



CRIME AND CORRUPTION COMMISSION

TRANSCRIPT OF INVESTIGATIVE HEARING

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(DURATION: 57MINS)

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LEGEND

PO Presiding Officer – ALAN MACSPORRAN QC
CA Counsel Assisting – GLEN RICE QC
30 HRO Hearing Room Orderly – MELISSA LETONDEUR
W Witness – GREG HALLAM
LR Legal Representative – MR T FYNES-CLINTON, King & Company, Solicitors

- HRO This hearing is now resumed. Thank you.
- PO Mr RICE.
- CA Commissioner, I call Mr Gregory HALLAM.
- LR Good afternoon, Commissioner. My name is FYNES-CLINTON, first
10 initial T. I am a partner at King & Company Solicitors. I am appearing
for Mr HALLAM.
- PO Thank you, Mr FYNES-CLINTON.
- Mr HALLAM, do you have any objection to taking an oath?
- W I do not.
- PO Thank you.
- 20 W The evidence which I shall give in these proceedings shall be the truth,
the whole truth, and nothing but the truth, so help me God.
- CA Is your name Gregory John HALLAM?
- W It is.
- CA Mr HALLAM, you're the Chief Executive Officer of the Local
Government Association of Queensland; am I right?
- 30 W That's correct.
- CA That's a position that you have held since 1992?
- W Yes, almost 25 years.
- CA A long time.
- W Indeed.
- 40 CA You are here today in response to a notice to attend; am I right?
- W That's correct. I have a copy with me.
- CA Can I show you this one and get you to confirm it. Is that a copy-
- W That is the notice, thank you.
- CA I tender that.
- 50 PO Exhibit 89.
- CA Could you explain, to begin with, Mr HALLAM, what the role of the
Local Government Association is?
- W Yes, thank you. The Local Government Association of Queensland is
a company limited by guarantee. It was established in 1896, so it's

121 years old.

Our mission is to strengthen the ability and performance of local government to better serve the community, and our objects are to promote the interests, rights and entitlements of its members, improve the efficient performance of local government in Queensland, advise and counsel members - I should say "member" in that instance is the body corporate; it is the governing mind of the council, not individuals - in matters of doubt or difficulty, monitor and take action in relation to any legislation affecting members and undertake and promote actions endorsed by our annual conference at policy executive and board.

10

CA Your membership, then, consists of?

W Seventy-seven councils of Queensland. We are a voluntary body, but all 77 councils are members.

CA Being, I think you said, the bodies corporate of those councils?

20

W Yes, the bodies corporate. We, in a practical sense, unless we're in doubt, take that the Mayor and/or the CEO are representing the view of the governing mind. If that's not the case, then we have to take extra measures to ensure that we do reflect the majority view of that body.

CA Does that role that you have outlined, then, bring you and the association into regular contact with Mayors?

W Yes. I would see most Mayors half a dozen times a year.

30

CA What about individual councillors, does your interaction extend down to the next level, as it were?

W Yes, we have very significant stakeholder engagement processes and what we would call onboarding processes. We are at the minute visiting, I think, 35 sites around Queensland to do elected member training. We would ring every elected member in Queensland a minimum of four times a year as part of our outward-bound calling processes. We conduct training in all number of things. And then they would attend the annual conference, or some of them - certainly the Mayors would - and other regional meetings of council. So we spend around about \$1 million a year on travel, and we do quite literally thousands of face-to-faces with our elected member body, the entirety of it, the 500-odd, in the course of a year.

40

CA You mentioned "we" in connection with the amount of travel that is undertaken. You are speaking of yourself, I suppose, to begin with?

50

W Yes. This year I have spent about 90 nights away from home, but, as a rule, I would spend around 70. I have 76 colleagues at the LGAQ, but there would be a hard core of a dozen of us that would be regularly at regional or other meetings of councils across the state and have the formal discussion and then the cup of tea outside on the verandah after or during those proceedings.

CA Does the association have any role with respect to the conduct of elections?

