



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 7 – FRIDAY 28 APRIL 2017
(DURATION: 31MINS)

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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 – RICHARD BINGHAM
LR Legal Representative – N/A

HRO This hearing is now resumed. Thank you.

PO Mr RICE.

CA Commissioner, we anticipate evidence from five witnesses today. To begin with, I call Mr Richard BINGHAM.

10 PO Thank you.

Good morning, Mr BINGHAM. Do you have any objection to taking an oath on the Bible?

W No.

PO Thank you.

HRO Please repeat after me. The evidence which I shall give in these proceedings.

20 W The evidence which I shall give in these proceedings.

HRO Shall be the truth, the whole truth, and nothing but the truth.

W Shall be the truth, the whole truth, and nothing but the truth.

HRO So help me God.

W So help me God.

30 CA Sir, is your name Richard BINGHAM?

W That's correct.

CA Mr BINGHAM, are you the Queensland Integrity Commissioner?

W That's also correct.

CA You were appointed to that role, I think, on 1 July 2014?

40 W Yes.

CA For a three-year term?

W That's right.

CA Prior to that, you served as South Australian Ombudsman for a number of years?

50 W Yes, for five years, just about.

CA Going back a little further, you also served for about four years, I think, as Chair of the Tasmanian Electoral Commission?

W Correct.

- CA You are appearing today, I think, in response to a notice to attend?
- W That's correct.
- CA Can I show you this, to begin with.
- W Sure.
- 10 CA Is that a copy of the notice you received to appear?
- W Yes, it is.
- CA I tender that, Commissioner.
- PO Exhibit 91.
- CA You were appointed, Mr BINGHAM, I think, under the *Integrity Act 2009*, and part of your statutory function includes an advisory role?
- 20 W Yes, that's correct, to designated persons as that term is defined by the Act.
- CA That includes, I think, ministers and state members of parliament?
- W Yes, it does.
- CA And extends to whom?
- 30 W Well, the Premier, ministers, members of parliament, senior bureaucrats in the state system. Relevantly for this inquiry, it doesn't extend to local government, although the Act also makes provision for the regulation of lobbyists, and, in that respect, my office has dealings with local government so far as contact with lobbyists is concerned.
- CA Your advisory role is of what kind?
- W It's to give advice to people who are designated persons when they seek advice about ethics or integrity issues of any description.
- 40 CA Including, say, conflicts of interest?
- W That's the particular historical focus, yes. It can also include matters like procurement processes or human resource issues, something that has that ethics or integrity dimension.
- CA Is the advice written or oral, or potentially both?
- W The Act says that the formal advice must be provided in writing, the initial request has to be in writing and my response has to be in writing, but I do take informal inquiries from people and that doesn't attract the protections of the *Integrity Act*.
- 50 CA You have mentioned that your advisory role doesn't extend to local government level. Do you have any view about the desirability of councillors having access to an advisor having the role of the kind that you do, if not the same position?

- W Yes, I do think that's a very important part of an integrity framework. I know that the Local Government Association here has appointed a former Deputy Premier as the ethics advisor to local government. It's not a position which is found in all other Australian jurisdictions, and I do think it is a very valuable addition to the integrity regime which applies both to state government and to local government.
- 10 CA Would that advisory role have, as part of its content, a kind of awareness information?
- W So far as my position is concerned, the public awareness function that my office undertakes is limited to the functions of the Integrity Commissioner, so it's not a general public awareness or education role in relation to integrity matters generally, but there is that element to it and the Act says that that's what I should do.
- 20 W So far as other positions of this kind are concerned, there's a bit of a double-edged sword, I think. The Act, and I believe that advisors - this sort of role is best undertaken in a confidential way. I fear that if people find that the advice or the fact that they've sought advice and the nature of that advice is made public, then they're not always going to seek advice in circumstances in which it's desirable that they should.
- W That said, the broader community needs to have confidence in the way that the advice is given and that those who are entrusted with public office are getting good advice. So there is a bit of a double-edged sword, as I say.
- 30 CA Thinking about what might be helpful to local government, is awareness training a component of that?
- W My understanding about the way that the local government system operates in this state is that there is an induction process which applies once councillors take office, and I understand that a background about the ethical and integrity dimensions of their responsibilities forms a part of that process. That said, that's not something that my office has been involved in, for the reasons you would appreciate.
- 40 CA I understand, yes.
- W But I do think that that is a fundamentally important part of the role that anybody assumes when they take on a public office. It's commonly expressed in terms of a public trust and acting in that way, and I think it's very important that people should understand that.
- CA Descending down one level, perhaps, in the course of a councillor's term, particular problems might arise. Would you see a role for tailored advice to particular situations?
- 50 W I think it is really important that advice is tailored to particular situations. The fundamental principles about all of this are that what's important is the view of the reasonable person who's informed of all the facts. And it's often said, and I will often say that I'm a very poor judge in my own cause. It's always helpful to get advice from a second party who's not involved in the factual situation. They can sometimes see the wood much more

clearly from the trees.

