because it is an offence not to do that?
- W That's right. So one would hope, if candidates are receiving money and donors are providing that information, they're aware of the legislative requirements, and, yes, if it is incorrect, they are breaking the law.
- CA You don't have enforcement staff as such, I think you have said?
- 20 W I don't.
- CA But some staff, at least for some of the time, carry out a form of audit of a disclosure return?
- W They do, yes.
- CA For the 2016 election, which is now over a year ago, were any offences identified, that is to say, has anyone been prosecuted for incomplete or incorrect disclosure on their disclosure returns?
- 30 W As far as prosecuted, no.
- CA Were there any from the 2012 election, do you know?
- W I don't believe so. I'll confirm that when I get back to the office, and if the information is contrary, I will certainly let you know. But I don't believe that's the case.
- 40 CA Well, to what extent -- you have mentioned there is the matter of trust in the integrity of the candidate, is that correct, of the person providing the disclosure return to do so honestly?
- W Absolutely. I can provide rules and regulations and guidelines, and I do that when I provide the handbook to the candidates. They get a candidate handbook. They also get a local government disclosure handbook, which provides the guidelines in terms of what they should do. But I have been very careful to put in those guidelines that they are guidelines alone. The candidate needs to make themselves fully aware of the legislative provisions that impact on them, whether it is the *Local Government Electoral Act* or whatever. They need to abide by that. I don't have the capacity to make sure that they follow the legislation.
- 50 CA Since we have been discussing the disclosure requirements, does the Commission have a means of informing or seeking to educate candidates about what the requirements are?

W Yes, we do. Every candidate in local government will receive a Guide for Candidates, which is very -- it basically tells them what they can do in terms of nominating for a candidate, nominating as a group and things like that. It is quite prescriptive in terms of that. But you need to read the -- the candidate needs to read the guideline in conjunction with the legislation.

10 In addition to that, we also provide on our web a local government disclosure form, which covers all those things in terms of what they should know about disclosure. And, again, the onus is also on them to take this as a guide. It is a guide. If they follow this guide, they should be right. But sometimes there might be some complexities in terms of using a trust fund as a dedicated bank account. The candidate or the group of candidates should go and seek independent legal advice in terms of how to run that trust fund.

20 I don't employ lawyers and solicitors and financial planners and financial people like that. I can give you the information in broad terms. The crux of it is in the legislation. So if you want to run a dedicated bank account as a trust fund -- or a trust fund as a dedicated bank account, you need to ascertain that you are not breaking any of the legislation in terms of that.

So, yes, I believe the Commission provides sufficient information to candidates in terms of their roles and responsibilities as a candidate and financially in terms of what needs to be done.

30 Yes, candidates are more than welcome to discuss matters with the returning officer, or we have a funding and disclosure unit within the Electoral Commission, which will provide generic advice on things that aren't too complex in terms of legislative interpretation. I believe we provide enough information. I have four full-time staff in the funding and disclosure team, and as of today I believe that is sufficient to do -- or meet our commitments under the legislation of informing candidates what they should and shouldn't do and where they can get further information. Sorry, that was a longwinded response.

40 CA Not at all. In the course of your answer, you were holding up a document. Perhaps I can show you this copy.

W Yes.

CA It seems to be similar?

W It's identical, yes. I didn't print mine in colour.

CA The document I have shown you, is that a guide on disclosure by candidates?

50 W Yes, Local Government Disclosure Handbook.

CA It has a date on it, 3 February 2016.

W That's right.

CA Is that accurate?