- W No, we don't. That has always been the province of either the ECQ or the Department of Local Government. Our view has always been because at law the member is an elected body, we deal with the elected body at the time.
- CA You mentioned though, I think - you referred to your outward-bound calling processes?
- 10 W That's correct.
- CA Perhaps you might explain in a bit more detail what that consists of?
- W Yes, thank you. It's a number of things. Firstly, it is obviously forming a relationship with those folks. It's-
- CA "Those folks" being?
- 20 W Sorry, my apology. The 500-odd councillors of Queensland. So as a matter of course, we would ring every one of them four times a year. That is our member services centre, not myself. It is a group of people dedicated - eight people dedicated to that task.
- CA Sorry, Mr HALLAM, just in relation to those calls, what is the object behind calling councillors regularly or at least four times a year?
- W Sure. So we understand their priorities and their concerns and that we're meeting their needs in relation to services and training. The LGAQ is an extensive business as well. Apart from the advocacy role and being the registered industrial organisation for councils, our group total turnover is around about a billion dollars a year.
- 30 So we own and operate an insurance company, not a brokerage but a full suite company - a full suite of services, I should say; a workers comp licence to most councils in Queensland; a procurement function, Local Buy; a shared services and facilities management company, Propel; and an infrastructure delivery group, LGIS.
- 40 So we have multiple sets of responsibilities and I guess we see it in these three senses: advocacy, assisting councils on the day-to-day basis, and then partnering with councils in those business domains I just mentioned.
- CA You mentioned, in connection with your calling to councillors, an aspect of training and education. What is the content of that so far as the interaction between the Local Government Association and councillors is concerned?
- W Mr RICE, we take all that information. We have a business analyst that reviews all that material that comes in, and then we would parlay that into the programmes that we would run, such as the elected member programme at the minute, so the topics that we would be covering as we go around the state annually and at the time - immediately after the election, a two-day programme and/or the training courses our registered training organisation offer, or even services that we might not currently provide. So we're checking to see whether there are gaps or there are unmet needs, and then we take that material and we turn those
- 50

into offerings or business opportunities.

CA What are the subjects, then, of training and education?

W They're varied. We do offer an elected member specific course in local government administration, but elected members are free and do involve themselves in Certificate IV type courses, such as paraplaning, environmental health, financial administration and local government generally. So I think there are 14 RTO accredited courses that are either
10 Cert III or Cert IV or diploma level, and a goodly number of elected members participate in those.

CA This hearing is more focused on the electoral process. Is there any training or education provided to councillors in respect of, for example, obligations under the *Local Government Electoral Act*?

W No, not as such. We, as I said, have a very clear view where our remit starts and finishes, and we see that as the province of the Electoral Commission of Queensland and the Department of Local Government.
20

It's the Department of Local Government that conducts the candidate briefing sessions. They're voluntary sessions, but they run them across the state and people who are intending to run can attend those. But we do give advice from time to time for sitting councillors, obviously. If they ask a question, we would answer to the best of our ability.

We produce, apart from any of the face-to-face I refer to - my colleague at the Bar table and I produce a handbook. We've done that for, I think, 20 years, and that goes to the responsibilities of councillors having taken office. We provide, via a barrister, a legal commentary on the three principal Acts. And we have, as I think has been noted in other parts of these proceedings, an external independent ethics advisor, Ms Joan SHELDON.
30

CA I will come back to that. You mentioned that you don't have any formal role in the electoral process, but do you find, as a matter of practice, that in the course of election campaigns you tend to field inquiries from councillors about how to deal with issues that arise in the course of a campaign?
40

W To be honest, not a lot during the conduct of elections. The sort of stuff that we would get are people crying foul about potential defamations, abuse of the political process, matters referred to the Commission. But, no, we don't get many questions, certainly I don't, about the actual ins and outs of the *Local Government Electoral Act*.

CA It sounds like you field complaints, though?

W Many, many complaints.
50

CA On what kinds of topics, Mr HALLAM?

W Well, indeed, I've made appearances here in relation to those matters. People would attack the good name of a candidate. They would allege that they have referred matters to this Commission, the Ombudsman, the Auditor General and any number of watchdogs. Very false

submissions have been made about the powers of councils, that they can do certain things when they can't, or the financial position of councils.

10 We're on the public record as saying - and we're still in the process of investigating establishing an independent electoral monitor. That's quite apart from the ECQ, but that's to look at questions of people - I guess, in the current common parlance, fake news, so people making all sorts of accusations and allegations in respect of the wrongdoings of councillors, but not in respect of - I've never received a - I certainly didn't receive any phone calls in the term of the last election about, you know, How to Vote Cards or those sorts of things.

Look, I would have had people - and we've dealt with this, again, separately - that have raised questions about the ECQ's conduct of the election, concerns about matters such as postal votes, their website, the quality and number of people that were assigned to returning officer and related roles, and we've made a separate submission to the government in relation to the review of that process.

20 CA Is that just to give you feedback about issues that councillors see-

W Correct, correct.

CA -in their workplace, which at the time is on the hustings?

W Absolutely.

30 CA Is that an expectation that you, then, have a role of interfacing with the state government?

W Indeed.

CA And can represent those complaints to the government?