CA I suppose, on the one hand, councillors are elected to make up their own minds about things, but, on the other hand, I take it you see a role for some advisory capacity when conflict of interest situations or other difficulties emerge?

10 W Yes, I do. I take your point that ultimately the decision-making responsibility sits with the person who is elected to undertake that responsibility. That is a very important principle that underpins our representative democracy. But I think it's also important that those persons, as I say, should be getting good advice about ethics and integrity dimensions of the issues that they deal with, not just the nuts-and-bolts policy implications as well.

CA I think you have already made the point that advice of that kind should be on a confidential basis?

20 W It's preferable that it's confidential, I think, just because that's more likely to encourage people to seek advice in circumstances when it's desirable that they should.

CA You have been good enough, I think, to respond to an invitation to make a submission to this inquiry?

W Yes, that's correct.

30 CA Could I show you a copy of this and just ask you to confirm it. Is that a copy of the submission you made, Mr BINGHAM?

W It is.

CA I tender that, Commissioner.

PO Exhibit 92.

40 CA Mr BINGHAM, one feature of local government which is not so present at the state level is that, for the most part, candidates for election are not party endorsed. A good proportion promote themselves as independents in the course of their campaigning, and yet some have party membership or other kinds of affiliations or even support from party organisations. How important is it, do you think, for electors to know that kind of background?

50 W I think it's fundamentally important. It really is central to the way in which we organise ourselves as a community that the electoral process should be as clear and transparent as it possibly can be. It's certainly my view that there should be full disclosure of all of the linkages and associations of any candidate, whether they're a member of a political party or not, what they have, what they stand for, what are their values. That's the whole basis upon which we ask electors to make those decisions.

CA That leads, I suppose, to the next question of the mechanism by which that should occur. One view has been presented that it's sufficient for such information to be revealed by a candidate as and when electors

inquire about it. Is that a sufficient response to the issue, do you think?

W Not in my view. I've noted that I think there should be an obligation to lodge a declaration of interests, if you like, before an electoral decision is made and that that should be as comprehensive as it possibly can be about any interest which might influence the way in which that particular person would undertake the responsibilities for which they're standing.

CA That sounds like a view in favour of some regulation of that situation?

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W Yes, it does. Yes, it is. One of the responsibilities of my office is to review declarations of interests which are made by senior statutory officers and state public servants, and whilst that system has some shortcomings, I believe - it's not as comprehensive as it could be - it is still an important way of ensuring that people think about what are the private interests which they have which may have some impact on the way in which they undertake their official responsibilities, and I think as often as that can be brought to the front of peoples' minds, the better.

20 CA Would such a register apply to all candidates?

W Yes, I think so.

CA Because some candidates are already sitting and have certain obligations imposed on them as sitting officers.

30 W Yes, and presumably that would make it simpler for them to comply with any additional obligation to lodge a declaration of interests before any subsequent election, even though they are sitting. But I think in all of these areas, the simpler the rules and the more comprehensive the rules, the easier it is for people to understand them and the easier it is for people to comply with them.

CA So that kind of disclosure should extend, say, to new candidates?

W Yes.

CA And presumably some form of publication of that kind of information would be part of the arrangement?

40

W Yes.

CA Do you see that as occurring through the Electoral Commission?

W That seems the logical way in which it should occur. I think it's going to be in the interests of the candidates, for the most part, to have their full interests and associations before the public before the electoral decision is made, and I think the Electoral Commission is the appropriate body to do that.

50

CA I have made reference to candidates campaigning on the basis of their being independent candidates, and yet that is a term that is not actually used in the *Local Government Electoral Act*.

W Yes.

