



**PARLIAMENTARY INSPECTOR
OF THE CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

**REPORT ON THE CORRUPTION AND CRIME
COMMISSION'S INVESTIGATION OF
ALLEGED MISCONDUCT CONCERNING
MR STEPHEN LEE, MAYOR OF THE CITY OF
COCKBURN" DATED 26 SEPTEMBER 2008**



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**REPORT ON THE CORRUPTION AND CRIME COMMISSION'S
REPORT DATED 26 SEPTEMBER 2008 CONCERNING MR STEPHEN LEE**

EXECUTIVE SUMMARY

1. The CCC is solely an investigative body. Its opinion that Mr Lee has "*engaged in misconduct*" is of no "*operative legal effect*" and "*should not be regarded as determinative or binding*" (as Chief Justice Martin has observed, in *Cox v CCC* (2008) WASCA 199, at [45] and [46]).
2. However, as the Report (at [80]) acknowledges, publication of its "*misconduct opinion*" may nevertheless have "*serious consequences for the public officers ... and their reputations*". In Mr Lee's case, it has prompted calls for his resignation or dissolution of the Council of the City of Rockingham, of which he is the elected Mayor. It is important, therefore, that the basis for the opinion is clear, demonstrably sound, and in accordance with accepted legal principle.
3. The CCC's opinions are based on its view that "*by at least mid-May 2005 Mr Lee knew that Australand had made, or would be required to make, a substantial donation to his campaign fund*" (by paying part of Riley Mathewson's election campaign charges); and that his failure to declare that, although not a breach of the Local Government Act or the Regulations, was "*misconduct*".
4. There is no doubt that Australand did pay a substantial part of the charges which Riley Mathewson, Mr Lee's campaign manager, had proposed to charge Mr Lee, but for which it had never sent him an invoice. That was done by arrangements between Australand, Riley Mathewson and Marta Fishing Co. The CCC accepts that Mr Lee was unaware of those arrangements.
5. The CCC also accepts that no-one (from Australand or otherwise) ever told Mr Lee that, and there is no direct evidence that he knew it. The CCC has "*inferred*" that he must have known, from "*circumstances*" which (at [35]) it states "*included*" the following:

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- There was a "*huge reduction*" in Riley Mathewson's charges
 - Mr Lewis of Australand had been "*substantially involved*" in Mr Lee's election campaign, and had offered to see Mr Riley about Riley Mathewson's charges.
 - Mr Lee must have realised that the "*huge reduction*" in Riley Mathewson's charges was due to Australand paying a substantial part of them, as that was the only possible explanation.
6. An "*adverse inference*" must not be drawn from "*circumstances*" unless all of the circumstances are taken into consideration, and after having considered what alternative inferences are reasonably open. That is not only an established legal principle, stated by the High Court, but common sense. The CCC has not done that, but has disregarded the evidence which supports an alternative inference (as well as the sworn evidence of Mr Lee) that he did not know Australand had made any donation).
7. That evidence, of what was known to Mr Lee, was:
- 7.1 When Mr Lee agreed to engage Riley Mathewson as his campaign manager, Riley Mathewson gave a "*commitment*" (confirmed by Riley Mathewson later in writing of what they had "agreed") that their charges would "*substantially be met by fundraising activities presently being undertaken*" [138].
- 7.2 Based on an email he received from Riley Mathewson, part of the way through the campaign, Mr Lee concluded that the total campaign costs would probably be "about \$40,000" [245], T 147.
- 7.3 On 9 May 2009 Mr Lee had a discussion with Mr Owens, an employee of Riley Mathewson. Mr Lee gave the only evidence of what was said at the meeting, as Mr Owens had no recollection of it. The CCC's inference depends on Mr Lee's evidence. Mr Lee said he expected that the total costs would be "*round about \$40,000*" (T 148). Mr Owens replied that he "*figured*" they would be "*closer to \$50,000 or \$60,000*" (T 149-150).
- 7.4 Mr Lee's evidence was that he said "*Well, you've got to be joking - how can that be so?*" (T 149). Although he did not know how much had been collected from fundraising, he did not think it would be as much

as \$50,000 or \$60,000, and he reminded Mr Owens (T 148, T195) of the "commitment" given to him by Riley Mathewson, when he agreed to engage them as campaign manager for himself and his "team" of candidates for election. He also said to Mr Owens (T202) "*Look, I hope ... I suspect there may be some confusion between invoices of work done for me and invoices of work done for Port Coogee Now and I hope that hasn't occurred*".

- 7.5 Later, in a discussion with Mr Lewis of Australand, he said he was a "bit concerned" about Mr Owens' statement (that he "*figured*" the campaign costs would be "*closer to \$50,000 to \$60,000*"), because "*on my calculations it doesn't make sense*". He told Mr Lewis he suspected that Riley Mathewson might have mixed up his invoices with invoices for "*Port Coogee Now*", a lobbyist group for which they were also acting (T 205).
- 7.6 Mr Lewis offered to "*have a word with*" Mr Riley, a partner in Riley Mathewson, whom he knew (T 205). (There was an "*ongoing relationship*" between Mr Lewis, as a representative of Australand, and Mr Riley, in relation to PCN's campaign account with Riley Mathewson.)
- 7.7 Mr Lee had not, as yet, received any invoice for Riley Mathewson's charges. His evidence was that he knew only that Mr Owens had said he "*figured*" they might be "*closer to \$50,000 to \$60,000*," than the figure of about \$40,000 which Mr Lee told Mr Owens was what he expected they would be.
- 7.8 Mr Lee also said in evidence he did not know, as yet, how much had been collected from fundraising. There is no evidence that he did know, apart from some donations he had received as a result of a letter signed by Mr Jakovich, seeking donations.
- 7.9 The first (and only) invoice which Mr Lee got from Riley Mathewson, for its charges was on 20 June 2005, for \$43,500. That was close to the \$40,000 that he had told Mr Owens he expected it would be.
- 7.10 The invoice did not say it was a reduced charge, and no-one told him it was. (The CCC Report says he didn't ask whether it was a reduced

charge, or whether Australand had contributed; but how does that support an inference that he had that knowledge?).

- 7.11 However, there was a shortfall of about \$21,000 between Riley Mathewson's invoiced charge of \$43,500, and funds collected from fundraising. Mr Riley told Mr Lee that Riley Mathewson would make a donation to his campaign fund of \$21,586.30, which it then did, by a Riley Mathewson cheque. That, as Mr Lee saw it, met Riley Mathewson's "*commitment*" (T 202).
- 7.12 Mr Lee disclosed all the campaign donations received, including the Riley Mathewson donation and a donation from "*Port Coogee Now*".
- 7.13 In February 2006, Mr Lee received a letter from "*Local Government*" asking that he confirm with Riley Mathewson that its gift of \$21,586.30, which he had declared, was not from any other source. He asked Mr Riley whether this was correct. Mr Riley said it was. (Mr Riley later admitted to a CCC investigator that he had lied to Mr Lee, and that the true source, never disclosed to Mr Lee, was Australand).
8. All of that evidence was before the CCC. It was clearly relevant and significant, but none of it is taken into account, and considered as supporting a conclusion, reasonably open, that:
- 8.1 Mr Lee did not know, or believe, that Riley Mathewson's correct charge was "\$50,000 or \$60,000", which Mr Owens had "*figured*" it would be "*closer to*" than Mr Lee's expected figure of "*about \$40,000*". His evidence was to the effect that it could not be correct, and that he suspected that Mr Owens was mixing up Riley Mathewson's charges for him, with charges for work done by Riley Mathewson for "*Port Coogee Now*".
- 8.2 When Mr Lee later received Riley Mathewson's invoice, in June 2005, for \$43,500 he had no reason to think it was a reduced charge. The invoice did not say it was. And it was consistent with the calculation he had made, part of the way through the campaign, that Riley Mathewson's charge was likely to be about \$40,000.

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- 8.3 When Mr Lee received a donation of \$21,586.93 from Riley Mathewson, he had no reason to think that the true donor was Australand. No-one told him that. The donation, by a Riley Mathewson cheque, covered the shortfall between the campaign funds which had been raised, and Riley Mathewson's invoice, and made good Riley Mathewson's original "*commitment*", when he agreed to engage them, that their charges would "*substantially*" be met from fundraising. Australand had not given him any such commitment, had no obligation (legal or moral) to meet that shortfall, and had never said it would.
- 8.4 Therefore there was no reason for Mr Lee to believe that Australand had made any contribution to his campaign costs.
9. The CCC has been very selective, in considering the "*circumstances*" from which it has drawn the inference that Mr Lee knew that there had been a "*massive reduction*" in "*Riley Mathewson's bill*" or "*account*", and that he must have realised that Australand had made a substantial payment to Riley Mathewson. The Report misdescribes what Mr Owens said he "*figured*" the costs would be "*closer to*", as a "*bill*" or an "*account*", (and even as "an account issued"). The Report does not explain why, in the opinion of the CCC, upon consideration of all of the evidence, its inference is the only one reasonably open or the "most probable one". It does not even consider any alternative, or the evidence that would support it. It has focussed exclusively on the adverse inference.
10. The evidence before the CCC was (and the CCC accepts) that Australand and Riley Mathewson never told Mr Lee about the arrangements they made whereby Riley Mathewson reduced the charge of \$76,597 for which it had raised invoices (but which, as the CCC has accepted, Mr Lee never got, and which were cancelled); nor that Australand had contributed anything to his campaign costs.
11. The failure of the CCC to consider all of the circumstances, and the alternative inference reasonably open, that Mr Lee did not know Australand had made a donation, is a departure from "basic principles" of the common law. It would be dangerous, and unfair, to place any reliance upon opinions formed on the

basis of an inference drawn from only "*selective*" evidence, without regard to other evidence, supporting an alternative inference, and based also on a misdescription of what Mr Lee said Mr Owens "*figured*" Riley Mathewson's charges were likely to be "*closer to*", as an "*account*", ignoring the fact that Mr Lee did not accept that it was correct.

