INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

Mr J Pearce MP (Chair)
Mr CD Crawford MP
Mrs BL Lauga MP
Mrs AM Leahy MP
Mr AJ Perrett MP

Staff present:

Ms M Westcott (Acting Research Director)
Ms M Telford (Principal Research Officer)

PUBLIC BRIEFING—EXAMINATION OF THE LOCAL GOVERNMENT ELECTORAL (TRANSPARENCY AND ACCOUNTABILITY IN LOCAL GOVERNMENT) AND OTHER LEGISLATION AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 15 FEBRUARY 2017

Brisbane

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Committee met at 9.16 am

CHADWICK, Mr Jesse, Technical Specialist, Legislation, Department of Infrastructure, Local Government and Planning

COUTTS, Mr James, Executive Director of Planning, Department of Infrastructure, Local Government and Planning

FISHER, Mr Darren, Project Director, Electoral Commission of Queensland

HAWTHORNE, Ms Josie, Manager, Legislation, Legal and Legislation Services, Department of Infrastructure, Local Government and Planning

RYAN, Mrs Barbara, Director, Legal and Legislation Services, Department of Infrastructure, Local Government and Planning

TIERNAN, Mr Dermot, Assistant Electoral Commissioner, Electoral Commission of Queensland

TIMMS, Mr Logan, Executive Director, Building Industry and Policy, Department of Housing and Public Works

CHAIR: Good morning. I declare open the public briefing for the committee's examination of the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016. Thank you for your attendance here today. I am Jim Pearce, the member for Mirani and chair of the committee. Other committee members here today with me are Ms Ann Leahy, the deputy chair and member for Warrego; Mr Craig Crawford, the member for Barron River; Mr Shane Knuth, who is not with us at the moment but hopefully will be; and Mrs Brittany Lauga, the member for Keppel. We have a new member with us today, Tony Perrett, the member for Gympie. Those here today should note that these proceedings are being broadcast to the web and transcribed by Hansard. Media may be present, so you could be filmed or photographed. The committee's proceedings are proceedings of the parliament and are subject to the standing rules and orders of the parliament. Witnesses should be guided by schedules 3 and 8 of the standing orders. The Parliament of Queensland Act requires the committee to examine the bill, examine the policy to be given effect by the bill and the application of fundamental legislative principles. Today's public briefing will form part of the committee's examination of the bill. I welcome representatives from the Department of Infrastructure, Local Government and Planning, the Electoral Commission of Queensland and the Department of Housing and Public Works. I invite you to make an opening statement.

Mr Coutts: I thank the committee for the opportunity to brief the committee on the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016, which I will refer to as the bill hereafter. Barbara and Josie are here to brief you on any queries you may have about the bill's objectives to improve transparency and accountability in the local government electoral disclosure requirements and the bill's amendments to clarify that the Electoral Commission may continue to recover direct, as well as indirect, costs associated with local government elections. Jesse Chadwick, Logan and I will brief you on queries you may have about the planning and building objectives of the bill, and we are happy to take questions as we go through or at the end as you please, and any particular questions that are relative to the Electoral Commission can be taken by Dermot and Darren.

I will turn first to the bill's objectives in relation to planning and building legislation, and these are to amend the Sustainable Planning Act 2009 to give early effect to the sum of the planning reforms contained in the Planning Act 2016 and the Planning and Environment Court Act 2016. It is also to amend planning and building legislation to address issues arising from several court decisions about

development approvals for building work and then finally to make several amendments of a technical nature to clarify aspects of the Planning Act 2016 and the Planning and Environment Court Act 2016 before their commencement in mid-2017.

The reforms in the Planning Act 2016 and the Planning and Environment Court Act 2016 intended to be given early effect through amendments to the Sustainable Planning Act 2009 are, firstly, an increase in the penalties for a range of development offences such as carrying out assessable development without an effective development permit, with the example there that the penalty units would increase from 1,665 units to 4,500 units; and, secondly, there are amendments to the cost arrangements in the Planning and Environment Court to substantially reinstate the arrangements that applied before changes introduced under the Sustainable Planning and Other Legislation Amendment Act (No. 2) in 2012. These amendments provide for each party to bear their own costs but with the capacity of the court to award costs in specified circumstances such as a proceedings started or conducted in order to delay or obstruct.