- W That is correct. It is the same version as I have, and it would have been available to candidates for the 2016 quadrennial election.
- CA When you say "available", do you mean on your website?
- W It's on the website.
- 10 CA Do you do more than that? Do you send a kit of any kind to persons once you are aware of their nomination?
- W The candidates get a guide for the candidates on a memory stick. In this guide, it makes reference to this document, which you can find on the web.
- CA That is the local government disclosure document?
- W Yes, that's correct. You have printed yours in colour.
- 20 CA Yes.
- W So the information is out there.
- CA I tender that local government disclosure document.
- PO Thank you. That Disclosure Handbook will be Exhibit 2.
- CA In addition to the disclosure guideline that has been tendered, there is a broader information pack dealing with other subjects?
- 30 W Yes, it's a Guide for Candidates handbook. I don't know if you have a copy of that. If you don't, I will get you a copy electronically or in hard copy. This is what every candidate receives. It is basically general information. It talks at length about nominations, electoral advertising and offences, candidates, party workers and scrutineers, voting, formality. It talks about, for example, under "Nominations", how to nominate as a mayor, how to nominate as a councillor. It talks about groups of candidates. It talks about recording of group membership if candidates want to form a group, time frames in terms of when to nominate, where to nominate, deposits. It's a general guideline which all candidates should have become very familiar with.
- 40
- W In the introduction, just picking up from what I said earlier on, I have specifically put in there that, "This handbook is compiled to assist candidates at local government elections and by-elections. It is not intended to be a complete guide, nor is it meant to be a substitute for reading the law. Please read the guide in conjunction with the *Local Government Electoral Act*, the *Local Government Act* and the *City of Brisbane Act* for those councillors who are affected by the City of Brisbane."
- 50
- W So I give them a broad outline, but I also encourage them to refer to the relevant legislation in terms of ensuring that they don't do anything wrong and that they meet the legislative requirements. I don't know what else I can do, to be honest.

- CA There was something else that you have touched on, but I haven't really asked you anything about it. There is an additional requirement, is there not, for a candidate to operate, for the purpose of a campaign, a dedicated bank account?
- W That is correct.
- CA That is section 126, I think.
- 10 W Yes.
- CA Is that, then, to be the vehicle which receives donations?
- W Candidates and groups of candidates must keep a separate account with the financial institution for the running of their election campaigns. The account is known as a dedicated account. All reasonable steps must be taken to ensure the dedicated account is not used in any way other than for those purposes outlined below.
- 20 I think, for the inquiry, could I just elaborate on those purposes?
- CA Yes.
- W A candidate or group of candidates must ensure that all amounts received by them or on their behalf in their capacity as a candidate during the disclosure period for the election are paid into the dedicated account. This includes all gifts received by the candidate or group of candidates for the election and all amounts received as loans by the candidate or group of candidates for the election. A candidate or group of candidates must ensure that all expenditure incurred for the conduct of the election campaigning during the disclosure period for this election is paid out of the dedicated account.
- 30 So that is basically a summary of what you will find in the legislation. But if you follow my guidelines, you can't make a mistake, to be honest. Again, I would encourage, as I did in this document, to refer to the legislation as well, but, really, that is a foolproof set of steps in terms of what a dedicated account is and how it should operate.
- 40 CA How does the requirement for operating a dedicated account assist with transparency?
- W It's one account. It prevents numerous other little accounts which may be used, may be forgotten, not necessarily intentionally, in terms of your disclosure. Having a dedicated account, you are bringing everything into one bank account; you can see what goes in and you can see what comes out, and it's basically for ease of transparency and managing the funds.
- 50 CA Does the Commission have the means to try to vet or scrutinise whether a candidate is using such an account, at least for the operation of law, it being an offence not to do so?
- W There is an assumption that a candidate will have an operating account. And the details of that account, the ingoings and outgoing, you know, we can certainly have a look at that. We can't cover for a candidate who might run two or three accounts. As far as we are concerned,

the legislation says you have one and that's what you run with. If you have two or three and you are caught out, you then commit an offence and you will be prosecuted for that.

10 So, again, it is going back to this trust factor. I will provide you with all the information to keep you honest, to keep you transparent, to let the people of Queensland have faith in the process. It's transparent. It's actually working. They know where the money is coming from. They know where the money is being spent. If for whatever reason a candidate chooses not to do that, one would hope they would eventually get caught out. But if they follow my rules and they follow the legislation, it shouldn't happen like that.

CA Tell me, just the last thing on this topic, can the Commission require the provision of that account for scrutiny, or not? Is that ever done?

W The reason I'm hesitating is because I can't remember when it was done, if it is done, but I can certainly ascertain if we have done that in the past in terms of running an audit.

20 CA If it was done, would it be done as part of the audit process that you have described?

W Yes. There has to be some level of scrutiny, and money in has to equal the money out and where the money has come from in terms of what the donor has actually declared in terms of the gift, so yes.