12. The Report states that, even on the basis of the CCC's inference that Mr Lee "must have known" that Australand had made a "*substantial donation*" to his campaign fund, his failure to declare it was not a breach of the Local Government Act or Regulations, but "could" be a "*breach of discipline*" providing "*reasonable grounds for termination of his employment*", if he were a member of the public service (which he is not).
13. If Mr Lee were a member of the public service, the question of whether he had committed such a "*serious breach of discipline*" as to justify termination of his employment, would be determined after a "*disciplinary inquiry*", conducted in accordance with the requirements of the Public Sector Management Act. Since he is not, however, there is no course open to him to have that question determined.
14. The question has not been determined by the CCC. It is prohibited, by Section 23 of the CCC Act, from reporting a finding or opinion that a particular person has committed a criminal or disciplinary offence; and a misconduct opinion by the CCC is not to be taken as a finding or opinion that a particular person has committed a criminal offence or a disciplinary offence.
15. The Report is therefore, very properly, careful to state that in its opinion Mr Lee's non-disclosure of a gift by Australand "*could*" constitute a "*disciplinary offence*" punishable by termination of employment, not that it actually does.
16. But, despite that qualification, it is important that any opinion made public by the CCC be reached in a balanced way, taking into consideration all of the evidence, not only those circumstances which may support an adverse opinion. The CCC has not done that.
17. In summary, the major defects in the CCC's Report are that it has:
 - Wrongly asserted that Mr Lee "*knew*" and "*understood*" that Riley Mathewson's charges would be "\$50,000 or \$60,000", ignoring the

evidence of Mr Lee which clearly was to the effect that he did not accept that that could be correct.

- Wrongly treated Mr Lee's evidence of what Mr Owens said as being a statement of what Riley Mathewson's charges actually were (an "account" or "bill"), when the language used (he "figured" they were "likely to be closer to \$50,000 or \$60,000" than the \$40,000 which Mr Lee expected) supports no such conclusion.
 - Wrongly treated as irrelevant, or of no significance, the commitment which Riley Mathewson had given to Mr Lee, that their charges would substantially be met from funds raised, and instead said it would "strain credibility" to believe that Riley Mathewson would make a donation to cover the shortfall.
18. A reasonable decision maker, taking those considerations into account, could not have inferred that Mr Lee, who was never told that Australand had made any contribution, nevertheless must have "known" that it had.



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**REPORT ON THE CORRUPTION AND CRIME COMMISSION'S
REPORT DATED 26 SEPTEMBER 2008 CONCERNING MR STEPHEN LEE**

Background

1. On 26 September 2008, the Corruption and Crime Commission ("CCC") tabled a *"Report on the Investigation of Alleged Misconduct Concerning Mr Stephen Lee, Mayor of the City of Cockburn"* ("the Report") expressing 5 *"Misconduct Opinions"* with respect to Mr Stephen Lee, who was elected Mayor of the City of Cockburn in December 2000 and re-elected in May 2005. The *"Misconduct Opinions"* followed an investigation by the CCC, which it said was initiated pursuant to sections 32 and 33 of the *Corruption and Crime Commission Act* ("the Act").
2. The investigation began after a report was made to the CCC, in April 2006, by the Department of Local Government and Regional Development ("DLGRD") on an allegation referred to it by the CCC, concerning donations received by Mr Lee from an action group, *"Port Coogee Now"* ("PCN") and a public relations firm, Riley Mathewson ("RM"), to support Mr Lee's successful 2005 election campaign.
3. The DLGRD report concluded that Mr Lee had complied with the disclosure requirements of the Local Government (Elections) Regulations, but added that *"there is speculation"* that Mr Lee did not disclose the *"true source"* of the donations disclosed by him as made by PCN and RM.
4. For the purpose of its investigation of this *"speculation"*, in February 2007 the CCC conducted public examinations of Mr Lee and other witnesses, including Mr Lewis, of Australand Holdings Ltd ("Australand") the developer of a project within the City of Cockburn, called Port Coogee, Mr Riley, a principal of RM, and Mr Owen who, in the relevant period, was an employed consultant with RM. The development, which was controversial, was supported by PCN, as its name suggests.

5. The February 2007 public examinations were held before Commissioner Hammond, who retired shortly afterwards, well before the Report was published on 28 September 2008. He was not its author. The examinations attracted considerable media publicity, as such examinations usually do, and was highly damaging to Mr Lee (as was the publication of the CCC's "*misconduct opinions*", over 18 months later).
6. Following the February 2007 public examinations, in November 2007 Mr Lee's lawyers made submissions to the CCC accompanied by a number of statutory declarations.
7. On 11 July 2008, the CCC notified Mr Lee, in accordance with s.86 of the Act, of comments adverse to him which it proposed to make in a report. He was given until 25 July 2008 to respond, later extended to 31 July 2008, when Mr Lee's lawyers did respond.

Parliamentary Inspector's Function

8. Following the release of the Report, Mr Lee was reported in the media as having stated that he had "*appealed*" to the Parliamentary Inspector against the CCC's "*Misconduct Opinions*".
9. I pointed out, when asked by media representatives whether I had received, and if so whether I was considering, an "*appeal*" by Mr Lee, that the Parliamentary Inspector's statutory function is not to act as an "appeals" court. Nor is it the Parliamentary Inspector's function to conduct a general "*review*" of opinions expressed by the CCC, as an administrative appeals body might do, substituting its own decision or opinion for the one under "*review*". I do not have a statutory power to "*reverse*" or set aside an opinion expressed by the CCC or to substitute mine. This report does not do that. It is confined to a consideration of the process by which the opinions in the Report were reached, and whether it was appropriate.

The Submission made on behalf of Mr Lee

10. That (as would be expected) was recognised by Mr Lee's lawyers, Messrs Hardy Bowen, when they sent to me, on 17 October 2008, detailed submissions on Mr Lee's behalf, requesting that I review the "*procedures and processes*" of the CCC, which had led to its Report and its "*Misconduct*

Opinions". The Parliamentary Inspector's statutory "functions" are wide, and include "to assess the effectiveness and appropriateness of the Commission's procedures", (section 195(1)(c)); "to audit the operation of the Act" (section 195(1)(aa)); "to audit the operations of the Commission for the purpose of monitoring compliance with the laws of the State" (section 195(1)(a); and "to audit any operation carried out pursuant to the power conferred or made available by this Act" (section 195(1)(cc)).

Formation and Effect of an "Opinion" Expressed by CCC

11. It should be observed at the outset (as the CCC itself has done on a number of occasions) that an "opinion" expressed by the CCC in a report is no more than that. It is not a "decision", or a "judgment", nor even a "finding", in the sense of a determination having any operative legal effect. It has no legal consequence, so far as the individual the subject of the "opinion" is concerned, any more than does an "opinion" expressed by a columnist in a newspaper. This important point was emphasised by Martin CJ in *Cox v CCC* (2008) WASCA 199 at [46] when he observed that the CCC's opinion is neither "*determinative*" nor "*binding*". Section 23 of the CCC Act makes it very clear: it prohibits the CCC from publishing an opinion that a particular person has committed a criminal offence, or a disciplinary offence; and also states that a "*misconduct opinion*" is not to be taken as an opinion or finding that a particular person has committed such an offence.
12. However, the practical consequences of a "misconduct opinion" are significant. Because the CCC is a statutory body, and its reports are tabled in Parliament (rendering its contents privileged and immune from defamation actions), and also, perhaps, because the opinions expressed in its reports are stated to be those of "*the Commission*", not simply some identifiable individual, the CCC's "*misconduct opinions*" may be perceived (wrongly) by large sections of the public as akin to a finding of guilt, by a body empowered to do so. As the CCC says, in para [80] of the Report:

"The Commission fully appreciates that any expression of opinion by it in a published report, that a public officer has engaged in misconduct, is serious. The publication of such an opinion or any adverse matter against a public officer, or any other person, may have serious consequences for the public officer, or person, and their reputation."

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13. Because of the serious consequences which an opinion of misconduct by the CCC, if made public, may have for the person concerned, it is important that the process by which the CCC has formed that opinion be transparent, and open to scrutiny by the Parliamentary Inspector, as an officer of the Parliament.

The Central Question: Did Mr Lee know that Australand had donated to his campaign?

14. The central question addressed in the Report is whether Mr Lee knew that Australand had, indirectly, made a "*substantial donation*" to his campaign fund after the May 2005 election and, knowing that, failed to disclose or declare it. As the CCC accepts, there is no direct evidence that he had such knowledge. Mr Lee's sworn evidence was that he did not know, until the CCC hearings, that Australand had made any donation. The CCC opinion, that he knew, is based solely on an inference said to be drawn from certain circumstantial evidence.

Standard of Proof and Circumstantial Evidence

15. Although the process whereby the CCC reaches an opinion of misconduct is not a trial, and the basis on which it may form its opinion is much broader than in a trial, nevertheless the reasons for its opinion must be clearly stated. The Report states (para [82]) that the "*standard of proof*" which it applies in reaching its opinion is "*balance of probabilities*", not (as in a criminal trial) "*proof beyond reasonable doubt*". But, as it also recognises, the seriousness of the particular allegation and the potential consequences of the publication of a "*misconduct opinion*" "*go to how readily or otherwise it may be so satisfied on the balance of probabilities*" [82]. That approach, no doubt, reflects the observations of the High Court in *Briginshaw v Briginshaw* (1938) 60 CLR 336: that where such a "*serious allegation*" is made, particularly one which can affect a person's reputation, profession or employment (as in Mr Lee's case) "*much care and caution*" should be applied before reaching an adverse opinion or conclusion. In other words, even though the standard of proof is the "*civil standard*", it is still a very high standard, and the CCC must not too readily reach such a conclusion.