Finally, I refer to the amendments providing for limited retrospective commencement of temporary local planning instruments, which I will refer to as TLPIs hereafter, subject to the approval of the minister. The amendments are intended to prevent the objects of a TLPI from being frustrated through pre-emptive development in the period between when the local government resolves to make that instrument and its approval by the minister. The bill seeks to address issues raised in several decisions of the Planning and Environment Court and the Court of Appeal by clarifying the circumstances under which a private certifier must await a development approval for building work from a local government before the certifier approves that building work. The bill is largely consistent with the findings of the courts but also identifies some circumstances that were not specifically addressed in the findings—for example, where the building work requires impact assessment under a planning scheme. The remaining planning related amendments in the bill reflect matters of a technical or clarifying nature that have been brought to the department's attention by stakeholders or which the departmental officers have identified during the preparations for the commencement of the new planning legislation, which, as I mentioned before, happens mid this year.

Turning to the bill's objectives to improve transparency and accountability in local government electoral disclosure requirements, the government accepted recommendations 1 to 4 and part of recommendation 5 of the six recommendations made by the Crime and Corruption Commission's December 2015 report titled *Transparency and accountability in local government*. To implement the government's response to recommendation 1, the Department of Justice and Attorney-General will progress separately to the bill amendments to the Associations Incorporation Regulation 1999 to address the CCC's concerns about the use of official titles such as 'mayor' in the name of incorporated associations. To implement the government's response to recommendation 2, the bill amends the Associations Incorporation Act 1981 to clarify that incorporated associations cannot be used to receive or hold electoral campaign funds which are intended to be applied for a member's benefit either directly or indirectly. To implement the government's response to recommendation 3, the bill amends the Local Government Electoral Act 2011 to provide a head of power for a regulation to prescribe the contemporaneous disclosure of gifts, loans and third-party expenditure, consistent with the Electoral Act 1992 where appropriate. The bill also amends the definition of 'disclosure period' for candidates, groups of candidates and third parties to allow for a regulation to prescribe a different disclosure period, which is also consistent with the Electoral Act 1992 where appropriate.

To implement the government's endorsement of a real-time online system to disclose local government election donations, the bill provides for the Electoral Commission to make procedures about how a return may be lodged electronically, consistent with procedures required under the Electoral Act 1992. The procedures do not take effect until approved by a regulation and the procedures and the regulation must be tabled in the Legislative Assembly and must be published on the Electoral Commission's website. Subject to the bill being passed, the provisions that provide for the contemporaneous disclosure of returns will commence by proclamation and amendments to the Local Government Electoral Regulation 2012 will be proposed to prescribe real-time online disclosure time frames, consistent with proposed amendments to the Electoral Regulation 2013 where appropriate.

To implement the government's response to recommendation 4, the bill sets the candidate and third-party election disclosure donation thresholds at $500 to align with a councillor's register of interests gift disclosure threshold under the Local Government Act 2009. Specifically for individual candidates the bill increases the donation threshold from $200 to $500 and for third parties the bill reduces the donation disclosure threshold from $1,000 to $500 and increases the third-party expenditure threshold from $200 to $500. The bill implements the government's acceptance of part

of recommendation 5 by requiring that unspent campaign donations at the end of the disclosure period are to be held for campaign purposes at a later point, returned to the relevant political party or transferred to a registered charity. To implement the government's endorsement of the proposal to strengthen the use of a candidate's dedicated bank account, the bill provides that a candidate's account can only be used for gifts and loans received and expenditure made for campaign purposes. In conclusion, in addition to implementing the government's response to the recommendations of the CCC, the bill clarifies that indirect as well as direct costs incurred by the Electoral Commission are recoverable from local governments. We are happy to take any questions the committee might have. Thank you.

CHAIR: Thank you. Can you give us a little bit more detail as to why recommendation 6 was not considered?

Mr Coutts: I might ask my colleague Josie to answer that question.

Ms Hawthorne: The government's response to recommendation 6 was that it was not supported because the requirement for councillors, chief executive officers and senior executive officers to declare funds, gifts and benefits provided to another entity which could be perceived to provide them with reputational benefit would be impractical and difficult to enforce. Further, in no other Australian jurisdiction are councillors and mayors required to disclose on their register of interests any funds, gifts or benefits provided to another entity that could be perceived to provide them with a reputational benefit. In Queensland members of parliament are not required to disclose such funds, gifts or benefits on their register of interests.

CHAIR: Josie, could you give us an example from past experience of what another entity is?

Ms Hawthorne: It could be any entity, anyone making a donation.

CHAIR: You do not have any examples, because there must have been some reason that that has been talked about and included.

Ms Hawthorne: The government's response did not provide any examples of entities, but I am happy to take that question on notice and provide some examples of entities.