CA Off the top of your head, you're not sure whether that --

30 W I'm not, no, but I will look into that and get back to you.

CA Thank you.

Would that be a convenient time, Mr Chairman?

PO Yes, certainly, Mr RICE. Thank you. We will adjourn for about a quarter of an hour or so. We will resume at 10 to 12. Thank you.

**ADJOURNED**

40 HRO This hearing is resumed.

PO Yes, Mr RICE.

CA Thank you, Mr Commissioner.

You mentioned in your evidence before about the Guide for Candidates, which is available on the website and also made available electronically to candidates.

50 W That is correct.

CA Just for completeness, could you look at this and confirm that it is a copy?

W Yes. That's exactly what I've got.

- CA You confirm that that's a copy of the Guide for Candidates made available to candidates in the way I have described for the 2016 elections?
- W That is correct.
- CA I tender that Guide for Candidates.
- PO Thank you. That will be Exhibit 3.
- 10 CA We'll turn to a different subject, then, Mr VAN DER MERWE, and it concerns the use of election material, in particular, How to Vote Cards. It might assist you to have the sections nearby while we speak about it. It commences, I think, at section 177. Do you have that?
- W I do.
- CA Is it correct, then, that printed material for distribution, and I'll take How to Vote Cards for example, requires an authorisation?
- 20 W That is correct.
- CA Is that subsection (2) of section 177?
- W That's correct.
- CA Just one thing. One topic of interest is the prospect of a group, a number of candidates running as a group. Can I just pose this scenario, that there is such a group, properly registered.
- 30 W Yes.
- CA And it may depict different members of the group and promote their interests by advising "Vote 1" in respect of each of those members; okay?
- W Yes.
- CA Just looking at the authorisation requirement, is a depiction of that kind -- how many authorisations are required?
- 40 W By way of example, if a How to Vote Card is being prepared for a group, the authorisation would be authorised by, say, Walter VAN DER MERWE. It would be my residential address. "To", Turbot Street, or whatever, Brisbane. "For", and then it will be the name of the group. That is the authorisation that would have to appear on the How to Vote Card.
- CA On the subject of the How to Vote Cards, there is regulation of content, is there not?
- 50 W Yes.
- CA Is that shown in section 178?
- W The regulation of the -- are we talking about, sorry, the authorisation or the actual content of the card?

- CA The actual content now.
- W Okay. I can only authorise or not authorise the How to Vote Card if it doesn't comply with the authorisation, which has to be in a certain font. It has got to go through a process whereby the How to Vote Card is lodged with the returning officer or with head office. There are other elements which I need to consider. Is it offensive, and is it misleading? If it is offensive and misleading, I won't authorise the How to Vote Card and I will also, as a result of that, give a written explanation to the candidate as to why the How to Vote Card fails the test.
- 10 CA To step that through a little bit, there is a requirement, is there not, in section 179 for a candidate's How to Vote Card or a How to Vote Card for a group of candidates to be submitted to the Electoral Commission seven days before polling?
- W Yes.
- CA That appears to be subsection (2) of section 179?
- 20 W That's correct. By 5 pm on a Friday at least seven days -- yes, that's correct.
- CA That section makes mention of the requirement to give the Commission a required number of How to Vote Cards?
- W That's right.
- CA How is that determined?
- 30 W By the number of polling booths and it's plus 12. Just bear with me a sec.
- CA Perhaps the full details may not be important, but is the idea that the number that's lodged at least covers the number of polling booths?
- W That is correct, plus some spares.
- CA Subsection (3), I think, touches upon what you were speaking about a moment ago in terms of what the Commission must reject by way of a How to Vote Card?
- 40 W It does.
- CA Are they the criteria that you operate by?
- W Yes, in terms of-
- CA That is to say, compliance with section 178?
- 50 W They need to comply with that, that's correct.
- CA Which talks about content?
- W Yes.
- CA Font size?