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16. There is no reason whatever why an opinion should not be based on inference. "*Circumstantial*" evidence is often relied upon in Courts to support a conclusion, but an adverse inference should not be drawn from circumstances, unless it is the only inference reasonably open, upon a consideration of all of the facts in evidence: *Peacock v R* (1911) 13 CLR 619 at 634; *Plomp v R* (1963) 110 CLR 234 at 252. In a civil case, "*the circumstances must raise a more probable inference in favour of what is alleged*": *Chamberlain v R* (1983-4) 153 CLR 521 at 536 (And, having regard to the seriousness of the allegation, that "*probability*" must be very clear). To do otherwise would be dangerous speculation. It would therefore be contrary to principle, to draw an "*adverse inference*" by reference only to some of the facts in evidence and ignoring others which may support an alternative inference at least as probable, if not more so.
17. In inferring from certain specific circumstances (see [35]), that Mr Lee knew that Australand had made a "substantial donation", the Report does not refer to all of the relevant facts or circumstances, or to the legal principles to be observed in drawing an inference in a circumstantial case. Nor is any consideration given in the Report to whether an alternative inference, consistent with Mr Lee's sworn evidence that he did not know that Australand has made any donation, was reasonably open, and if it was, why the adverse inference was "*more probable*".
18. If there was evidence which could reasonably support an alternative inference that is, that Mr Lee did not know (and therefore obviously could not disclose) that Australand had made a donation to his campaign fund and the CCC has failed to consider that evidence, and the alternative inference that was open, the CCC would have failed to act in accordance with established legal principle relating to the drawing of inferences, in forming its "*Misconduct Opinions*" against Mr Lee.

The evidence

19. The relevant evidence which the CCC obtained from its investigation may be summarised (in chronological order) as follows:

26 March 2005: At a meeting attended by Mr Lee, Mr Owens (an employee of Riley Mathewson), Mr Lewis (of Australand) and Mr Burke, who was a consultant to Australand, Mr Lee agrees to engage Riley Mathewson Public Relations (RM) as his election campaign manager. An assurance is given by Mr Owens (an employee of RM) that RM's costs would be "*substantially met*" from fundraising. (Mr Lee's evidence was to the effect that he engaged RM because of that assurance, which was important to him).

18 April 2005: Mr Lee receives an email from Mr Owens of RM, which indicates to him that RM's costs to that date were about \$30,000. Mr Lee estimates the total RM costs, to the end of the campaign, will be "*about \$40,000*".

19 April 2005: Written confirmation is received by Mr Lee from RM, that RM's charges would be "*substantially met*" from fundraising [138] (RM is involved in organising fundraising).

26 April 2005: Luncheon held by "*Port Coogee Now*" (a group supporting the proposed Port Coogee development) to raise funds for Mr Lee's campaign. Mr Lewis of Australand assists in drawing up a guest list.

27 April 2005: Mr Lee declares the promise of a gift (as yet unquantified) by PCN, as required by the regulations [142].

7 May 2005: Mr Lee is re-elected as mayor.

9 May 2005: Mr Lee and Mr Owens discuss the election campaign. RM has not yet sent Mr Lee any invoice or account for its charges. Mr Lee says he expects the charges will be "*about \$40,000*" (the estimate he made on 18 April), says he hasn't yet been told what funds have been raised, and reminds Mr Owens of RM's commitment, that the charges would be "*substantially met*" from funds raised. Owens says that he "*figures*" that the costs would be "*closer to \$50,000 to \$60,000*", but does not say what they are.

9 May 2005: Mr Lee makes his declaration of "*notifiable gifts*", which includes the promise of a donation by PCN.

10 May 2005: Mr Owens sends an email to Mr Lee, saying that he was "*reconciling our fundraising efforts against campaign costs and will let you know the details*". RM still has not sent any invoice or account to Mr Lee.

Shortly after 9 May 2005: Mr Lee meets Mr Lewis (of Australand). Election campaign is discussed. Mr Lee says he is a "*bit concerned*" (because Mr Owens had said the campaign costs may be "*closer to \$50,000 to \$60,000*") and says he suspects that RM might have mixed up invoices for some of the work they had been doing for PCN, with invoices for his work, "*because on my calculations it doesn't make sense*". Mr Lewis offers to speak to Mr Riley, a principal of RM, with whom he has a business relationship. Mr Lee still has not received any invoice or account.

16 May 2005: Lewis meets Owens and gets details of RM's charges, and funds raised.

31 May 2005: Mr Lewis meets with Mr Riley and Mr Owens. Mr Lee is not present, and is not told of the meeting. RM's charges total \$76,597.49. (Mr Lee has never been told that, and had still received no invoice or account from RM). Mr Lewis and Mr Riley agree on a proposal put by Mr Lewis, that:

- RM's charges will be reduced to \$65,288.32
- RM will invoice Mr Lee for \$43,500.73
- RM will make a donation to Mr Lee's campaign fund of \$21,586.83, which (together with other donations received or promised) would cover the \$43,500.73 invoiced.
- Australand would, through a company called Marta Fishing Co, pay \$43,500.73 to Riley Mathewson, which would result in Riley Mathewson getting a net \$65,4145.63.

(The CCC accepts that these "convoluted arrangements"(as they are described by Hardy Bowen were never disclosed to Mr Lee.)

17 June 2005: Mr Lee is told by Mr Riley that he will be invoiced by RM for \$43,500.73, but that RM will donate \$21,586.83 to his campaign fund. That donation, plus donations from fundraising activities, will cover RM's invoice.

20 June 2005: Mr Lee receives the RM invoice, which he pays, and RM gives him a Riley Mathewson cheque, as a donation of \$21,586.30 to his campaign

fund (*This invoice is the only invoice for charges that Mr Lee ever got. It does not say that it is a "reduced" charge, and Mr Lee is not told that it is.*)

21 June 2005: Australand makes a payment of \$43,500.73, via Marta Fishing Co, to Riley Mathewson.

22 June 2005: PCN donates \$15,820 [24].

25 August 2006: Donations from PCN (of \$15,820) and RM (of \$21,586) declared by Mr Lee in his annual return [142].

February 2006: Mr Lee has a letter from DLGRD, asking him whether the (disclosed) donation of \$21,586.30 from RM was funded by any other party, and if not, whether he has confirmed this with RM. Mr Lee meets Mr Riley, who confirms to him that the RM donation was not funded by anyone else. (This is a lie, as Mr Riley admitted later, to CCC investigators).

20. Of clear relevance to the question of whether it may safely be inferred that Mr Lee knew that Australand had made a contribution (apart from the fact that he was never told that it had, of course) is:

- the assurance (which Mr Lee described as a "commitment") given by RM to him on 26 March 2005;
- his expectation, based on the email from RM on 18 April 2005, that the total campaign costs would be about \$40,000;
- his reaction of disbelief when Mr Owens said he "figured" that RM's charges would be "closer to \$50,000 or \$60,000";
- his later discussion with Mr Lewis, when he said "It doesn't make sense", and opined that some of PCN's invoices might have got mixed up with his;
- the fact that the only invoice Mr Lee ever received from RM did not state that it was "reduced".

That evidence, summarised in the preceding paragraph, is referred to in more detail below.

Riley Mathewson's Assurances that its Charges to Mr Lee would be Substantially met from Fund Raising

21. On 26 March 2005, a meeting was held at the home of Mr Brian Burke, attended by him, Mr Lee, Mr Lewis of Australand, and Mr Owens of RM, to discuss Mr Lee's election campaign. PCN had been using the services of RM

for some 18 months, to promote the proposed Port Coogee development. It was proposed at the meeting that RM would be Mr Lee's campaign manager, and would assist in fund-raising: Report [17], [19].

22. At that meeting, Mr Owens assured Mr Lee that the costs associated with his election campaign would be "*substantially*" met from proposed fundraising (activities, which included a fundraising letter to be signed by Glen Jakovich, a well known local identity, and a fundraising luncheon to be arranged and hosted by PCN). Mr Lee agreed to appoint RM as his campaign manager. He said in evidence (T 195) that the assurance given by RM, that "*a substantial amount of the costs of the campaign would be met through fundraising ... and this was a very important aspect for me before I took them on*". There is no reason to suppose, nor does the Report suggest, that this was not in fact the case, although at [19] the Report somewhat glosses over this important point (that it was RM's assurance or "*commitment*"), saying:

"The intention of those present was that the costs of the election campaign would be substantially met from fund-raising, and that it was not intended for Mr Lee to contribute in any substantial way."

23. By letter dated 19 April 2005, RM confirmed the oral assurance which had been given to Mr Lee at the 26 March meeting, stating "*As agreed, costs associated with this campaign will substantially be met by the fundraising activities presently being undertaken*": [138].

Mr Lee estimates that total charges will be "*about \$40,000*"

24. As the Report states ([26]) on 18 April 2005, Mr Lee received an email from Mr Owens, which suggested that the campaign costs to that date had reached about \$30,000. Mr Lee's evidence was that from that, he calculated and believed that the total campaign costs were likely to be about \$40,000. He added that he "*made a perhaps over-simple conclusion*". It is not suggested by the Report that he did not have that belief, at that time.

Fundraising Luncheon

25. On 26 April 2005, the PCN fundraising luncheon was held. Mr Lee attended. All proceeds from the luncheon were collected by PCN, but it did not then account for the collections to Mr Lee, no doubt because it would have to calculate what the net result was, after expenses. The Report at paragraph

[279] states *"It is reasonable to infer from the PCN cheque account that there were some 18 paying guests at the fundraising function, paying \$1,000 each"*, but there is no evidence that Mr Lee knew how much was raised by the luncheon, nor does the CCC Report suggest that he did.

Post-election discussion with Mr Owens about RM's charges

26. The election was held on 7 May 2005. Mr Lee was re-elected. Two days later, Mr Owens of Riley Mathewson met Mr Lee. [281] Mr Lee's evidence was that he still expected that the total costs of the campaign would be *"round about \$40,000"* (T 148), based on the estimate that he made on 18 April 2005 (when he received RM's email which suggested that the costs to that date were about \$30,000).

27. He said in evidence that at his meeting with Mr Owens he discussed the successful campaign, and that when the question of the campaign costs was raised he said (T 148):

"Well, I figure it will be round about \$40,000 and anyway you guys have made a commitment that a substantial amount of the campaign will be paid for by fundraising activities. I haven't seen anything from these fundraising activities."

It is not suggested in the Report that this was not what Mr Lee said.