CHAIR: If you did not mind, just to give a little bit of background to help the committee.

Ms LEAHY: Recommendation 1 of the CCC's report says that incorporated or unincorporated organisations are not to use the official title of 'mayor'. Are there any other organisations other than the ones mentioned in the CCC report across the state that use the title of 'mayor' that may be affected?

Mr Coutts: Again, I might ask Josie if she could answer that question.

Ms Hawthorne: The department is not aware of any other organisations apart from the ones in the CCC's report at this time. I am not aware of that.

Ms LEAHY: Okay. In relation to recommendation 2, where incorporated associations cannot receive or hold electoral campaign funds that are intended to apply for a member's benefit either directly or indirectly, I want to explore that with the departmental officers. If we have an incorporated ratepayers action group at Timbuktu and they decide that they want to campaign to get a new mayor and new councillors and they are specifically in that community supporting particular candidates, can you tell me how they would be affected by that? Some of them are incorporated organisations.

Mr Coutts: Again, I will pass to my colleagues.

Ms Hawthorne: The amendments provide that incorporated associations cannot be used to receive or hold electoral campaign funds. If the incorporated association was attempting to do that, then that would be contrary to the Associations Incorporated Act. Does that answer your question?

Ms LEAHY: Maybe we might explore that a bit further. Is that saying that, if you are a ratepayers action group and you are incorporated—and there are many ratepayers action groups across Queensland—you cannot participate in the process if you want to support a change in your local government because you are incorporated. Is my understanding correct?

Mrs Ryan: The example that has been inserted into the Associations Incorporation Act clarifies that the association cannot, as its main purpose, receive and hold gifts within the meaning of the Local Government Electoral Act. If that was the main purpose of that incorporated association, it would be contravening the provision.

Ms LEAHY: If the ratepayers association at Timbuktu runs sausage sizzles and fundraises because it wants to run a campaign in the local paper to get a change in its government, it could be breaching the incorporations legislation; is that right?

Mrs Ryan: As we have said, the purpose of the provision is to ensure that the incorporated associations are not used as the vehicle, that is, their main purpose being to receive and hold gifts and donations that can then be applied to the benefit of a particular member or at the direction of that member. Again, it would be looking at what the purpose of that ratepayers association was and was it the main purpose of that association.

Ms LEAHY: For some ratepayers associations, their entire purpose is to get a change of candidates in local government. They would not be able to have an incorporated organisation?

Mrs Ryan: My understanding is that the provision is a clarification provision. The example is there to clarify the provisions as they already stood. It states specifically in the example that, where that association has at its main purpose the receipt and holding of those funds—gifts—then it would contravene the provision, yes.

CHAIR: How do we determine a 'main purpose'?

Mrs Ryan: I think that is a question that we are going to have to take on notice, if we may, and provide further details as to what a 'main purpose' might constitute.

CHAIR: It would depend on the constitution of the organisation, would it not?

Mrs Ryan: I expect it would. May we take that on notice and provide you with further information?

Ms Hawthorne: The associations incorporation legislation is under the portfolio of the Department of Justice and Attorney-General. With the committee's approval, we will seek advice from the DJAG on that matter.

Ms LEAHY: I have another question in relation to recommendation 5, particularly for local government candidates who self-fund. I think this was raised in some of the submissions. A lot of candidates across Queensland self-fund, because they are in smaller councils. For instance, if we have XYZ council and the particular candidate might be a farmer or might be a small businessperson, he has a separate account where he sells some stock so he can put some money in that account for his campaign funds. He self-funds and there is money left over after the election. What is the requirement on him for that funding?

Ms Hawthorne: The requirement for self-funded candidates is the same as for any other candidates. The requirement currently under the Local Government Electoral Act is that any campaigns or gifts as such must be put into a dedicated account. The definition of 'gift' would then determine where those funds go. If it is a gift, it must be in relation to an election and it must go into the dedicated account. If a self-funded candidate wants to use funds for another purpose, then they may not constitute the definition of 'gift' under the act and then would not go into that fund. If they are for an election, then they must go into the dedicated account. The bill then says that those gifts, or donations, if there is any amount left in that account, they must go to a registered charity or they must be kept in that account if that candidate intends to stand for another election.

Ms LEAHY: Even if the funds that go into the account are self-funding—because in a lot of smaller local government areas there are not a lot of gifts for people; the candidates self-fund? I want to get this absolutely clear, because it is very important to local government across the state. Even their own self-funding would have to be either retained—even though they raise it themselves, gift it to themselves—or donated to a charity?