40 W Yes. It's two-fold. I mean, we get the off-the-cuff and solicited responses and then we make formal submissions. So we would have two sources of information, one of which is stuff that comes to us directly and others where we've gone out and asked by way of formal circular to councils for their input.

I suppose the difference would be those that come unsolicited are largely individual, and then where we go out and ask for a council view, sometimes that's different because it's the majority view versus one's view. We put all those together and that is the basis of submissions we make formally to state government.

CA You mentioned the electoral monitor. Is that an existing position or a foreshadowed position?

50 W Foreshadowed. Because of the abuse, in our mind, the abuse of the system against sitting councillors, and we're on the record as saying it's the worst in living memory, which is-

CA Which is, Mr HALLAM?

W The last election.

- CA In terms of complaints that you have received?
- W Correct.
- CA Volume or type, or both?
- W Both. Both. It was quite pernicious, and a lot of it involved not
10 the mainstream media but the use of social media. So we've got a project
under way at the minute exploring at least the possibility to have
someone, not with judicial powers, obviously, or extra-judicial powers,
but an ability to have a senior person, supported by appropriate research
and media-monitoring systems, that could call in quick time
the straight-out fake news and furrphies.
- CA Is that, then, like an information-gathering role on practices of that kind?
- W Yes. We are currently researching, and the project won't complete until
20 the end of June, best practice around the world, to the extent that it
currently exists.
- CA This kind of information-gathering through this potential electoral
monitor, would that also feed into the kind of interface you might have
with state government?
- W Well, it will.
- CA Is that the objective?
- 30 W No, this is something we'll do off our own bat, Mr RICE. This is
something that-
- CA But to what end? What use are you going to make of the information you
get?
- W Well, it's not so much to our end. We would hope that by creating such
a role, the simple creation may stop some persons from abusing the good
name of sitting councillors unfairly.
- 40 CA More likely to be found out?
- W Yes, so naming and shaming but within the realms of not defaming
someone.
- CA The association does employ, I think you mentioned this before, a local
government ethics and integrity advisor?
- W That's correct.
- 50 CA Is that currently Mrs SHELDON?
- W That is.
- CA What is her role?
- W Mrs SHELDON is paid as a consultant, effectively, and not an employee

of the association. We have a formal common law contract with her to provide ethical, not legal, advice to councillors in doubt, and she does that without any reference to us. So I have - and by agreement with her and as part of her accepting the brief, she will not ever divulge the nature or the person or persons she has spoken to.

10 But we do sit down three or four times a year where we have a general discussion about the types of matters, whether there is any change in those, or whether there is any confusion, doubt or difficulty around those matters, and if that's the case, then we would highlight those by way of a circular to councils or conduct some training or ask Mrs SHELDON to talk about it at an annual conference.

CA Is she available to individual councillors through the state?

W She is. And senior council staff, they have her mobile numbers. She makes a point of travelling around the state at the start of each term with us as we do elected member inductions, so people know her and are able to meet her. She, at the start of the last term, attended the - I'm trying to think of the name of it - civic leaders summit, where she did go around and meet everyone, basically.

20 CA Would she be available, for example, to a councillor who was faced with a situation of conflict of interests with respect to his or her position on an application before council?

W Absolutely, absolutely.

30 CA And does that happen?

W Yes.

CA Does she field inquiries of that kind?

W She does.

CA And offer assistance to councillors on that kind of issue?

40 W She does, on ethics and not the law.

CA Does she have an approach to answering such questions which is her own, or is it directed by the association as to how she should approach such queries?

W Knowing Mrs SHELDON, she would never be directed, and, no, she doesn't.

50 CA In response to an invitation, I think the association has made a submission to the Commission for the purpose of this hearing?

W Yes, correct.

CA I'll just get you to confirm a copy, if you don't mind. Can I show you this.

W That is the document.

- CA I tender that.
- PO Exhibit 90.
- CA There were a couple of issues specifically touched on in that submission, Mr HALLAM. One was to do with disclosure of electoral donations. You would be aware, I think, under the *Local Government Electoral Act*, of the disclosure regime as it exists?
- 10 W Yes.
- CA And that it requires disclosure returns and they may be submitted up to 15 weeks after polling date. Do you and your association have a view about the adequacy of that kind of a regime in giving electors information that they might be assisted by in placing their vote?
- W We do. And I might elaborate on the submission and go somewhat further, Mr RICE?
- 20 CA By all means.
- W In the first instance, we've supported real-time disclosures. At the last local government elections, those of March 2016, a group of community organisations on the Sunshine Coast established such a system with some software that they paid for, and then by agreement with the candidates, they all participated and they were able to, during that election, essentially have real-time disclosure. Now, it might have been 24 hours, but it was essentially very quick.
- 30 So we believe it's possible. We think it's a good thing. Our fundamental view is that the more transparent the processes, the better off everyone is. So we support real-time disclosures up to seven days before the election, and then we say that no further donations should be received for that election. So once we are a week short of the polling date, that should be the absolute cut-off for any donations for that campaign, so it can't be gamed, so someone can't make a donation three months later for an event that had previously been held.
- CA Why select seven days?
- 40 W Biblical.
- CA No special significance in that timeframe?
- W No.
- CA Does the association, then, support the government's decision to introduce real-time disclosure in the Bill that is, I think, presently going through the House?
- 50 W We do. We do, Mr RICE, and then we go beyond that and say this, that in relation to the completion of the members register of interests and gifts register, they must be completed before they take office.
- CA That's the second issue that you raised in your submission.