28. Mr Lee said (T 149) that Mr Owens then seemed *"a bit worried ..."*, because *"he figured it would be closer to 50 or 60 (thousand dollars)"*, to which Mr Lee said *"Well, you've got to be joking, how can that be so?"* He reminded Mr Owens (T 195) of the *"commitment"* RM had made (that a *"substantial amount"* of the campaign cost would be met through fundraising). At that time, he said in evidence, (T 195) he did not know *"how successful the PCN fundraising had been"* but agreed that he was not anticipating that it would have been as much as *"\$50,000 or \$60,000"*, although he *"really had no idea"*.

29. Mr Lee also said in evidence (T 194) *"I felt very strongly that Riley Mathewson obviously would have to ... I may have a case for Riley Mathewson to have to carry any shortfalls because "substantial" to me would mean almost completely"*. The Report does not suggest that this view (which would be a reasonable one, having regard to Mr Owens' earlier assurance on the basis of which RM was engaged) was not genuinely held by Mr Lee.

Discussion between Mr Lee and Mr Lewis

30. Mr Lee later met with Mr Lewis. Each gave evidence in the public examinations in February 2007, regarding this meeting.
31. Mr Lee's evidence was: (T 205)
- "I was at a meeting with Chris (Lewis) after the election and he asked me, "What did you think of the election outcome?" "Good, good result," but I said, "I'm a bit concerned now because Peter (Owens) has told me that it may be 50 or 60 thousand and I'm a bit fearful that they've mixed up some of the work they were doing for "Port Coogee Now" with some of my invoices because on my calculations, it doesn't make sense." He said, "Did you want me to have a word with Des (Riley)?" or words to that effect".*
32. Mr Lewis' evidence (at 107) was *"he had a meeting after the election campaign to talk overall about how that campaign had run. The issue of his election costs was raised. Clearly I felt he wanted to see ... wanted my help. I was happy to provide that".*
33. At T107 he was further questioned by counsel assisting, on the incorrect assumption that RM's invoices, which it had drawn up but not sent to Mr Lee, had been received by Mr Lee. He agreed that it was his understanding that RM's costs were to be *"substantially met by fundraising"*. He was then asked *"By the end of the campaign, did it come to your knowledge that in fact the fundraising had fallen substantially short of the tax invoices RM had sent to Mr Lee?"* Mr Lewis replied "Yes". He also agreed that *"that there was a shortfall in excess of \$50,000"*.
34. The underlined words show that the assumption on which these questions were based was that Mr Lee knew what RM's charges actually were, because RM had sent him its invoices. But that was wrong. As the Report accepts, Mr Lee had never received the invoices (which were on RM's file and marked *"cancelled"*) and he did not know what RM's charges were.
35. Mr Lewis' evidence about the meeting (T 107 - 109) was that when he met Mr Lee to discuss how the campaign had run, Mr Lee had expressed concern about RM's charges, which he said (T 121) were *"very high"*. Mr Lewis was asked *"Did he actually specify you an estimate as to that amount?"*. He replied *"No, he didn't"*.
36. Mr Lewis said (T 84) *"It was clear in my mind that he was seeking my help with that"*. When asked by counsel assisting *"Your help in what sense? A financial*

sense?" Mr Lewis replied "To see if I could in some way reduce that cost". He elaborated on that (T 85), saying that he believed that Mr Lee had approached him "most likely because of my relationship with Riley Mathewson".

37. At para [28] the Report comments on that evidence as follows:

"Instead of approaching Riley Mathewson directly and entering into negotiations, perhaps taking some comfort in their prior agreement that the campaign costs would substantially be met from fund-raising, Mr Lee approached Mr Lewis. Mr Lewis understood from Mr Lee's approach that Mr Lee was seeking his help, and he subsequently entered into negotiations with Riley Mathewson on the basis that Australand would be required to make a contribution. In the Commission's opinion, Mr Lewis' understanding of what Mr Lee was asking for (and expecting) was correct." (Underlining added)

38. The underlined passage from the Report implies that the evidence of Mr Lewis was that he "understood" that Mr Lee was seeking (and expecting) Mr Lewis to negotiate with RM "on the basis that Australand would be required to make a contribution". However, as noted above, the evidence of Mr Lewis at T 84 was that he understood that he was being asked, because of his relationship with Riley Mathewson, to approach Mr Riley of that firm, to see if he could get the costs reduced. His evidence was not that he (or Australand) was being asked for "financial assistance", or to "make a contribution".

39. Furthermore, Mr Lewis also said, (at T 122) that he did not realise, at the time of his meeting with Mr Lee that Australand "*might have to make a contribution towards (Mr Lee's) election campaign*".

40. It was put to Mr Lee (T206.1) by counsel assisting, that Mr Lewis' evidence was that Mr Lee had asked him to meet Mr Riley (regarding the RM costs). That was not Mr Lewis' evidence. When that proposition was put to Mr Lewis (T 121) he did not agree. He simply said "*It was clear in my mind he was asking for my help*" - not that Mr Lee actually asked him to go and see Riley Mathewson about the account. When Mr Lewis got details of RM's charges - not from Mr Lee, who did not have them, but from RM - he concluded that RM had "*basically just mismanaged the campaign*" and that "*the costs had blown out significantly*" (T 122). He worked out "*the shortfall*" between the funds raised and charges. It was then, he said "*that the decision was made*". There is no evidence that Mr Lee was told anything of this.

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41. Neither Mr Lewis nor Mr Lee gave evidence that it was ever stated, or implied, that Australand was to make any contribution towards RM's costs. Mr Lee's evidence was to the effect that he thought that if RM's charges (for which he had not yet been invoiced by RM) were "\$50,000 or \$60,000", that might be the result of a "*mix up*" between his account and the PCN account with Riley Mathewson. Mr Owens had not told him what the RM charges actually were, just that he "*figured*" they would be "*closer to \$50,000 or \$60,000*", than \$40,000.

The Riley Mathewson invoice and its donation

42. The next that Mr Lee heard about the matter was that he received an invoice (the first and only one) from RM for \$43,500.73 (T 198). He was asked to write a cheque out to RM for that sum (which could not be "*substantially met*" from the funds raised: However, he was told in an email from Mr Riley that RM would make a donation of \$21,586.83, which it did. That covered the difference between the funds raised, and RM's invoice. Mr Lee's evidence was that when he asked Mr Riley why not simply give RM a cheque for the difference (of about \$22,000) Mr Riley replied that he had legal advice about the way the gift of \$21,586 should be made. So that was how it was done. Neither Mr Riley, nor anyone else, told Mr Lee that Australand was making any contribution.
43. The net result was that Mr Lee's campaign expenses were covered by the funds raised, plus the donation from RM. That outcome was consistent with the oral assurance given to Mr Lee by his campaign manager, RM, in March 2005 (confirmed in writing on 19 April 2005) that the campaign costs would be met "*substantially*" by fundraising. It was consistent also with:
- Mr Lee's expectation, once he received RM's email on 19 April 2005, that the total campaign costs would be "about \$40,000" (RM's invoice being \$43,500.73);
 - his reaction to Mr Owens' statement on 9 May 2005 (that he "*figured*" that RM's costs would be "*closer to \$50,000 to \$60,000*" than \$40,000) that this could not be correct ("*You've got to be joking*") and must be a "*mix up*" between his account and PCN's account with RM; and

Meeting between Mr Lewis and Mr Riley

44. The charges which had actually been raised by RM for Mr Lee's campaign costs totalled \$76,597.49. It is not clear when those charges were raised, but although the 3 invoices for the charges had been made out, addressed to Mr Lee, the CCC has accepted that he never received them (although in the public examination of Mr Lewis, counsel assisting (T108) mistakenly referred to them as "*the invoices that Mr Lee had received*").
45. On 31 May 2005 Mr Lewis of Australand met Mr Riley and Mr Owens, of Riley Mathewson. Before then, on 16 May 2005, he had obtained from RM details of the invoices totalling \$76,597.49 and the amount of funds raised. His evidence was that he had "*looked at various components of those, and then obviously looked to Riley Mathewson to discount or reduce the account*" (T109).
46. As a result of Mr Lewis' negotiations with him, Mr Riley agreed to reduce the RM account from \$76,597.49 to \$65,288.32 (T109), to invoice Mr Lee for \$43,500.73, and to make a "donation" to Mr Lee's election campaign of \$21,586.83 (which would mean that Mr Lee's net payment to RM would be only \$21,913.90, which was about the total of campaign donations). In turn, Australand, through a company called Marta Fishing Co, was to pay \$43,500.73 to RM. That, added to the (net) \$21,913.90 paid by Mr Lee to RM, would result in RM receiving, in full satisfaction, \$65,414.63.
47. It is not suggested in the Report, nor is there any evidence, that Mr Lee ever knew of any of these "*convoluted arrangements*" (as Hardy Bowen aptly describes them) made between Mr Lewis and Mr Riley. The CCC accepts that he knew nothing of Marta Fishing Co, or what payment Australand made (via Marta Fishing) to RM; nor that RM's charges, originally, were \$76,597.49; nor what reduction in those charges was agreed between Mr Riley and Mr Lewis. All of this was, for reasons best known to Australand and RM, concealed from Mr Lee. Perhaps it was because Australand knew that Mr Lee like a majority of Council members, favoured the Port Coogee development, which save for a few minor amendments had already been substantially approved, and Australand did not want Mr Lee to know it had donated, as it would then be necessary for him to declare it.

The evidence of Mr Lee's knowledge about campaign costs

48. The only direct evidence of what Mr Lee knew about the campaign costs was therefore as follows:

- The email from RM of 18 April 2005 suggested to him that his campaign costs to that date were about \$30,000, from which he deduced that his total campaign costs were likely to be "*about \$40,000*".
- On 9 May 2005 when he told Mr Owens that he thought the costs would be about \$40,000, and Mr Owens said he "*figured*" they would be "*closer to \$50,000 or \$60,000*", as Mr Lee later told Mr Lewis, he thought there must be a "*mix up*" between his account and PCN's.
- When he later told Mr Lewis his concern, and also mentioned RM's "*commitment*" that donations collected would substantially meet the campaign costs, Mr Lewis said he would speak to Mr Riley of RM about RM's costs.
- Mr Lee later received an invoice (the only one) from RM, for \$43,500.73. He was not told that this was a reduced charge, nor did the invoice indicate that it was.
- When he gave RM a cheque for that invoice, RM made a donation to his campaign fund of \$21,586.83 which covered the "*shortfall*" between RM's invoice for \$43,500.73, and donations received from fundraising.