Ms Hawthorne: Yes, that is correct. That is currently the situation. There is no change. This bill does not change that situation. That is exactly the way it operates now. The only change this bill makes is that, if there is an amount outstanding in that dedicated account, it must go to a registered charity; if the candidate is a member of a political party, to the political party; or, if the candidate intends to stand again, then it can remain in the dedicated account. The bill does not change that requirement. We are not introducing anything new there.

Ms LEAHY: Can I just clarify something? Not all local governments in Queensland, not all candidates stand under the banner of a particular political party. That is mainly the city councils—the larger councils. What about those who are not under—

Ms Hawthorne: It is triggered by being a candidate for the election. That is the jurisdiction of the act. If you are a candidate in an election, you must maintain a dedicated account for funds for a political purpose—I should not say for a political purpose—for an election.

Mrs Ryan: If I might? Please correct me if I misunderstood, but I understand the question really to be what constitutes a 'gift'. When a self-funded candidate is funding themselves, will that trigger the gift requirements and, therefore, need to be deposited into that account? Again, may I take that question on notice just to clarify? In respect to what Ms Hawthorne has just commented on, we do

not believe that those provisions about whether their money has to go into a particular account because they are self-funded or not has changed as a result of the bill, but we will also clarify that point. The two points that we will be clarifying is: what does constitute a gift? Does it apply to a self-funded candidate? Has that position changed in respect to the bill? Will that address your question?

CHAIR: That would be fine.

Ms LEAHY: That would be very good, thank you.

Mrs LAUGA: I was keen to ask a question about the amendments to SPA. The increase in the penalty units from 1,665 to 4,500 is quite substantial. What is the rationale for such a substantial increase? Have you received any feedback from stakeholders about that substantial increase?

Mr Coutts: As I mentioned in my introductory speech, the increase in those penalty units reflects a commensurate increase that is occurring under the Planning Act, which commences on 3 July this year—or is intended to commence on 3 July this year. That decision was made in the Planning Act, because the current penalty units in SPA are quite dated in terms of their relevance and their applicability to the sorts of development offences that we are experiencing at the moment.

As you would understand the situation, when the development offences are committed, the penalty is intended to obviously penalise somebody who has done the wrong thing but it is also a significant incentive for somebody to not do the wrong thing by the penalty being sufficient to operate as a disincentive. In response to a considerable number of submissions—largely from local government when the Planning Act was subject to consultation, that those penalty units needed to be of a sufficient size to act as the appropriate deterrent—the decision was made to incorporate the higher penalty units in the Planning Act.

The decision to, in effect, bring those forward into the Sustainable Planning Act is a recognition that we are already experiencing a number of circumstances where it is believed that those penalty units, or penalty units of this higher size, would have acted as a more significant deterrent to where development offences have been committed, if they are in place right now. If you followed media more prominently in Brisbane than elsewhere, we have seen a number of situations where properties have been demolished, for instance, without what appears to be appropriate approvals in place. There is the potential for action in relation to a development offence. There is quite a significant concern that the sooner those penalty units can act as the appropriate deterrent, the better.

Mrs LAUGA: The 1,665, when was that included in SPA? How long has it been since we have had—

Mr Coutts: I will ask my colleague Jesse Chadwick to answer that.

Mr Chadwick: It was originally included in the Integrated Planning Act, which preceded SPA, and that was 1997. It commenced in 1998, but it was passed in 1997.

Mrs LAUGA: Right.

Mr Chadwick: They are 20 years old, in other words—so about due a review, I think.

Mrs LAUGA: The penalty units increase by regulation. In today's terms, 1,665 equates to about $200,000 and 4,500 equates to about $550,000—about half a million dollars. Will that be a sufficient deterrent? Half a million dollars could still seem like peanuts as a penalty in comparison to the extent of the offence.

Mr Chadwick: I think ultimately that is going to be a matter for reviewing court decisions in terms of the way they apply that. It is probably worth noting that, simply because half a million or so dollars is indicated as a maximum penalty, the court will apply its discretion in determining what particular penalty gets applied. That is always in the context of a maximum. We probably just need to review decisions as they occur and see what forms of development—I think James mentioned things like demolition—but I think that it would be a matter for us to keep an eye on and make appropriate recommendations to the minister as we go. I certainly acknowledge that there are often millions, or tens of millions of dollars, involved in developments I think it is an open question about whether half a million dollars as a maximum is appropriate to deter some. Certainly, a roughly two times increase will help deter many, but it is a matter of that top end and how the court applies its discretion in imposing penalties.