- W Yes. As it currently stands, it is 30 days, so there is a potential for councils to sit and determine matters without those registers being completed, the way the law currently works. I mean, if you work back from the minimum time that a council can - from which the poll is declared, officially declared, it's possible to have a meeting inside the 30 days. We say now that the best practice would be for all registers to be completed before people can take up their position at a council meeting.
- 10 CA Just enlighten us as to what is the content of the register of interests?
- W The register of interests goes to a number of things: the financial and other interests of the elected member and their wife, although it's held in private; it details any interests that might affect the conduct of their business; it goes to the membership of political parties. It covers off on a range of things, but it is separate from the gifts register, which is the register in which they must lodge the particulars of political donations.
- 20 CA One matter that a couple of councillors have raised in the course of hearing in this session is that the gifts register and register of interests is not applicable to new candidates, and some councillors feel it is not a level playing field.
- W Our submission is that they should. So we will argue here and in any subsequent discussion that it should apply to everyone, so that all the sitting councillors and candidates are on the same level playing field. But, more importantly, some of the issues that have been canvassed here over the last little while wouldn't arise if all those relationships and memberships were known prior to the election.
- 30 Again, without having any particular reason to suggest 14 days, we would suggest 14 days, but it could be seven, but I suggest that's probably a bit too short a period of time for people to ventilate and understand those sorts of matters, particularly where there is not a newspaper circling in a community. For the purposes of this hearing, we say that 14 days out, all those particulars should be known for everyone standing.
- CA Would a register of interests, if it were extended to new candidates and not only limited to councillors, expose political affiliations, memberships and so forth?
- 40 W Yes. Yes, it would.
- CA At what level does it operate? What kind of information of that type currently is disclosed by councillors?
- W You simply have to record, if you are a member of a political party, what that party is.
- 50 CA I suppose the donations return should disclose donations by a political party, were that to occur?
- W Yes. We've contemplated this position and we've thought through how do you deal with all the potentialities, and I'm comfortable to say that we've got a view now that says that a political party or a union should not be able to make a donation to a candidate who is not an endorsed

candidate of that party, bearing in mind there are three types of candidacy, as you are well aware: there is an individual, there's a group, and those that are endorsed by the state secretary of whichever party it happens to be.

So what we say now is this, that in the event - well, go the other way, that a political party or a union should not be able to donate to a candidate that is not the endorsed candidate of that party.

10 CA Why do you take that view that a political party shouldn't donate to a candidate who is not endorsed?

W Transparency, that every-

CA Assuming, though, that such a donation was properly disclosed, is the transparency not achieved by the disclosure method? You go a step further, by the sound of it, and would look to prohibit such a donation?

20 W Yes. I think when you understand - and it has been canvassed in an article in the Courier-Mail yesterday, to which I've responded today. When you understand the significance that electors place on independents, or independence of their councillors, we believe that's a necessary step. Mayor TATE dealt with it very well. The last time a major political party tried to involve itself in an election outside of Brisbane City was the Gold Coast in 2008. That party spent \$1 million. They ran in every seat, every division and the mayoralty and didn't succeed. So I think that's a test.

30 As I indicated in today's Courier-Mail, the biennial community attitude survey that the LGAQ has now conducted 11 times also bears testament to that. People are happy for you to be a member of a party, they'll live with that, but they expect you to be fiercely independent when you walk into the council chamber. And I think the extra step I outlined about breaking any connection in a financial political support sense from a party to an individual that wasn't endorsed goes to that matter.

CA I'll take you back to a submission that was made in 2006. It may have been you, I'm not sure, but-

40 W It was. I remember it well.

CA Part of the submission made to the CMC, as it was then in 2006, was that disclosure of political party membership is as significant an issue as disclosure of election gifts.

W Yes.

CA Do you still adhere to that?