Declarations by Mr Lee of donations

49. Mr Lee declared the donations from RM and from PCN (well known as a strong supporter and campaigner for Australand's Port Coogee development). He has given sworn evidence that he believed, when he made the declarations, that they were correct, both as to amount and source.

50. When he received a letter of enquiry from DGLRD in 2006 (mentioned earlier) he was asked to confirm that the source of the RM gift of \$21,586.93, which he had declared was not from anyone else, and to advise (in writing) whether he had confirmed this with Riley Mathewson. So he met Mr Riley, the principal of RM, his former campaign manager, and asked him whether his proposed answer, that the donation had been made only by RM, and not

by anyone else, was correct. Mr Riley confirmed that it was; but Mr Riley has since admitted to a CCC investigator that he had lied to Mr Lee ([319]).

What reason was there for Mr Lee not to disclose any donation?

51. If Mr Lee knew that Australand had made any donation, his evidence was that he would have declared it. It was put to the CCC, in submissions made on Mr Lee's behalf in 2007, that there was no logical reason why, had Mr Lee known that Australand had made a donation, he would not have declared it. The CCC's response (at [382]) was that his reason for not declaring it was to "disguise" the financial involvement of Australand in his campaign, so that he would not be required to disclose an interest in relation to any matters before Council involving Australand.
52. That reply fails to refer to the evidence, relevant to this question, that:
- Mr Lee had declared the donation made by PCN, which was a lobby group well known as a supporter of Australand's Port Coogee development;
 - Australand's proposals for development had, in the main, by the time of the May 2005 election, been approved by a majority of Council (including Mr Lee) and only comparatively minor variations to the approved development were yet to be dealt with.

Furthermore, it is not suggested, and there is no evidence, that Mr Lee had any financial interest in Australand or its Port Coogee development - so why would he be concerned about disclosure? What advantage or benefit to him could it possibly have been?

No direct evidence that Mr Lee knew that Australand made a donation

53. As observed earlier, there is no direct evidence that Mr Lee knew Australand had made a donation. The sworn evidence of each of Messrs Riley, Lewis & Owens is that none of them told him of the Australand payment, or anything about the "convoluted arrangements" between Australand, Riley Mathewson and Marta Fishing Co. described earlier. Nor does the Report suggest that Mr Lee was told.
54. The CCC has, nevertheless, formed and expressed a "*First Misconduct Opinion*" (from which the remaining "*Misconduct Opinions*" flow) on the basis

of its opinion (at [37]) that Mr Lee "failed to declare a gift from Australand in his annual return, despite knowing [emphasis added] that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign ..."

The CCC's "inference" that he knew

55. The opinion that he had that knowledge is based entirely on an inference, drawn from the "circumstances" summarised in para [35] of the Report (underlining added):

"In the opinion of the Commission, given the circumstances, including the involvement of Mr Lewis throughout the election campaign, including the PCN fund-raising luncheon, and the huge reduction in charges by Riley Mathewson following Mr Lee's meeting with Mr Lewis, an Australand General Manager who had been substantially involved in his campaign, Mr Lee well knew that payment of the balance of Riley Mathewson's costs had been made by Australand. There was no other possible source. In the opinion of the Commission, it follows that Mr Lee knew that the declaration of a gift from Riley Mathewson in his annual return for the year ended 30 June 2005, made on 25 August 2005, was false, and knew that he ought to have declared a gift from Australand".

56. The Report also comments later, at [283]:

"At no time did Mr Lee ask Mr Riley or Mr Lewis how it came about that his bill had reduced from \$50,000 or \$60,000 to \$21,913.90. The evidence of both Mr Riley and Mr Lewis is that he did not. In the Commission's opinion he didn't have to. He knew that this had resulted from his meeting with Mr Lewis. There was no need at that time for Mr Lee to directly ask whether Australand had funded the remainder of the bill because he knew that it had".

and at [284]

"It is inconceivable to think that Mr Lee simply accepted that the accounts issued by Riley Mathewson in respect of his election campaign had reduced from \$50,000 or \$60,000 to \$21,913.90. Even if Mr Lee thought that Mr Lewis was able to negotiate a reduction from \$50,000 or \$60,000 to \$43,500.73, being the amount for which Mr Lee was ultimately invoiced, it strains credibility to think that Riley Mathewson would then offer a further discount (by way of "gift") to Mr Lee of \$21,586.83 without compensation or benefit. The only other possible source of funding, was Australand. Given the involvement of Mr Lewis throughout the election campaign, including the PCN fund-raising luncheon, and his involvement in negotiations with Mr Riley regarding the campaign cost, it is clear Mr Lee was well aware that Riley Mathewson were only willing to offer such a massive reduction to him because they were to receive the funds from some other source – and it could only be Australand.

The CCC's major premise : a "huge reduction" in RM's "account"

57. The underlined references (at [35]) to a "huge reduction in RM's charges"; and to a reduction in his "bill" from "\$50,000 or \$60,000" (at [283]); and (at [284]) to

"a massive reduction" in "the accounts issued by RM ... from \$50,000 or \$60,000" appear to treat what Mr Owens said on 9 May 2005, that he "figured" that RM's charges were likely to be "closer to \$50,000 or \$60,000", than Mr Lee's expectation of "about \$40,000", as if it were a statement of what RM's charges actually were, and that Mr Lee, at that point, accepted that the RM "charges" were "\$50,000 to \$60,000", not just the range of what Mr Owens "figured" they "closer to".

58. That proposition, which underlies the CCC's "opinion", does not bear objective scrutiny.
59. First, what Mr Owens said, that he "figured" the RM charges were likely to be "closer to \$50,000 or \$60,000" than Mr Lee's expected "about \$40,000" was not a statement of what RM's "charges" actually were, but what he "figured" they would be "closer" to. It is putting a considerable "spin" on what Owens "figured", to refer to that as a "bill," or an "account", for "\$50,000 or \$60,000", or as the Report refers to it at [284] an "account issued" by RM. That simply misdescribes the evidence.
60. Secondly, Mr Lee's reaction to it was: "You've got to be joking, how can that be so?" It was, of course, in excess of his expected total of \$40,000 (round about) based on the figures he was given in RM's email in April 2005. He later told Mr Lewis he suspected there must be a "mix-up".
61. Thirdly, there is no evidence, nor does the Report suggest, that Mr Owens, or anyone else, told him there had been any reduction in "RM's account" or "bill".
62. Fourthly, the invoice itself did not state that there had been any reduction in RM's charges. It did not, for example, say "Charges: \$50,000, but reduced to \$43,500.73", as might be the expected notation, if there had been any reduction in charges, particularly a "massive" one. Notations like that are not infrequently made in the tax invoices of legal practitioners and other professionals, if the charge, although correctly calculated, has been reduced. But nothing in the RM invoice suggested that there had been a reduction at all. If there had been, surely it would have been reasonable for Mr Lee to expect to be told?

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63. The Report, it should be noted, does not specify what the "*massive reduction*" in "RM's charges", or "*account*", or "*bill*", was. Nor could it. The only "*account*" Mr Lee actually received was the invoice for \$43,500, which was about what he had expected. That was not, on its face, a "*reduced charge*". So, what was the "*massive reduction*", which in the CCC's opinion Mr Lee must have realised had resulted from an undisclosed donation by Australand? Was it a reduction from what Mr Owens' "*figured*" the charges would be "*closer to*"?
64. At [284] the CCC appears to accept, as a reasonable inference, that Mr Lee may have thought that Mr Lewis had negotiated "*a reduction from \$50,000 or \$60,000 to \$43,700*"; but then asserts that it "*strains credibility*" to think that RM would then "*offer a further discount*".
65. This so-called "*further discount*" (which in the opinion of the CCC Mr Lee must have known was the result of a payment to RM by Australand) was the donation of \$21,586.83 which RM made (by its cheque) to Mr Lee. Of course, it could only be thought by Mr Lee to be a "*further discount*" if he knew, or believed that the invoiced charge of \$43,500 was a "*discounted*" charge. But no-one said that it was, and the invoice did not say so.
66. As the Report acknowledges ([283]) there had been "*a prior agreement*" - that is, an assurance orally and in writing - by RM that their charges would be "*substantially met*" by donations. Why, then, does the Report make the assertion ([284]) that it "*strains credibility*" that RM would make a donation to cover the shortfall between its invoiced charge of \$43,500.73, and the funds that had been raised? Why should Mr Lee conclude that Australand, which had given no such assurance to Mr Lee, would make a donation to meet the shortfall, rather than RM, the party that had given the assurance?
67. The Report ([283]) suggests that Mr Lee could have approached RM directly about their charges, "*perhaps taking some comfort in their prior agreement that the campaign costs would substantially be met from fund-raising*". Given the oral and written assurance from RM, which Mr Lee believed gave him a basis for a claim against RM to cover any shortfall, it would hardly be surprising if RM

made a donation, to honour that assurance, much less that it would "strain" his, (or anyone else's) "credibility".

68. The Report fails to explain why the only inference reasonably open was that Mr Lee must have known that Australand had paid RM, despite the assurance that RM had given to Mr Lee, which placed RM under a moral (and possibly legal) obligation to meet the shortfall. And an obvious reason for Mr Lee accepting Mr Lewis' offer to talk to Mr Riley about RM's charges was that Mr Lewis knew Mr Riley, and had a business association with him (which was what Mr Lewis said he thought was the reason, as noted earlier).

CCC's reliance on evidence of Mr Lewis

69. At [262] the Report refers to evidence given by Mr Lewis, about being approached by Mr Lee, in early 2006, after Mr Lee had received the DLGRD letter. (Mr Lee's evidence was that Mr Lewis had told him that Australand had not made any donation to his campaign):

"When Mr Lee had raised this matter with you were aware at least it was all to do with donations in his 2005 campaign?---Yes.