Mrs LAUGA: Are the courts imposing maximum penalties much at the moment with the 1,665?

Mr Chadwick: I do not have a lot of contemporary information myself, although I am aware that some years ago there was commentary among stakeholders that the courts were being relatively conservative in imposing penalties and it was very rare that the maximum penalty was being imposed. I do not know what their current approach is, but I was aware that that was a bit of an issue probably five to 10 years ago.

Mr Coutts: If the committee would like to pursue that matter further we could seek advice from the Department of Justice and Attorney-General about what sort of penalties are being imposed by the courts.

Mrs LAUGA: A summary of penalties imposed and recent decisions would be great. Also a comparison of the penalties with the value of the work would be great.

Mr Coutts: We could endeavour to provide you with the latter. The latter is probably quite a bit more difficult because I do not believe the court would have the information about the value of the development. We would have to research the online records of the council. Even then a lot of those online records have very scant information about the value of a development. It is usually how close to the mark an applicant is when they nominate that when they apply.

Mrs LAUGA: Maybe even just a brief summary about what was proposed or what occurred so we can get an idea of the value of work.

Mr Coutts: Yes. In the relation to the demolitions that I mentioned earlier, the larger penalty if the court was choosing to impose that for what is turning out to be one of the more common cases where it is either a redevelopment of an individual lot and replacement with another dwelling for instance or at most the replacement of one dwelling on a larger lot with two dwellings on two smaller lots—what is known as block splitting—I would have thought based on the profit margins of developments of that scale that half a million dollars is a very significant deterrent. It would pretty much write off the whole profit that you would realise from the development. If there was the threat of a penalty of that scale, particularly where the offence was so blatant and obvious—that is, where the court was inclined to come close to applying the maximum—it would be a very significant deterrent.

I appreciate that in some of the instances that Jesse Chadwick mentioned the scale of the development relative to that would be a relatively small impediment. Probably I should not say this without checking court records, but the most common experience that I have had—because I have spent some time in local government—is that a lot of the development offences are actually performed at that smaller end of the scale. Larger developments tend to be quite strict in the way they adhere to conditions imposed on approvals.

Mr PERRETT: My question relates to the ECQ and the recovery of direct and indirect costs of local government elections. I want to get some clarification around the problems, the issues or the ambiguity that might be there in the current act with respect to the recovery of costs for those elections?

Mr Coutts: I will ask Josie if she can answer that question.

Ms Hawthorne: Thank you for the question. Currently the Electoral Commission of Queensland may charge for indirect costs. By indirect costs we mean costs associated with research and development. There is a local government electoral branch within the Electoral Commission of Queensland and operational costs associated with that. The existing provisions in the act allow the Electoral Commission to do that. The amendment is merely to clarify that continuing arrangement. There is no provision in the bill. It is not an additional head of power. It is just a clarification for the ECQ to continue with that practice.

Mr PERRETT: Has the LGAQ provided any direct comment on or are you aware of their views with respect to this matter? Obviously we will be talking to them.

Ms Hawthorne: The LGAQ supports the amendment.

Mr PERRETT: In terms of ECQ activity with respect to local government elections, do you conduct most of those across the state? There is still an option for some councils to do it themselves?

Ms Hawthorne: No. The provisions in the legislation only allow the chief executive officer of a council to run an election if there is no other option reasonably available. That is as a returning officer only. The Electoral Commission runs the local government elections in Queensland.

Mr PERRETT: Most of the councils in Queensland would have the ECQ run the entire election?

Ms Hawthorne: Yes, it is not optional; it is mandatory.

CHAIR: Dermot, would you like to any further comment to those last two questions?

Mr Tiernan: No, just to confirm Josie's advice. A CEO may act as a returning officer for an election or a by-election but they have to be appointed by the Electoral Commissioner.

Mr PERRETT: Thank you for that clarification.

Mr CRAWFORD: Are there any amounts that the ECQ has not been able to recover from elections?

Ms Hawthorne: No.

Mr CRAWFORD: I am interested in the real-time online donation issue. There are two parts to the question. How do we actually see that operating in a realistic pattern at a local government election? When would we see that system possibly going live?

Ms Hawthorne: The provisions in the bill that provide for contemporaneous disclosure of returns commence by proclamation and regulation. The way the bill is set up is that it provides a head of power to allow for the contemporaneous disclosure time frame. Once the government makes a decision about what that time frame is—and subject to the bill being passed of course—then a regulation will be put to the Governor in Council to prescribe what that contemporaneous time frame is.