50 W Absolutely.

CA We notice, though, that whilst there is a regime of regulated disclosure of election gifts, although it may be subject to improvement, there isn't presently such a scheme of disclosure of that kind of political affiliation.

W Except to say it's in your register of interests.

- CA Okay. But as we've been discussing, that doesn't apply presently to a candidate-
- W No, no, correct, so in the present sense, that's true, yes, and we say that needs to be remedied.
- CA That is part of what you have suggested, I think, in the second of your suggestions in your submission?
- 10 W That's correct. I guess, just to complete the picture about timing of disclosures, we see no real reason why the returns to the ECQ should take 15 weeks. We've thought about that long and hard, and the only thing is, by way of analogy, that's what applies to the political parties and others in the state regime for the state elections. We don't believe that 15 weeks is necessary or good practice. We think it could be as few as 30 days.
- CA You've been around a long time, Mr HALLAM. Do you know what the rationale was for a scheme of that type allowing 15 weeks after election to put in this kind of information which is relevant to electors?
- 20 W The public argument at least is harmonisation between the laws that apply to state and local government elections.
- CA That doesn't say anything, though, about informing electors, does it?
- W No, Mr RICE, it does not.
- CA Related to that, as you know, most candidates for local government are not party endorsed?
- 30 W Correct.
- CA And a good many campaign on the basis of independence?
- W True.
- CA As if that is an electoral virtue?
- 40 W Correct. I think I've said that, yes.
- CA That's not, however, a classification that is recognised in the *Local Government Electoral Act*, is it?
- W I suspect it is by default; that is, if you are not endorsed by a party or not a member of a group, you must be the other, which is an independent.
- CA Section 27, I think, is the one that deals with nominations.
- 50 W Correct.
- CA And it's the only section which really touches upon that in the way that you have described?
- W That's right.

CA Should there be an independently obtainable content to the expression of independence; that is to say, should there be a definition of attributes that people can relate to?

10 W Yes, and I'll come to that. I guess it's already a legal document when you sign that, sign your nomination form. It may well be that it needs to be made more express and, indeed, the penalties that are provided for making a false declaration. We, as you are aware, appeared as a friend of the court, I guess would be the term, in the 2006 proceedings which you referred to. I'm very familiar with what was said would happen and then what was found to have happened at the 2004 Gold Coast elections. And then we were obviously consulted in relation to changes to the legislation that introduced the notion of a group.

I've gone back and acquainted myself with the second-reading speech and the explanatory notes from that time, and I'm not a lawyer, but I think it's still ambiguous as to what a group is.

20 CA What object was intended to be met, going back in history, Mr HALLAM?

W Well, clearly, what the legislators intended was that if people were not individuals and not endorsed candidates but had formed together for the purposes of not just electioneering but working together as a group, then that should be known to voters before the election date.

30 We've given some thought to that. We think that it's still ambiguous and in the absence of a court precedent, these matters have never been tried. What I would suggest today is that there might be a proposition that there be, say, four limbs and that if you are found to have breached, for want of a better word, or met the test of three of those four limbs, then that would constitute a group. And that would go from common funding - and you may well say majority common funding, because otherwise you could have a situation where you have \$100,000, but \$98,000 comes from one source or sources and \$2,000 is independent of all others, so it would be some sort of test around majority common funding. A common campaign structure, and that would include strategy, signage, documentation, common materials, billboards and the like. And the fourth limb would be common materials on the day at the polling booth, including How To
40 Votes.

We don't believe any one or even any two of those would necessarily mean you're a group, but we think in the absence of a precedent that if you met three or four of those, then you would be a group.

CA The current definition is quite different to that, isn't it?

50 W It is. I think it's certainly complex, obviously, when you try to translate the will of governments through the drafting process into law, and even more difficult when you have to administer that law, and bearing in mind the government was clearly of a mind back then to change the penalty from six months jail to seven years jail to send a very clear signal. But I think, in hindsight, in terms of efficacy and being able to prosecute, the provisions weren't as strong as they might have been.

CA You, by the sound of it, would favour some greater listing of the attributes

of a group?

W Yes.

CA Whereas at present a group is one which is formed to promote the election of candidates or to share in the benefits of fundraising?

W Correct.

10 CA Which is very broad, do you agree?

W It is, Mr RICE.

CA Do you think the breadth of it is appreciated by councillors and by candidates?

20 W No, I don't. I think we all struggle with the complexities of the electoral law and, indeed, what happens once you get elected. The fundamental difference between local government and state and federal governments is that we don't have a party political system. I think that's a good thing. But we're talking about mums and dads. We're talking about, as you have heard in evidence, people that don't have access to parties. They don't have access to party-sanctioned lawyers. They don't have Crown Law advice. They don't have a whole lot of things.