Did you then tell him about the donation from Australand?---No.

Any reason for that?---No reason.

Was it because he already knew?---I don't know if he already knew, you would need to ask Mr Lee.

Well, was the - - -?---But I think it's obvious that Australand have - we met with Des Riley, the bill is being reduced and he pays a much reduced bill.

So it was obvious that what?---That obviously there has been a contribution.

A contribution from Australand?---I would feel so, yes"

70. The Report, at [263] places some reliance on this evidence from Mr Lewis

"In the Commission's assessment, the effect of the evidence, then, is that it was obvious to Mr Lee, as a result of his meeting with Mr Lewis shortly after the election and the subsequent reduction in the Riley Mathewson invoices, that Australand had made a contribution to Riley Mathewson in respect of Mr Lee's election campaign. The Commission is satisfied that was so. The evidence of Mr Riley was that the payment was to come from Marta Fishing Co, and he knew that that entity was associated with Australand. However, there is no evidence that Mr Lee knew about Marta Fishing Co nor the actual mechanics of the payment of part of his Riley Mathewson campaign costs by Australand".

71. There are several problems with the use of that evidence, to support an inference that Mr Lee knew that Australand had made a "contribution". First, the CCC cannot use, as a "circumstance" from which to draw an inference that

Mr Lee knew Australand had made a contribution, evidence of what Mr Lewis "would feel" was "obvious". The question is, what facts may reasonably support that inference - not what someone "felt". Furthermore, Mr Lewis' reason for "feeling" it was "obvious" was that when he gave that evidence he was under the mistaken belief (shared by counsel assisting) that Mr Lee had received RM's invoices for charges totalling \$76,597, and therefore knew that he got a "much reduced bill" after Mr Lewis met with Mr Riley. (Even if - and there is no evidence that he did - Mr Lee had known that RM's bill was "much reduced" why would it be "obvious" to him "that Australand had made a contribution"? Would it "strain credibility" for him to think that RM accepted that its charges were excessive, and had reduced them, perhaps persuaded by Mr Lewis to do so?)

72. The CCC's apparent reliance on what Mr Lewis said he "would feel" is repeated at [277]

"The Commission is satisfied that Mr Lee did not ask Mr Lewis or Mr Riley, at the relevant time, that is, after the election, whether Australand had made any direct or indirect financial contribution to his election campaign. In the opinion of the Commission, there was no need for Mr Lee to ask such a direct question of either Mr Lewis or Mr Riley because the circumstances were such that he knew that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign. Mr Lewis said so. He considered that it was obvious that Australand had made a contribution to Riley Mathewson in respect of Mr Lee's election campaign. Although that acknowledgement came during questioning about a conversation he had with Mr Lee in June 2006, Mr Lewis was referring to the earlier period when he negotiated the deal with Mr Riley when he made reference to the fact that it ought to have been obvious to Mr Lee that Australand had made a contribution".

Enquiries by Mr Lee as to whether Australand had made any contribution

73. At [275] the Report refers to Mr Lee's evidence, that not only did he not know that Australand had made any contribution to RM's charges (and the Report accepts that he was never told) but that he asked both Mr Riley and Mr Lewis whether Australand had made any contribution, and was told it had not.
74. That evidence of Mr Lee (see T205 and T209) appears to have been referring to the enquiries he made, after he received the DLGRD letter in 2006 which prompted his enquiries. At [277] the Report says "*The Commission is satisfied that Mr Lee did not ask Mr Lewis or Mr Riley ... after the election, whether*

Australand had made any direct or indirect financial contribution ...". The Report says, at [276] that the CCC prefers the evidence of Mr Riley and Mr Lewis on this issue, for several reasons, including that it is "*corroborative*". How each could "*corroborate*" the evidence of each other, as to whether each was (separately) asked this by Mr Lee is unexplained. In any event, the evidence of Mr Lewis was that he never told Mr Lee that Australand had made a contribution, and Mr Riley has admitted that he was asked, and lied to Mr Lee, and told him Australand had not contributed.

75. Why would Mr Riley lie to Mr Lee, and tell him Australand had not made a contribution when he knew it had? The obvious answer is that Mr Riley did not want Mr Lee to know, and just as obviously, nor did Mr Lewis. That is clearly inconsistent with the proposition, stated by the Report, that it was "*obvious*" to Mr Lee that Australand had contributed.

The Basis of the CCC's Misconduct Opinions

76. Regulation 30C of the Local Government (Election) Regulations 1997 only provided for the disclosure of gifts made, or a promise (of a gift) made, during a "*disclosure period*", which ends on the day on which a member makes a declaration prior to taking office. Mr Lee made his declaration (which included the promise of a donation by "Port Coogee Now" (PCN) on 9 May 2008. The CCC's view was that he knew (but only "*by mid-May 2008*") that Australand "*had made or would be required to make*" a gift, but since that was after he had made his declaration, he was "*not required by the Act or Regulations to disclose a financial interest*" ([410]).
77. Having concluded that there was no breach of those provisions by Mr Lee the Report ([415]) cites clause 3.5 of "*City of Cockburn Code of Conduct*":
- "Elected members shall ensure that there is no actual or perceived conflict of interest or incompatibility between their personal (i.e. non-financial) interests and the impartial and independent fulfilment of their civic duties. Any such interests shall be disclosed immediately before the matter is discussed and noted in the minutes of any meeting attended by individuals in their capacity as an Elected Member of Council"*
78. It interprets this ([416]) as not being intended to exclude from disclosure (under the Code of Conduct) "*an interest of a financial nature that does not fall within the financial interest provisions*" (of the Local Government Act). That

interpretation is, perhaps, arguable; but that is not what the plain words of clause 3.5 actually say. Clause 3.5 refers only to "*non-financial*" interests.

79. The Report then goes on to consider some "*Guidelines*" issued by the DLGRD, which suggest that when a member is deciding whether an "*interest*" should be disclosed, "*it is helpful to answer the following questions*":
- *If you were to participate in assessment or decision making without disclosing, would you be comfortable if the public or your colleagues became aware of your association or connection with an individual or organisation?*
 - *Do you think there would be a later criticism of perceived undisclosed partiality if you were not to disclose?*
80. These Guidelines are not, of course, legislation, or regulations. They are simply, "*Guidelines*".
81. The Report, however, makes particular reference to these Guidelines. It says (at [422])
- "The nature and extent of the involvement of Mr Lewis, in his capacity as a General Manager of Australand, in Mr Lee's re-election campaign, was alone certainly a circumstance affecting the perception of Mr Lee's impartiality on matters affecting Australand which came before Council. However, given all the circumstances, including that Australand made a substantial payment to Riley Mathewson in respect of Mr Lee's election campaign, there can be no doubt of a public perception that he had an interest affecting his impartiality, had the public known of the payment."* (underlining added)
82. It is not entirely clear from that passage, given the underlined words, whether the CCC is saying that even if Mr Lee was not aware that Australand "*had made, or would be required to make*" a substantial donation to Riley Mathewson, a failure to declare that Mr Lewis of Australand had been "*involved*" in his election campaign was a breach of clause 3.5 of the Code of Conduct. If that is the proposition, it is one which would have serious implications: any member of council would be obliged to declare, if a matter came before council affecting any of his or her past election campaign supporters, a "*conflict of interest*".
83. Ultimately, however, the CCC's finding of misconduct depends on its inference that Mr Lee knew, by mid-May 2005, that Australand "*had made, or would be required to make a substantial (unspecified) donation to his campaign fund*", and that although the failure to declare it did not breach the law as it then stood, it was a breach of clause 3.5 of the Code of Conduct, and also a

"breach of discipline" which could constitute a disciplinary offence under the Public Sector Management Act, as defined by Section 80 of that Act. For the reasons stated previously that inference has been drawn without taking into consideration all of the relevant circumstances, and the alternative inference which is open: that Mr Lee did not know that Australand had made a contribution, but that was concealed from him.

The CCC's Representations on the Parliamentary Inspector's draft report

84. On 15 December 2008, I provided the CCC with a draft "Executive Summary" of my proposed report. The covering letter invited the CCC to make representations regarding the view which I had reached, after very careful consideration, that the CCC's "*misconduct opinion*" had been reached without taking into account all of the relevant evidence, and giving consideration to whether, having regard to all of the evidence, an alternative inference to that drawn by the CCC was reasonably open.
85. My letter also stated my intention to annex to my report any representations made by the CCC. The Executive Summary was followed, on 17 December 2008, by the full "draft report".
86. On 18 December 2008, without notice to me, the CCC applied, ex parte, to the Supreme Court seeking to prevent me from tabling my report. The application was accompanied by several affidavits. I was unaware that the CCC had made that application until the morning of 23 December 2008, when I obtained a copy of the reasons for the decision of Chief Justice Martin, who dismissed the CCC's application. I then called for, and received from the CCC, a copy of the Court papers. It is clear that a substantial amount of the CCC's time and resources would have been required, for the purpose of mounting and arguing its unsuccessful ex parte application. Why no notice of that application was given to me has not been explained.
87. Later, in mid-afternoon of 23 December 2008, I received the CCC's "*representations*" regarding my draft report and executive summary. In accordance with my stated intention - although I have no statutory obligation to do so - I have annexed them to this report. It is a practice which

I would recommend to the CCC, with respect to any representations made to it by persons the subject of an "*adverse opinion*" expressed in a CCC report.