Local government is following the state in relation to that. Those two contemporaneous time frames we will be looking to have the same. The operational aspect of the database is triggered by the provision in the act that allows the Electoral Commission to make procedures or may make procedures about lodging an electronic return. That is the set-up in the bill. I might pass to the Assistant Electoral Commissioner to respond to operational issues about the database, if that is all right.

Mr Tiernan: The system is actually online now if you wanted to have a look at the sort of data contained. It is not interactive as yet. We have put it through two rounds of user acceptance testing and loading testing. By user acceptance testing we are covering everything from how intuitive it is and whether the colours look nice all the way through to what the response time is—how long do you have to wait. The load testing is literally to avoid issues like the ABS had last year with the census. It passed the first round of UAT and loading testing with flying colours. The second round is actually underway as we speak.

It is a database. We have not changed anything. The data you submit in paper based forms is the same data. It will just appear on a computer screen so that you or any member of the public can do a search and look at a particular electorate, a particular candidate and see all the donations or gifts that are attached to that candidate.

Once it is live parties, registered officers, candidates and the donors will be able to register. The registration process we have tried to make as simple as possible. If you have ever bought a ticket to the footy or the cricket you know that you have to go into Ticketek and create a profile. It is similar to that. It is that level. There are a few 'are you a robot?' checks.

We have designed the system because we do not know what real time will be defined as. We have designed the system so that real time can be what the current act says all the way through to straight away. Once the regulation is passed for the state level we can insert the relevant number and the system will perform.

You create your profile. To protect against things like malicious and personality attacks we have allowed some flexibility within the system. For example, a candidate cannot be unduly penalised by what is a false declaration of a gift. It will require some vigilance from political parties and candidates. There is nothing we can really do about that. If we are going to put this data in the public domain—and that is the policy position of the government—then everybody is impacted not just the candidate or the ECQ.

We are still waiting for the launch. The second round of UAT will finish tomorrow. We do not expect any bugs, but if there are we have the time and the budget to fix those. The system is bespoke so it is built for this purpose. It is the first of its kind in Australia. There is a bit of risk attached to it. That is why we have been very conservative with the testing. It has been built by a local company called GIS People. They have provided great support to ECQ throughout this process.

We have been running this project pretty hard. We have consulted with every major player whom we think could be impacted along the way. That includes: the Australian Labor Party, the Liberal National Party and the Queensland Greens. We have offered consultation to the seven registered parties—Katter's Australian Party, Family First, Pauline Hanson's One Nation Queensland party and the Consumer Rights & No Tolls Party—as well the Local Government Association of Queensland. Generally the feedback has been good. As this is setting a precedent we have consulted with the other commissions around Australia. The feedback from those commissions has been pretty positive too.

If you go into our website you can have a sneak peek. Any member of the public can. You will get an idea of what it looks like. You click on and a map comes up and you can search by map or in tabular form. You can just type in what you are interested in. At the moment it is just a one way flow of data. The ability to register and enter data is not there. The data we have in there is legacy data. There is nothing new. It is presented in the way that the EDS, we call it, will show it.

CHAIR: What sort of mischievous behaviour is possible?

Mr Tiernan: I was hoping you would not ask me that. The example I put to Darren Fisher, our project manager, is that I want to make sure that the system has the ability to prevent things like a famous criminal—and I will not name names—registering as a donor and saying they contributed to a large amount of money to your campaign. The local paper could pick that up and have a field day with you for 24 hours or even a week. We are partly at fault because we publish this false data. The system actually has checks and balances in place whereby that person does that action, you as the candidate—and if you are a member of the party the registered office of the party—will immediately receive an email and so will we saying this action has happened. There is a 24-hour delay. You have 24 hours to confirm or question that activity. We encourage everybody, if this sort of thing or something similar happens, to get onto us straight away.

The good thing about the system is that if that person did that because they have registered, because they have given us bona fides we know who they are and because of the internet we know where they did it. We can provide the police with a body of evidence pretty much straight away.

Mrs LAUGA: Would that actually be a crime?

Mr Tiernan: It would be fraud. It is not necessarily crime under the Electoral Act. That is why I say we will present the police with a body of evidence. That is me being a bit over sensitive perhaps. When you push data out quickly the potential for mischievous behaviour is there. We have been a bit cautious—perhaps overly cautious—in building the system so that we reduce that risk as much as possible. ECQ does not want to be involved in election campaigning in any way at all and we do not want to be criticised for accidentally getting involved in election campaigning.