- CA Do you think there should be some definition of that term with attributes that the public could be aware of and make comparisons against particular candidates?
- W I find it very difficult to imagine any sort of formulation which is going to be helpful in that respect. I think it's more useful to list what are the interests and associations and to let the electorate decide whether that qualifies the candidate as being independent according to their definition or not. To attempt to say, well, this candidate is an independent and this one isn't because this one is a member of a political party and this one is only a member of a community association, for example, you start to run into a lot of dancing on the head of a pin or hair-splitting or something, I think, when you get into those sorts of definitional issues.
- 10
- CA So that kind of definitional solution is not desirable?
- W I don't think it would be helpful to electors and I don't think that it would be something which would add value. I think what would add more value is a specific listing of what are that person's interests and what are their associations and for people to make their own judgment about whether that qualifies the person as being independent.
- 20
- CA One matter that your submission touched on was electoral funding. At local government level, we currently have a private funding model where candidates, if they need campaign funds, either fund it themselves or rely on donations of some kind.
- W Yes.
- 30 CA Does that pose any risks, in your view, to public confidence in the integrity of the electoral system?
- W Yes, there are big risks and it's really important that the way in which those risks are managed is robust and transparent. I do believe that the system of disclosure of political donations which has been introduced in this state very recently is a significant advance in relation to that element, but I don't believe that it's the full solution, and, as I say, I think things like declarations of interest.
- 40 I think also it's really important that there is a real-time disclosure of interests which relate to the official responsibilities that are actually being exercised at a particular time, whether that's done by the disclosure of interests at the start of a meeting, for example, or whether it's done in some other way which enables the public to see that their elected representatives and the bureaucrats that support those elected representatives are applying their minds to what their private interests are and how those private interests should properly be managed to ensure that the public interest is what prevails in the decision making.
- 50 CA The *Local Government Act* doesn't presently incorporate any regime for anything like real-time disclosure, for example, of donations; correct?
- W That's my understanding, yes.
- CA Do you think it would be preferable to move in that direction?

- W Yes, and I'm referring to the system which the Electoral Commission of Queensland operates through its website at the present time where there is a disclosure regime which is much more comprehensive than that which applies in other places at the present time.
- CA That real-time disclosure system pertains, I think, to donations in particular?
- W Yes, it does.
- 10 CA Do you see that as information that electors really ought to know before casting their vote?
- W Yes.
- CA Who is providing funds to a particular candidate?
- W Yes, absolutely, I think it's very important.
- 20 CA There is then a question of what kind of information the disclosure should consist of.
- W Yes.
- CA Under the *Electoral Act*, the details involve the name and address of an individual but not, for example, the individual's occupation so that one could get a sense of what is behind the donation.
- W Yes.
- 30 CA Is there any view that you have about the level of disclosure that would be helpful to electors?
- W Yes, I do have a view that the level of disclosure would be - it's preferable that it goes a level below just the name of the organisation, if you like. If you look at that website at the current time, you will see business names and company names and organisations, but it's very difficult to discern who are the principal proponents of that organisation or what's the nature of the business of the organisation or anything like that.
- 40 I'm conscious that this is a very new system and I'm sure there will be an opportunity for it to be refined over time, but that's one area, I think, where it would be worthwhile to look at what we can do that goes beyond what we've got at the present time.
- CA Do you think that the media has a role in illuminating lists of names?
- W Of course. The media is a very important part in ensuring the transparency that assists the electoral process.
- 50 CA And I suppose one could place some reliance on rivals to make relevant findings, I suppose, about the true nature of another candidate's donors?
- W I think that's an important part of the political process, yes.
- CA Scrutiny by rivals?

W Scrutiny, yes, by the media, by rivals, by the broader community at large. I think the comment has been made that the more transparency there is around these sorts of matters, the better off we all are, and I think that's a good starting point.

CA In your submission, you express the view that it was not desirable or warranted to depart from a private funding model and move towards a public funding model. Why do you say that, Mr BINGHAM?

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W Yes, I think the basic position that I take about all of this is that there are some significant changes that are inherent in the disclosure regime which has been introduced. My preference is to see how that operates, whether it achieves its objectives as fully as we would like, before doing anything any further towards the public funding of elections.

20

I do believe that the right of political association, the right of people to express their views and to support the candidates they want to support needs to be respected, and to go to the next step of public funding seems to me to be a bridge further than I would be prepared to contemplate at the present time. That's not to say that I would rule it out, because I wouldn't, but I do think that there are some other things that we can try yet before we get to having to get to that stage.

CA Would you agree that the private funding model tends to pose risks, at a minimum, to perceptions of conflicts of interest once a candidate is elected and has received donations from certain identifiable sources?

30

W Yes, it does, but the receipt of donations is not the only cause of potential perceived conflict of interest. I think it's really important that the systems that we have and the culture that we establish within local government or state government, whichever government it is, is sufficiently transparent and robust to cope with anything of this nature. So just trying to avoid conflicts of interest arising in the first place, commendable though it may be, is not the full solution.

40

We need to accept that they will always arise and that we have to be able to manage them whenever they arise. It doesn't matter whether they're caused by a political donation or membership of an environmental association or membership of a trade union, whatever it is that gives that potential conflict of interest to arise, it's really important that the processes that operate are sufficiently robust to ensure that it's the public interest which prevails in any decision-making that is relevant.