88. I have carefully read the CCC's representations, and have made some comments on them (below). I have also made a few comparatively minor changes to the draft report, and to the draft Executive Summary to meet a few points put (some, repeatedly) in the Representations. For example

- The Representations cavil in several places, at the description given in the draft report referring to the statement made by Mr Owens of Riley Mathewson to Mr Lee (which Mr Lee said was very important to him) that Riley Mathewson's charges would be "*substantially met*" by fundraising . The draft report refers to this as an "assurance". The Representations point out that the email from Riley Mathewson to Mr Lee, confirms that it was "agreed"; and that Mr Lee referred to it, in his evidence, as "*a commitment*" by Riley Mathewson. I have therefore amended my report to use those terms, although it is not clear to me what difference, in substance, there is. And the substantive point is that, however expressed, this "commitment" has been effectively treated by the CCC as no significance, as bearing on the question of whether it was likely that Riley Mathewson would make a donation to meet the shortfall between funds raised and their invoiced charges. To say, as the Representations do, that the CCC Report refers to the evidence of the "commitment" is not enough. Nowhere does the Report give consideration to its significance.
- The Representations also take issue with the term "*convoluted*", to the arrangement made between Australand, Riley Mathewson and Marta Fishing Co, of which (as the Representations accept) Mr Lee knew nothing. It points out that the CCC's Report does not use that adjective. True, nor did my draft report say that it does - it was a quote from the submissions by Mr Lee's solicitors, to whom it is specifically ascribed in my draft report. However, I have further clarified that, as the Representations take issue with it more than once.

Mr Lee's alleged knowledge of Australand's contribution

89. The CCC representations accept that Mr Lee was never told that Australand had made any contribution to the costs of his campaign manager, Riley Mathewson, and that its opinion that, nevertheless, he "*knew*", is a matter of inference.
90. The CCC representations also accept that an essential part of its inference reasoning is the Mr Lee knew that there had been a "*substantial reduction*" in Riley Mathewson's charges. If he did know that, the CCC says, then he must have realised that Australand had made a contribution, even though he was never told that it had.
91. The CCC representations accept that the invoice for \$43,500, which Mr Lee received from Riley Mathewson for their charges, was the only invoice Mr Lee ever received, that the invoice did not say that it was a "*reduced*" charge, and there is no evidence that he was ever told that it was. But the CCC representations maintain that an inference was open, that he must have "*known*" (ie realised) that it was, and that was the "*most probable inference*". Why?
92. The answer, according to the CCC representations, is that as a result of a meeting with Mr Owens of Riley Mathewson on 9 May 2008, Mr Lee "*understood*" that RM's charges were "*likely to be some \$50,000 or \$60,000*" (Reps p3, 6). At p13, the representations quote para [284] of the CCC's report, which refer to this - with something of a quantum leap - as "*the account issued*" by Riley Mathewson for \$50,000 or \$60,000. That is a misnomer. No such "*account*" has ever been "*issued*".
93. The CCC representations note that Mr Owens could not recall what was said at his meeting of 9 May with Mr Lee. The CCC has based its inference on the evidence given by Mr Lee. It states at [63] that it "*accepted from Mr Lee's evidence that he understood from what he said Mr Owens told him that RM's charges were likely to come to \$50,000 or \$60,000*".
94. That was not Mr Lee's evidence at all. His evidence (on which the CCC relies) was:

- His expectation, when he went to the meeting, was that RM's charges would be about \$40,000, based on a "*perhaps over simple*" calculation made part way through the campaign (Reps [43] and T 148).
 - He told Mr Owens that, Owens said he "*figured it would be closer to 50 or 60*", and Mr Lee said "*Well, you've got to be joking, how can that be so?*" (Reps [43]).
 - When he spoken to Mr Lewis, later he said "*I'm a bit fearful that they've mixed up some of the work they were doing for PCN with some of my invoices because on my calculations it doesn't make sense*" (Reps [43]) - underlining added.
95. Nowhere in Mr Lee's evidence did he say either that he "*understood*" or "*believed*" that RM's charges either would be or were likely to be \$50,000 or \$60,000. It is not reasonably open to infer, from that evidence (which, of course, does not purport to be a verbatim account of what was said more than 18 months earlier) that he believed and accepted from that conversation, that "\$50,000 or \$60,000" was correct. To say "... *it doesn't make sense ...* " and to raise the possibility "*of a mix up of accounts*" is hardly evidence from which it could be concluded or inferred that he knew or believed that RM's charges would be (or were) "\$50,000 or \$60,000".
96. The evidence simply doesn't support the CCC's assertion that Mr Lee "*understood*" RM's charges to be other than the invoice he received. That being so, the starting point for the CCC's inference that he "knew" Australand had made a contribution is gone. If he didn't know there was a "*reduction*", obviously no such inference could be drawn.

The Parliamentary Inspector's "Functions"

97. At para [31] and following, the Representations contend that the CCC Act does not empower the Parliamentary Inspector to produce and table a report, which critically considers the process by which the CCC has formed a misconduct opinion (as this report does).
98. This contention has been raised on a number of occasions. It is not only my view that it is wrong, it is also the opinion of eminent counsel from Victoria, David Grace QC, whose opinion of April 2008 stated that the Parliamentary

Inspector's "*audit power*" should be read broadly, and extends to ensuring that the "*basic principles of law*" are observed by the CCC in forming its misconduct opinions, and that those "*basic principles*" require that the CCC should, in forming its opinion (relevantly):

- "(1) *Not take into account irrelevant considerations*
- (2) *Not fail to take into account relevant considerations*
- (3) *Not reach a decision which no reasonable decision maker could possibly reach.*"

99. The "*functions*" of the Parliamentary Inspector include an audit (or review) of the CCC's report to ensure that it has complied with those "*basic principles of law*". The failure to take into account, in concluding that "*it strains credibility*" to accept that Riley Mathewson would have made a gift, or donation to Mr Lee, the fact that this would honour Riley Mathewson's "*commitment*", that its charges would be met from fundraising, demonstrating the CCC's departure from those "*basic principles*".



Malcolm McCusker AO QC
Parliamentary Inspector

24 December 2008



**PARLIAMENTARY INSPECTOR
OF THE CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

ANNEXURE

**Representations of the Corruption and Crime
Commission in Response to the Parliamentary Inspector's
Proposed Report**

**REPRESENTATIONS OF THE CORRUPTION AND CRIME COMMISSION
IN RESPONSE TO THE PARLIAMENTARY INSPECTOR'S PROPOSED
"REPORT OF THE CORRUPTION AND CRIME COMMISSION
DATED 26 SEPTEMBER 2008
CONCERNING MR STEPHEN LEE"**

Summary

- A fair reading of the whole of the Commission Report shows that:
 - In drawing the inference that Mr Lee knew Australand had made a substantial payment to the costs of his campaign, the Commission did consider all the relevant evidence;
 - The Commission did consider the alternative inference, that he did not know;
 - The Commission was positively satisfied on the balance of probabilities that Mr Lee did know;
 - In drawing that inference, the Commission had regard to the seriousness of it and of the misconduct alleged.
- The law does not require a royal or other investigatory commission to refer to the evidence or principles of law in a particular way, so long as the reasons for its findings or opinions are revealed and there is evidence to support them. The Commission's Report does that.
- The proposed report, and the exercise which has produced it, have no lawful foundation in the functions or powers of the Parliamentary Inspector. In the Commission's contention, they are beyond statutory power and the proposed report is not one that can lawfully be tabled in the exercise of the Parliamentary Inspector's statutory functions or powers.
- In any event, the opinions expressed in the Commission Report were reasonably open to it on a consideration of all the evidence and having regard to the relevant standard of proof, which the Commission Report shows was properly applied. In those circumstances, the Commission's opinions were properly arrived at.

Introduction

- [1] The Commission's Cockburn Report was tabled on 26 September 2008, following a lengthy investigation which commenced in early 2007.
- [2] Approximately 4:30 pm on Monday 15 December 2008, the Commission received from the Parliamentary Inspector a letter dated that day, with which was enclosed a draft "Executive Summary" from the proposed report.
- [3] The Parliamentary Inspector wrote that he wished to table the report "if possible, this Friday" (that is, 19 December 2008). The proposed report was not received at the Commission until 1:45 pm, Wednesday 17 December 2008.
- [4] The Commission wrote, advising that the time allowed (effectively one working day) to respond to the proposed report, was unreasonable, and indicating that it considered at least two or more weeks (particularly given that would include Christmas) would likely be needed.

- [5] On 18 December 2008 the Parliamentary Inspector forwarded a further (amended) proposed report with substantial deletions from the previous draft (on which the Commission had been working), and advised that he was not prepared to delay the tabling of the report later than 4:00 pm, Tuesday 23 December 2008.
- [6] On 22 December 2008 the Parliamentary Inspector wrote to the Commission advising that there was no new “Executive Summary” and it was not intended to produce a new one (although changes may be made to it in the light of any representations by the Commission).
- [7] As the draft “Executive Summary” was prepared as it related to the first draft of the proposed report, and even then, further summarised (rather than presenting extracts from) that draft, it is accordingly necessary for the Commission to respond both to the draft “Executive Summary” and to the draft proposed report of 18 December 2008. That is done in Schedules 1 and 2 respectively.
- [8] The Commission has used its best endeavours to provide these representations within the time frame set, but for obvious reasons it has not been possible to address all the matters the Commission would have wished to address, in the way it would have wished to address them, nor provide as comprehensive references and comment as it would otherwise have done.
- [9] The draft Parliamentary Inspector’s report (“the proposed report”) disparages the Commission’s conduct of public examinations of Mr Lee and other witnesses (by the then Commissioner Hammond) in February 2007 as having been done for the purpose of investigating “speculation” that Mr Lee did not disclose the true source of donations made to him by Port Coogee Now (“PCN”) and Riley Mathewson (“RM”).
- [10] That misrepresents the purpose of the investigation and the Commission’s position.
- [11] Section 18 of the Corruption and Crime Commission Act 2003 (“The CCC Act”) says one of the ways in which the Commission performs its misconduct function is by investigating whether misconduct:
- (i) has or may have occurred;
 - (ii) is or may be occurring;
 - (iii) is or may be about to occur; or
 - (iv) is likely to occur.
- [12] As the Commission’s “Report on the Investigation of Alleged Misconduct Concerning Mr Stephen Lee, Mayor of the City of Cockburn” (“The Commission Report”) makes clear (at [90]-[94]), the Commission had received two allegations concerning Mr Lee’s fund-raising activities, one of which it assessed under section 22(1) of the CCC Act as indicating that misconduct had or may have occurred.
- [13] The Commission referred that allegation to the Department of Local Government and Regional Development (“DLGRG”) for investigation in the first instance. In its report to the Commission (the text of which is set out at paragraph [93] of the Commission’s Report), the DLGRD not only said there was speculation that Mayor Lee did not disclose the true source of his donations from PCN and RM, but observed it:

“... is limited in the information that it can obtain on the matter and is unable to examine the circumstances of the donations in any detail”.