CHAIR: Have you made any inquiries with regard to mischievous behaviour like that potentially being a fraud issue? Have you discussed that with the police?

Mr Tiernan: We have discussed it internally. It has never happened before, Mr Chair. It is purely hypothetical.

Ms Hawthorne: May I interject, here? Under the Local Government Electoral Act, providing false or misleading information in a return is an offence. There are 100 penalty units maximum associated with that offence.

CHAIR: Has anybody ever been charged or convicted?

Ms Hawthorne: I do not know. I do not have an answer.

CHAIR: Can you check it?

Ms Hawthorne: Okay.

CHAIR: You have been very cooperative, so I might ask for a bit more.

Mr PERRETT: Obviously, assuming that this change goes through the parliament, what is the process of education? In respect of parties, as you mentioned, the head office generally keeps an eye on a lot of this sort of stuff. Particularly with a lot of candidates across the state, what is the process to make certain that candidates are fully aware of their obligations with respect to this? There are some penalties for false information or wrong information. What is the process that you go through with respect to the current act and obviously moving to a new structure for this?

Ms Hawthorne: I will respond in the first instance. The real-time online database will be going live for the state first. The Department of Justice and Attorney-General, in consultation with the Electoral Commissioner, will be providing information around that. For the Local Government Electoral Act, as I said earlier, it is subject to the bill being passed and then proclaiming into force those provisions and also the procedures that the Electoral Commission will be making in relation to making a return online. The state also requires that for members of parliament. I understand that procedures are being drafted by the Electoral Commission to assist users in that. For local governments, because the next local government election is not until 2020, the quadrennial election, there will be plenty of time to get information out. It will also apply for by-elections, that is true, but for the next quadrennial election we will be able to see what happens at the state level and then use that information, as well. Dermot, I do not know if you want to add to the education process?

Mr Tiernan: The only thing I would add is that when you register as a candidate we provide you with a candidate guidebook. That is currently being updated. We do a particular job, so we are guilty of jargon sometimes. We are actually getting some independent advice on making sure those candidate handbooks are as simple to understand and as factual as they can possibly be.

Ms LEAHY: I am curious—and this is probably a question to Mr Tiernan—why the system would need third parties to go in and have that registration. Why would it not be restricted to an approval by candidates in the election, the ECQ and the respective political parties? Why is there a need for third parties to be able to declare donations when that information should be coming from the candidates and the political parties? I am a bit curious about that.

Mr Fisher: The legislation requires both parties to submit a return. That has caused some issues in the electronic system, because the donor will say they gave person X $10,000 and then person X puts in the system that they received $10,000 from that donor. We need the system to reconcile both of those entries to say that it was only $10,000 received and not $20,000. Basically, the political entities, candidates, et cetera are already registered with the ECQ. We use that registration information in our systems to automatically send those political entities an email, basically as a one-time link into the electronic system to say, 'Here is your user profile; create a password and you are in'. We do not know who the donors are. No-one knows who they are until the time that they decide to make a donation. Currently, those people are required by legislation to fill out a paper form to say, yes, they have made that donation. Under the electronic system, they will be required to log in, register and state who they are and make their return in that way.

As Dermot said, anybody who has used internet banking, eBay or any other system on the internet will recognise this system. It is exactly the same sort of process. You are led through the process. It is very simple to use. There is not a lot of complexity there at all. Anybody who has an email address will have no problems at all in quickly and easily making a return. As a matter of fact, I would venture to say that it is probably easier to make the return in the electronic system, because it guides you as to what specific information is required as opposed to a paper form where people are quite uncertain as to what is required in each field in the paper form.

Ms LEAHY: Can I pick up on an answer from Ms Hawthorne. Please correct me if I am wrong, but I think she said that it is an offence under the act if a candidate provides an incorrect funding or disclosure declaration. Is it an offence for a third party, if they provide incorrect information?

Ms Hawthorne: If there is a requirement under the act to give a return, then the offence would apply to that person required to give a return. Under the Local Government Electoral Act, third parties—and third parties are defined—are required to give returns for both incoming and expenditure. Therefore, for donations received and expenditure, there is a requirement on third parties to give a return so any return that includes false or misleading information will be an offence.

Ms LEAHY: I have a further question to the Electoral Commission in relation to the direct and indirect costs for local government elections. Are costs that are now sent to the local governments for their elections from ECQ itemised? Is an itemised account sent to each council?