CA I take it you would be of the view that you can't really regulate conflicts of interest out of existence?

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W I don't think you would want to. I think it's a good thing that elected representatives have close links to their community, so they are members of community associations and patrons and all of those sorts of things. In lots of cases, the reason why individuals get elected is just because of those interests, and that's what people want to have represented in the forum.

So I do hesitate when I hear people say that we have to avoid conflicts of interest at all times. I think that puts the cart before the horse. I think

the important thing is that we have to accept that conflicts of interest will arise and we need to be able to manage them effectively and productively to ensure that the public interest prevails.

CA You have expressed that, I think, also in your submission and perhaps made it a point of emphasis that there should be some robust method of dealing with conflicts of interest?

W Yes.

10

CA That leads me to ask what would be the content of a robust method of dealing with conflicts of interest?

W The first thing is identification and not just relying solely on the judgment of an individual about whether a conflict exists. We talked earlier about the benefit of getting advice from an outside party about those sorts of issues, not just an individual relying on their own judgment, and I think that's an important first step, if you like. Whether it's advice from an ethics advisor or from an office like mine or from the colleagues of the person, the peers of the person on the council, I think it's important that there should be that objectivity in the identification of what constitutes a conflict of interest.

20

That's a first step, but a second step is then transparency about it and making sure that the existence of the conflict is drawn to public attention and is publicly disclosed.

CA What is a means of that - some recorded minutes or some form of recording of a declaration of that kind?

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W Yes, I think so, and it's in that context that the real-time disclosure of conflicts of interest becomes more salient as well, I think. If you have a register which is constantly being updated having regard to the decisions which people are being asked to make, then I think that would be a significant step forward.

40

Once you have the conflict identified and disclosed, it then becomes a question of how it's managed and how that happens in a robust way. Often it will be the case that the best way is for the person who has the conflict to withdraw entirely from the decision-making process, but that's not always necessary. Sometimes I think it's sufficient for the conflict to be disclosed and for a person to continue to participate in the decision-making process.

What are the circumstances in which that will occur and when that should occur is going to depend on all the facts - what's the nature of the interest, how many other people are involved in the decision-making process, those sorts of things. But I think when you ask what are the elements of a robust process for managing, I think that's a central part of it as well.

50

I'm conscious that one of the things that can happen is that people will declare conflicts on lots of occasions, and the corollary of that is that the representational aspect of the role diminishes, so electors lose a voice, if you like, and I think we have to be careful about ensuring that that doesn't happen as well.

- CA Well, that gives rise to the dilemma, I guess-
- W Yes.
- CA -that a councillor faces, the choice between excusal and giving the appearance of not participating when there may be a perception of lack of impartiality, on the one hand, and losing the voice by way of contributing to debate, on the other. How should that kind of a choice be exercised? How does the individual approach that?
- 10 W The guiding principles about it are, firstly, to err on the side of caution, so if there is a likelihood, then to withdraw, secondly, to rely on advice and judgment other than your own about it.
- CA Does that assume the wisdom to seek advice?
- W It does, to the extent that that is the sole responsibility of the individual, yes, it does. But there used to be a provision in the *Local Government Act* here, which obliged a council to express a view about whether an individual member of the council had a conflict in relation to a particular matter, and I think that bears some further exploration, whether we should be thinking about that principle as well, whether there ought be some obligation on other members of the council and, indeed, council staff to identify situations in which an individual might have a conflict and should be considering a conflict.
- 20 I've been aware, wearing some of those previous hats, of situations in which councillors would say, "Well, that's the business of that individual councillor to declare their interest. I know that this person has some other things going on, but I'm not going to do them in or make any comment about it", and I think that sort of attitude doesn't serve the public interest well. I think they should be saying - if there are legitimate concerns about whether a particular individual should be participating in a decision-making process, then all the other people involved in that process should be able and should be willing to raise that concern too.
- 30 CA Is there an incentive on a councillor to make a disclosure of interests, in the sense that perhaps he or she could not afford subsequently to be found out not to have made a disclosure?
- 40 W There should always be carrots and sticks in relation to these things, I think, yes.
- CA Is that a carrot, a sufficient carrot?
- W I would put that in the stick category if they're going to face a consequence for not having done what they should have done. And, yes, there should be significant consequences about that.
- 50 CA Does the operation of that kind of judgment, perhaps with ramifications for making the wrong judgment, when a conflict of interest arises provide a sufficient protective measure for the interests of good local government?
- W Well, I'm not sure whether I'd say anything is sufficient in itself, but I think it would be helpful, yes.

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CA Thanks, Mr BINGHAM. That is the evidence, Commissioner.

PO Thanks, Mr BINGHAM. Thanks for coming. You are excused.

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