CA Some don't look at the Act.

30 W Well, that has come out in evidence, yes. I should just say this, though: we are the level of government closest to the people, and I opined this in today's Courier-Mail. We are most reflective of community. A lot of folks do not have a background in understanding the separation of powers, the operations of government, the executive, the judiciary or even the most rudimentary ideas about how governments work. They are motivated because they want to serve their community and/or they have some particular issue that they want to address. So in that sense, we're most reflective of society, I guess, and the corollary of that is that we're probably in some ways least prepared.

40 CA Would it be a fair comment to say that many people seeking office are focused upon the objective and not so much on the regulatory requirements of the Act?

W Entirely, Mr RICE.

CA We touched on the way in which disclosure might be made of political party membership, and I appreciate that the association's view is that that would be achieved by extending the register of interests to all candidates?

50 W Correct.

CA One other suggested option is that disclosure of that kind should simply be left to the political process unregulated, that it should be left to the scrutiny of rivals and the media, and so forth, to draw out this information.

W I think that becomes-

- CA Is there some reason you don't subscribe to that?
- W I think it is a positive thing to have disclosures, to be upfront, to tell people who you are, rather than have it done second-hand by another party.
- CA Or perhaps wait until an elector inquires about such an association?
- W Correct.
- 10 CA You favour a more proactive disclosure?
- W We do. I should say - and, again, this was part of my commentary today in the paper - that despite the common view that most people are members of parties, that is not the case. We've not done it for the 2016 election, but we've done it, I think, for the five before that, four or five: somewhere between less than a third and as low as 25 per cent of sitting members in past councils are members of political parties. So the great majority of people who are elected are independent. Again, that's a matter of fact based on those returns.
- 20 CA One issue that has been considered in this hearing is the use of trusts and other forms of intermediary between donors and candidate recipients. Does the association support the notion of donations to a trust, which would then distribute funds to one or more beneficiary candidates?
- W We don't have a position. We certainly believe that there's got to be some independence in the process and that there has to be separate accounts and there has to be a proper accounting of all moneys in and out of those bank accounts, but we have not got a position on whether it should be a trust. Clearly, the trust implies or requires - imposes, I guess is the word, fiduciary obligations on those that are the trustees, and there would be some measure of comfort, I guess, from the voters' point of view. Against that, some of the transparency is lost. So there are two sets of arguments either way, I guess, and we don't land on any position about whether it should be a trust, but we do support the notion of a separate bank account.
- 30 CA Do you think candidates should know who the donors are to a trust from which they're receiving money?
- 40 W It depends on what the question is. Is it about when they take office, or is it as a consequence of getting elected? When they take office, there's an obligation to generally understand where you might have a conflict of interest. So to the extent that it's possible to know who those parties are, yes, when you have taken office, you should deal with those.
- 50 Councillor SUTHERLAND has had many, many conversations with me about that and about what the law says and the difference between an MPI and a conflict of interest, when you have to walk and when you don't walk, equally Councillor PISASALE, trying to understand in precise terms, and there is a difference between, you know, what some would say was ethical or suggested by others and what the law requires you to do.
- And we're very clear - and I've thought about this over the last 48 hours in preparation for this appearance. We run the risk of elevating a donation to an MPI, and it's not an MPI. It isn't an MPI.

- CA Just explain what you mean. You used an acronym there.
- W My apologies. There's no personal interest. There is no personal interest. It's different from owning shares in a company or having some financial connection and the potential for gain or loss by way of a decision. That doesn't exist in the case of a political donation. It's not the same thing.
- 10 So if we start talking about having to walk on those things, it really does change the game. As I said, it elevates donations to a place I don't believe they should be. I believe people can - if there's transparency in the record-keeping and the registers and we reform the processes we've talked about and people declare that interest, that's what the community needs to know. They need to know that all those interests have been declared and taken into account and that there is no doubt as to where those interests lie.
- 20 But, as I said, if you by extension start to think about banning donations and the like, or banning donations from classes of people, or even public funding for your campaigns, you completely change the nature of the process.
- CA Well, you ventured into the area of conflict of interests and mentioned, I think, material personal interests as one aspect of that?
- W Correct, yes.
- CA The other aspect is a conflict of interest?
- W Correct.
- 30 CA What's the difference between the two?
- W Well, the conflict is a non-material interest. A material interest, as I said earlier, is where the Act is quite clear there is potential for financial gain or loss by a decision council might take, that you have a direct financial or pecuniary interest.
- 40 A conflict is a much broader concept. It says that you have a connection to or a relationship with or an interest in. It might well be that you are a member of a sporting club. It might well be that you have some, more than vague but still tenuous, connection to a project, a body, an interest. I think that's how I would describe or define the difference between the MPI. The MPI is crystal clear. We tell everyone that if you have an MPI, as soon as you register, you walk; you do not stay. That is just black-and-white advice we give all day, every day.
- CA You leave open, by the sound of it, to the individual the question of whether they walk where there is a conflict of interest?
- 50 W Correct. We advise them on what the law says and then tell them it's up to them as to how they deal with their conflict. And, indeed, we're more like - we're less like a parliament. It's often lost in these things. We're not an imitation, even a part imitation, of state and federal parliaments. These are corporations, and it is essentially the corps law test or standard that applies.