Mr Tiernan: Following an election, there is. Off the top of my head, I cannot remember what the letter looked like last year, but if it is okay I can de-identify a letter and provide it to the committee for information.

Ms LEAHY: That would be helpful.

Mr Tiernan: We try to be as transparent as we can.

Ms LEAHY: Is that estimate of direct costs sent after the election or prior to?

Mr Tiernan: There are the election costs, which are sent after the election. We close the books and we try to do it to align with council budgeting time frames, which is difficult because the election is in March and they want budgets locked away by May. Then there is the annual local government electoral branch contribution, which pays for the planning not just of by-elections but also the lead-up to the big event every four years. I can give the committee a copy of both, if you like.

Ms LEAHY: That would be helpful. Does the Electoral Commission intend that any indirect costs will be itemised, as well?

Mr Tiernan: When we do council elections, we actually work as much with the councils as possible to limit the cost impact on them, because they just pass it straight to the ratepayers, as they have to. If there are indirect costs, we try to limit those as much as possible. If we have to itemise and it is clear and there is a clear audit trail, yes, we can itemise those. However, it is really about the direct cost of the election. I will go on the record: that is sometimes honest, because sometimes you have a local government with 250 people and then you have Toowoomba, for example, with 110,000, so oils ain't oils, so to speak. There does have to be some averaging of certain things. With 250 people, generally they are run as full postal ballots, but if they are an attendance ballot you do not have the cardboard impost, you do not have the staffing impost. However, you do have the same IT backroom cost and you do have a significant logistics cost, as well. Everything is a bit variable, depending on what type of election it is, where we are in the state and how many electors are on the roll.

Ms LEAHY: Does the ECQ ever actually go to councils and say, 'Here is the cost of a full postal and here is the cost of a polling booth; you can choose and here are the quotes', and then council can choose which way they decide to go with that?

Mr Tiernan: We have not done that in the past, because the decision on whether it is an attendance or a full postal is the decision of the council. They write to the minister seeking approval for that and then the minister just tells us what it is. However, we do talk to councils in the lead-up to elections and engage with them in a partnership approach to limit the impost on them. If a particular council wanted some data on the likely cost of a full postal versus an attendance ballot, we can work with them on that.

Ms LEAHY: I think that would probably help them in making their decision and trying to reduce those costs to ratepayers.

Mr Tiernan: Yes.

Mr KNUTH: Dermot, I know legislation has changed. What was the difference between the 2012 and 2016 elections? Was the 2016 local government election more efficiently run?

Mr Tiernan: I was not at the commission in 2012. I was there for last year's dual event. I think last year's dual event was run as efficiently as it possibly could be. It was the biggest event we had ever run at the commission, so we are not really comparing apples and apples there. On the 2012 election, Mr Chairman and Mr Knuth, that would be a speculative answer for me. I would not feel comfortable going on the record saying, because I was not there in 2012.

Mr KNUTH: That is fine. In regard to the returning officers, with the CEOs, did many apply in the 2016 local government election?

Mr Tiernan: I will have to take that one on notice, if that is okay?

CHAIR: This will probably be the last question. I need a little bit of clarification around section 117. At the moment, the act says that gifts of $500 or more must be disclosed. For example, say it is the intention of a donor to give a person $5,000. He does not want to have that donation disclosed, so he gets family members to put in $490 each, which comes to $4,900 or $100 less than the $5,000. How does this legislation stop that from happening? Doesn't that reduce the transparency, which was the intention of the legislation?

Ms Hawthorne: The government's decision was to increase the threshold to $500. In the example that you have given, yes, if it is just below the threshold then a return is not required because the threshold has not been met. That situation currently exists even though the threshold is less, at $200. This bill does not address that issue.

CHAIR: Does the Electoral Commission have any concerns about that?

Mr Tiernan: I would say that that is a policy question, so it is one for the department. One thing I would say is that the cumulative gifts will trigger. If somebody gives $490 and then they give $11, both have to be declared. I know that is an 'If', but I would agree with Josie: the situation as you describe currently exists; it is just the threshold that is different.

CHAIR: I am suggesting that there would be 10 individual donors—

Mr Tiernan: Yes, I understand.

CHAIR: It is not really clear how much a person can donate, because that is one way of getting around the $500 threshold. Given that there are no more questions, I again thank you for your participation. You are always very cooperative when we talk to you. We have a number of things on notice. Hopefully, you can provide those to us by 17 February. That would be lovely. Once again, thank you for today's briefing. As always, we learn from the departments and we appreciate that. I declare this hearing closed.

Committee adjourned at 10.16 am