- W Font size. The authorisation.
- CA And the authorisation?
- W Yes.
- CA So who considers the cards that are submitted?
- 10 W The returning officers and then head office. We actually have a checklist, which I am quite happy to tender as well. In terms of anybody who wants to nominate or get a How to Vote Card approved, there is a checklist that the returning officer goes through. I am quite happy to share that or-
- CA Is that a returning officer's document?
- W Yes, and it then comes to the Electoral Commission's head office, which we'll keep on record.
- 20 CA It is not a candidate's document, though?
- W No.
- CA It is a returning officer's document?
- W Yes, yes.
- CA All right.
- 30 W Returning Officer's How to Vote Card Assessment.
- CA I will tender that returning officer's checklist.
- PO Exhibit 4.
- CA And the returning officer goes through a process of scrutiny of the cards submitted?
- W That is correct.
- 40 CA To check for compliance with subsection (3)?
- W That's right.
- CA Well, authorisation will or won't appear on its face; correct? And font size is easy to check?
- W The font size is easy, yes. We have something to measure it with.
- 50 CA But in terms of authorisation, you can see what appears on the form and whether it appears to be compliant?
- W It's self-evident, yes.
- CA Self-evident?

- W Yes.
- CA Something which is not so self-evident is whether a How to Vote Card is likely to mislead or deceive an elector?
- W You're correct, but I think the returning officer needs to make an assessment on that. If they are dubious or doubtful in any way, my funding and disclosure team runs a process of scrutinising How to Vote Cards during an electoral event. We have specific people to run their eye over them. So if it is perceived to be misleading, or whatever, the returning officer himself or herself won't necessarily make the call. It will be referred to head office and we will make the decision to reject it or accept it if we consider it misleading.
- 10
- CA Can you give us some example of what sort of thing you are looking for?
- W Say, for example, a promise is made on the How to Vote Card that, "We guarantee to feed or house every child in the whole of Queensland", realistically that could be a little bit misleading for a single candidate in a small shire. So there are those sort of things that we would do, or, I don't know, anything similar to that, which is obviously an extension of what's possible.
- 20
- CA There are things such as the example you posed, which would be pretty obvious, overstep the mark. There would be other things, perhaps, would it be fair to say, that are not so clear?
- W That are not that obvious, yes.
- 30 CA In determining those things which may not be self-evidently misleading, are you reliant on, say, complaints from opposing candidates to determine whether something is misleading or does it just slip by, or how do you deal with it?
- W We get a number of complaints from opposing candidates in terms of How to Vote Cards, and every single one is looked at on its merits because if it is misleading, it's not fair to the electors. You are taking away the transparency of the basic existence of why we're running an election. But, yes, we rely on feedback, for want of a better word, from other candidates in terms of the content of their opponents' How to Vote Cards. It may be justified. It may not be.
- 40
- CA Did the economies of the scale of the election for 2016 that we spoke about impact on the degree to which you could undertake this kind of scrutiny?
- W No, every single How to Vote Card had to be approved because we also put them on the web. So every How to Vote Card that was used in 2016 we had to publish on the web. You can't just let some through because of the sheer quantum. Yes, it was a lot of extra work and each and every one was processed.
- 50
- CA Does subsection 179(3), then, describe the limits of really what your parameters are for scrutiny of the How to Vote Card?
- W Yes. As long as we're satisfied on reasonable grounds that it's not likely

to mislead or deceive, it will be approved.

CA You are looking for formal compliance with section 178?

W Yes.

CA And then you are looking for the potentially misleading content?

10 W Potential to mislead, and if we believe there is a potential, the matter will be addressed with the candidate and they will have an opportunity to lodge a revised How to Vote Card.

CA Can I show you a How to Vote Card. It contains the names of three candidates. They are shown as Paul TULLY, Paul PISASALE and Kerry SILVER; correct?

W That is correct.

20 CA It appears to be a How to Vote Card for those persons?

W Yes.

CA In terms of authorisation, do you see at the bottom it appears to be authorised by a D SMALL for all of those candidates?

W Yes.

CA It may put you on the spot a bit --

30 W That's all right.

CA -- but is that a sufficient authorisation for multiple candidates?

W The How to Vote Card is not deemed by the Commission to be a group. By affiliation, yes, I think it's quite honest or quite reasonable to say that there is an affiliation there.

CA Yes.

40 W But it's not identified as a group. However, if --

CA On the strength of that?

W On the strength of this. If we received any complaints during or after the event that there was a belief that a group had existed, the candidates didn't follow the right process and register themselves with my Commission as a group, then action would need to be taken against them. But that itself doesn't portray a group.