- CA Dealing with conflict of interests, that would leave to the decision of the individual as to whether, having declared a conflict, he or she remains to vote on a proposal or not?
- W That's correct, yes.
- CA Does that, in turn, place reliance on the integrity of that councillor?
- 10 W It's not a question of integrity. I mean, they're either being lawful or not lawful. There's no third law on this. There's one law, and the law says you can stay as long as you've done certain things. It's a matter for them and their conscience and, I guess, the broader electorate in terms of whether you get elected at the next term or not. There is no requirement to leave, so I think we have to be so careful about this, that we don't confuse the two.
- CA Would there be circumstances of conflict of interest that would require that course to be taken? I suppose circumstances are infinite, aren't they?
- 20 W They are. When my colleague Mr FYNES-CLINTON and I write the handbooks, we very carefully avoid those situations, because you could never - we'd have a never-ending story. I just could never give that advice. If I'm in doubt, I refer to my legal colleagues, that's for sure, if there's any danger. Look, you know, in the whole permutation of possibilities, you can't ever rule it out, but I think it would be a very, very limited set of circumstances that would apply.
- CA Is that situation a sufficient safeguard, do you think, of proper and accountable local government?
- 30 W Absolutely. And I go to this point: you've got to see it through the entire decision-making process. So we're focusing, and correctly so, on what happens before an election and donations and what happens with conflicts. But you've got to bear in mind when these matters come before council in a formal sense, if there's a resolution to approve a project, declarations have to be made and conflicts are noted in the minutes.
- 40 If the council were to not agree with the chief planner's recommendation, then they must state in their resolutions the grounds on which they turn it over, and none of those decisions can be made behind closed doors. So I think there's every protection when you see the full gamut of how these matters play out through to an approval.
- CA And is the ultimate sanction, then, the next election?
- W Correct. I mean, as an old veteran of 30-odd years in local government, we go through these swings where we are either pro-development or anti-development, and there is a cycle and you see it. Probably the cycle comes around more often now than it did years ago, but there is no offence to be anti-development or pro-development. It is simply someone's philosophical view of the world. We get confused at times about those things. It takes on a meaning and a significance beyond the law.
- 50 CA Before we started talking about these conflicts and the resolution of them, we were talking about the use of trusts. Does the use of a trust as an intermediary between a donor and the recipient enable a candidate to

genuinely avoid making a declaration of interest?

W I've never really contemplated it, to be honest.

CA I ask that because if the disclosure regime is working, then the third party, being the trust, should make its own disclosure of who its donors are.

10 W True. And, again, when I went back and consulted the explanatory notes which accompany Bills into the parliament, that was the intention, that they had a complete system, it was indivisible, that there was a check and balance in relation to one of three parties having to report that - the donor, the recipient and the trustee - so that there was a complete picture of any transactions that occurred.

CA And all these returns are made public by the Electoral Commission; correct?

W Correct.

20 CA On their website?

W That's right.

CA So that the information is published to the world?

W Correct.

CA As to, for example, who the donors are to a recipient trust?

30 W That's right.

CA And then, from there, where the trust distributes its money to?

W Correct.

CA In that scenario, then, would it be disingenuous to any degree for a candidate to deny knowledge of who the donors to a trust are when it's available to the public at large?

40 W I have never turned my mind to that possibility. As I said, we don't get ourselves involved in the elections per se. I mean, that's something I've eschewed for a very long time.

CA You touched on the subject of banning donations or capping donations a little earlier. As it turns out, you're in favour of banning a kind of donation, being a donation from a political party; correct?

50 W Well, I'd be more precise - banning a donation from a political party or a union to a non-endorsed candidate. That's a very narrow group of people, Mr RICE.

CA But acknowledging a ban of that kind, would you see scope for any extension of bans to other donors or kinds of donations?

W I think it's extremely dangerous.

- CA Why, then, make a distinction between the one that you have selected and other kinds of donors who people might think are equally concerning?
- W Well, I think I simply repeat what I said earlier, that because of the significance in the voters' minds of independence, true independence, then it flies in the face of that to be able to have a person who might be a member of a party, who's funded by the party but is not endorsed by the party. That doesn't - I think that wouldn't pass the pub test.
- 10 CA Okay. Let's assume very substantial donations from a developer who has a current development proposal before the council, and let's assume the donation is made to the candidate for that particular division. Would that not be of equal concern to the prospect of a political party supporting a non-endorsed candidate?
- W Not in my mind, no, simply because they're different things. One is getting someone elected. The other is, by extension, what happens when you vote on those matters involving that donor. You never vote on a matter involving the LNP, the Labor Party, the Greens or any other party.
- 20 CA Do you subscribe to the view that the deliberation process, including the recording of minutes and so forth, will sufficiently expose conflicts and the way they're treated?
- W Yes, and, as I said earlier, all the reports are made available. They're public documents, those planning reports. All of the debate and the actual decision, the actual resolution, the passing, must be done in full open council. And the final check is, as I said earlier, by law, where the council overturns the recommendation of the planner, it must state in its reasons why that is the case. So I think that ties it up beautifully.
- 30 CA On the subject of donations, you are not in favour of any other kind of banning of donations beyond the one that you have mentioned?
- W No. No, we have turned our mind to it, and I guess it will be for the High Court one day, but there are clearly these concepts of the implied right of political freedom of speech and association.
- 40 CA There are questions of legality involved?
- W Yes, there are, no doubt. It seems to me it's more probable that the High Court would look favourably on limits rather than - so it's a question of regulation versus prohibition, the old one everyone faces. I guess it's more a question of regulation than prohibition. I mean, who do we prohibit? We would really tilt the playing field one way or the other.
- 50 Having said that, I think it's really important for everyone to understand 90 per cent of all candidates don't get any donations. We're talking about a small - if you talk about the entire system, we're talking about 10 per cent of it here.
- CA We have been focusing on some of the larger councils.
- W Correct.

- CA But there's quite a wide range of councils around the state, of varying size and complexity?
- W And we always start from that point of view, what's right for the system and what moves the needle to the right, I guess, and this is - we are talking about 10 per cent. It is a very important 10 per cent, but it is 10 per cent.
- CA What about capping of campaign donations up to a particular limit?
- 10 W My association doesn't have a view. A personal view is I think that has some merit, that you could try to buy an election, but then again I just go back to my earlier evidence, the same as Mayor TATE had said, there was an attempt to do that on the Gold Coast in 2008 and it backfired spectacularly. People identified very clearly, because they were endorsed, I guess - that was the thing - that they didn't want that independence overturned. They wanted to have their man or woman representing their local patch.
- 20 CA What about public funding? We presently have a private funding model, which goes back to donations or other kinds of funding for those who need it. Would you favour some component of public funding?
- W No, because we're putting our hand in the ratepayers' pocket.
- CA What about expenditure caps?
- W Well, I think that would probably go - it's a difficult one because do you penalise the individual who is able to fund their own campaign versus someone who is externally funded? Yes, I haven't got a resolved view on that.
- 30 CA We mentioned capping of expenditure. You said you didn't really have a view about that, I think. What about disclosure of expenditure as such, is there a desirability factor there?
- W Again, I haven't turned my mind to that, to be honest. I've not really contemplated it. It's very difficult - again, I come back to this. We have to be careful what we impose on the system, because these are mums and dads, as you have heard many times throughout these proceedings. They haven't got armies of accountants or lawyers or party-political people standing behind them. That would probably - if you're coming down to every stamp, you know, that's going to be a hard ask. So I guess what's the definition of good public policy? One that you can enforce and one that improves the system. So I'm not sure that that's actually plausible, or doable, whatever the words are.
- 40 CA Across the various topics that we have been discussing, there is an issue, is there not, between the extent to which a system should be regulated, on the one hand, and left to the political process, on the other.
- 50 W Indeed. I think that's a very fair, honest comment, yes.
- CA Thanks, Mr Commissioner.
- PO Thanks, Mr RICE.

Mr FYNES-CLINTON, do you have any questions?

LR No, Commissioner.

PO Thank you.

Thank you, Mr HALLAM, for coming. Thanks for your help. You are excused.

10 Mr RICE, that's it for today?

CA Yes, Commissioner. We expect a range of expert commentators and stakeholders tomorrow.

PO Thank you. It is proposed to start at 10?

CA 10 o'clock.

20 PO Thank you. We will adjourn now and come back at 10 tomorrow.

HRO This hearing is now adjourned. Thank you.

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