50 CA It wouldn't be rejected for that reason?

W I don't think it was rejected.

CA I tender that How to Vote Card.

PO That is Exhibit 5.

- CA I will show you these two How to Vote Cards for Division 9. They promote a candidate, Jade CONNOR. One I think you will notice in the middle of the page has an authorisation in fact from Jade CONNOR at an address at Redbank Plains. Do you see that?
- W Yes.
- 10 CA Do you see towards the bottom of that, in a square box, it has a representation of Labor Queensland with a Southern Cross and the word "Independent"?
- W Yes.
- CA Do you know whether that How to Vote Card was approved in that form?
- W I don't, but I can certainly make some inquiries and find out if it was, because it looks -- it needs a bit of a closer interrogation if it was submitted as a How to Vote Card. But I can certainly find out if it was and the basis of accepting it as a How to Vote Card. What is really unusual is what is printed on the back, which is of more concern to me.
- 20 CA Why is that?
- W A How to Vote Card --
- CA Should not be policies?
- W No. So if you are okay with it, I will have a look and see just exactly what happened to this one. But on the face value, yes, it would have needed scrutiny.
- 30 CA Because of the information that is on the reverse?
- W Yes, and with the "Labor Independent". I'm not quite sure where that comes from or how that impacts on the intent of a How to Vote Card.
- CA The other version of this one, in this instance authorised by a Dean HARVEY of Springfield Lakes, does not contain that representation of Labor Queensland?
- 40 W No, it doesn't.
- CA So you are not aware of whether either of those pass scrutiny?
- W No.
- CA Not certain?
- 50 W No, but I can certainly find out for you if they passed or if they didn't pass and what the rationale was.
- CA All right. I tender those two How to Vote Cards in the name of Jade CONNOR.
- PO Those cards will be collectively Exhibit 6.

- CA I will show you two more -- two versions of the How to Vote Card in the name of Declan MCCALLION. Just compare the two of those in the top right-hand corner?
- W It's got that "Labor Independent" on it again.
- CA Yes. It's the same, is it not, as Mr CONNOR's representation on the previous exhibit?
- 10 W It is, yes.
- CA And the other version of it has the Queensland Labor details removed, and it just appears with the word "Independent"?
- W I question the validity of that one with the "Labor Independent" on it. This one looks more acceptable.
- CA If you assume that the candidate is not a party-endorsed candidate --
- 20 W That one?
- CA Yes. In relation to the other one, which has the Queensland Labor details on it, if you assume for argument's sake that he is not a party-endorsed candidate --
- W Well, it begs the question why "Labor Independent" is on the How to Vote Card.
- 30 CA Do you have any knowledge as to whether either of those --
- W I don't. Again, I will certainly find out for you.
- CA I tender those two Declan MCCALLION How to Vote Cards.
- PO They will be Exhibit 7.
- W There were close to 2,000 that were given to us to sign off on, but I am pretty sure I will be able to find out whether or not they were approved, and on what basis or, equally, if they were rejected.
- 40 CA I will show you this How to Vote Card. It bears two names, Julie GREER and Allan SUTHERLAND. In this case there appear to be two authorisations, one per candidate?
- W It does.
- CA Can you tell us whether the How to Vote Card in that form would be rejected as being a How to Vote Card pertaining to a group of candidates?
- 50 W Well, it clearly doesn't say that it's a group. I think it's another example of a How to Vote Card by association of the two - two individuals. So, again--
- CA The same as the first one we looked at?

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W Yes. It may have been accepted but, again, off the top of my head, I can't tell you but I will certainly find out for you. And if it was rejected, I'm quite happy to give you the reasons why. But it certainly doesn't depict a group. It doesn't have the name of the group as required by the legislation. It's more by affiliation for Ms GREER and Mr SUTHERLAND.

CA I tender that How to Vote Card.

10 PO Exhibit 8.

CA That is Mr VAN DER MERWE's evidence, Mr Chairman.

PO Thank you. Are there any applications for anyone to ask any questions of Mr VAN DER MERWE? Thank you.

Thank you for your attendance.

20 W Thank you, Mr MACSPORRAN.

PO You are excused.

W Thank you.

HRO All stand. This hearing is adjourned.