- [14] The DLGRD recommended an appropriate authority, “perhaps the CCC”, conduct further investigation.
- [15] As the Commission Report indicates (at paragraph [94]) it was based on that recommendation and other information gathered by the Commission, that a Commission investigation was initiated. The Commission investigated the allegation, not the “speculation”.
- [16] In any event, a considerable amount of investigation work was undertaken between receipt by the Commission of the DLGRD report, and the public hearings of February 2007, including obtaining, examining and analysing a range of documentation, and interviews of, and meetings with, various persons.
- [17] The proposed report correctly notes (at paragraph [9]) that it is not a statutory function of the Parliamentary Inspector to act as an “appeals” body, nor to conduct a general “review” of opinions expressed by the Commission, nor to “reverse” or set aside an opinion expressed by the Commission so as to substitute the Parliamentary Inspector’s own opinion for that of the Commission.
- [18] The proposed report purports (paragraph [10]) to be a consideration of the “process” by which the opinions in the Commission’s Report were reached, and whether that was appropriate.
- [19] Despite the disclaimer at paragraph [9], it is apparent from the content of the proposed report, that the exercise which has been undertaken cannot properly be described in any other way, than as a general review of the Commission’s opinion of misconduct by Mr Lee.
- [20] It is no part of the statutory role of the Parliamentary Inspector to examine and report upon the “process” of reasoning or the “process” by which the Commission expresses itself in its reports. But that is precisely what the proposed report does.
- [21] In the Commission’s opinion, the proposed report, and the exercise leading to it, has no lawful foundation in any of the functions or powers of the Parliamentary Inspector. In the Commission’s contention, they are beyond statutory power and the proposed report is not one that can be lawfully tabled in the exercise of the Parliamentary Inspector’s statutory functions or powers. The Commission will revert to this below.

Circumstantial Evidence - Inferences

- [22] The central proposition in the proposed report appears to be that at paragraph [16], stating that, there is no reason whatever why an opinion should not be based on inference:

“... but an adverse inference should not be drawn from circumstances, unless it is the only inference reasonably open, upon a consideration of all of the facts in evidence: Peacock v R (1911) 13 CLR 619 at 634; Plomp v R (1963)

110 CLR 234 at 252. In a civil case, an adverse inference must not be drawn unless, having considered all of the evidence (not merely selected portions) the adverse inference is “more probable” than any alternative: *Chamberlain v R* (1983-4) 153 CLR 521 at 536 (and, having regard to the seriousness of the allegation, that “probability” must be very clear). To do otherwise would be dangerous speculation”.

- [23] It is then said it would be “contrary to principle” to draw an adverse inference by reference only to some of the “facts in evidence” and ignoring others which may support an alternative inference at least as probable, if not more so.
- [24] The opinion which is then expressed in the proposed report (at paragraph [17]) is that:

“In inferring from certain specific circumstances (see [35]), that Mr Lee knew that Australand had made a “substantial donation”, the Report does not refer to all of the relevant facts or circumstances, or to the legal principles to be observed in drawing an inference in a circumstantial case. Nor is any consideration given in the Report to whether an alternative inference, consistent with Mr Lee’s sworn evidence that he did not know that Australand has made any donation, was reasonably open, and if it was, why the adverse inference was “more probable”.

- [25] The Commission says that:
- (a) Apart from the additional comment of the Parliamentary Inspector, that “to do otherwise would be dangerous speculation”, the proposition stated in paragraph [16] of the proposed report is a correct statement of the law in relation to criminal and civil trials before the courts, but it does not explain how the (civil) test is to be applied in the context of a royal commission or administrative or executive investigation.
- (b) The opinion expressed at paragraph [17] wrongly asserts that the Commission’s Report does not refer to all the “facts and circumstances” relevant to the issue whether Mr Lee knew that Australand had made a “substantial donation”¹.

The Commission says two things about this. First, whilst the Commission accepts that it may often be desirable to do so, there is no obligation on an investigative Commission to specifically refer to all the evidence relevant to an issue upon which it expresses a finding or opinion. For such a body not to do so, does not mean its findings or opinions are a nullity or “unsafe”. Commission reports are not judgments of a court.

Secondly, the proposed report seems to assume there is some legal requirement for the Commission to expressly state “the legal principles to be observed in drawing an inference in a circumstantial case. The use of the word “case” is indicative that the proposed report is relying upon principles of law applicable to the trial of adversarial proceedings in criminal and civil cases,

¹ The words “substantial donation” are not those of the Commission. The Commission deliberately referred to the payment by Australand as a “payment”, specifically to make the point that it was not a donation either in response to the Jakovich letter or the PCN fund-raising luncheon.

implying that they are to be applied in the same way. The Commission argues that there is a difference in their application in a royal commission or other investigative inquiry. Nonetheless, the fact is that the Commission Report did correctly and sufficiently refer to and apply the legal principles to be observed in drawing an inference in the conduct of a Commission investigation. That was done at paragraphs [80] – [84] of the Commission Report, which are annexure A to these representations. Applied to the Commission’s assessment or opinion that Mr Lee knew of the payment by Australand, it is clear from the Commission Report itself that:

- the Commission was satisfied of that on the balance of probabilities;
- in drawing that inference, the Commission had regard to the seriousness of it and of the misconduct alleged; and
- the Commission drew the inference not on a mere mechanical comparison of probabilities, but to the extent it had a positive belief that Mr Lee knew. Mr Lee’s evidence was that he did not know of the payment by Australand. The Commission referred to that evidence but did not accept it. The assertion in the proposed report that the Commission Report gave “no consideration to whether an alternative inference consistent with Mr Lee’s sworn evidence that he did not know that Australand has (sic) made any donation (sic), was reasonably open” is simply wrong. It completely ignores the references to that evidence in the Commission’s Report.

[26] At paragraph [18] of the proposed report it is asserted that:

“If there was evidence which could reasonably support an alternative inference that is, that Mr Lee did not know (and therefore obviously could not disclose) that Australand had made a donation to his campaign fund and the CCC has failed to consider that evidence, and the alternative inference that was open, the CCC would have failed to act in accordance with established legal principle relating to the drawing of inferences, in forming its “misconduct Opinions” against Mr Lee”.

[27] The Commission takes the expression in paragraph [17] of the proposed report “the legal principles to be observed in drawing an inference in a circumstantial case” and in paragraph [18] the phrase “established legal principle relating to the drawing of inferences”, to be references to what is set out in paragraph [16] of the proposed report. The Commission has already observed that paragraph [16] does not explain the application of the legal principle in the context of inquiries and reports by investigative commissions. That point is developed further below²

[28] Following a discussion of selective parts of the evidence (to which the Commission will return), the proposed report expresses the opinion (at paragraph [83]) that the inference Mr Lee knew of the payment by Australand was drawn by the Commission without taking into consideration all of the relevant circumstances “and the alternative inference which is open: that Mr Lee did not know that Australand had made a contribution, but that was concealed from him”.

² At paras [47] – [57]

- [29] It is patently clear from the Commission's Report that all the evidence relevant to that issue was considered by it and indeed that the Commission recognised and dealt with the question whether or not Mr Lee knew of the Australand payment, as the fundamental question. There is simply no basis for the assertion that the Commission failed to consider the possible inference that Mr Lee did not know that. This fundamental error removes the whole basis of the opinion in the proposed report.
- [30] The Commission will now turn to deal briefly with the issue of statutory powers, then in more detail with the "legal principle(s)" which the proposed report claims the Commission has failed to apply, and then deal with what that report says about "the evidence".

Parliamentary Inspector's Function – Proposed Report Beyond Power

- [31] Whether or not the Parliamentary Inspector does or does not have certain powers is a matter of law. The CCC Act either does give them to him or it does not. That is a question of statutory construction. If it is disputed, that question can only be determined by a court.
- [32] The starting point must necessarily be, therefore, to consider whether the CCC Act does or does not give the relevant power.
- [33] In broad terms, the functions of the Parliamentary Inspector are directed to how the Commission exercises its powers, and not what opinions it forms. However, the Commission accepts that exercising those functions may involve a detailed review of a particular investigation. That will only be so where the detailed review is conducted for the purpose of:
- auditing (i.e., reviewing) the operation of the CCC Act itself (section 195(1)(aa));
 - monitoring the Commission's compliance with the laws of the State (section 195(1)(a)); or
 - assessing the effectiveness and appropriateness of the Commission's procedures (section 195(1)(c)).
- [34] As the proposed report accepts (at paragraph [9]), none of those allows the Parliamentary Inspector to "review" the opinions of the Commission.
- [35] The Commission notes that section 195 does not give these powers to the Parliamentary Inspector at large – they are expressly confined to the purposes stated in the section. It may also be noted that the power under section 195(1)(cc) is directed to auditing the use of powers "conferred or made available by [the] Act", which must mean the exceptional powers which the Commission may make available to the Police under Part 4 of the Act.³
- [36] It is not now, and never has been, the Commission's belief that Commission investigations and reports are not subject to any audit or review by the Parliamentary Inspector. Indeed, the Commission's position is to the contrary.

³ This appears not to be in dispute. See for example page 5 of the Parliamentary Inspector's 2006/2007 Report).

[37] In its March 2008 “Report on an Administrative matter relating to the Functions of the Commission”⁴ the Commission expressly acknowledged⁵ the Parliamentary Inspector could do so:

“The Commission accepts without reservation that the Parliamentary Inspector can subject any of its operations or investigations (including its reports) to “methodical review”, to determine whether they were conducted in accordance with the CCC Act and any other laws of the State and that its procedures were effective and appropriate”.

[38] Thus, the Commission accepts – as it always has done – that if the Parliamentary Inspector intends to monitor the Commission’s compliance with the laws of the State, or audit the granting of exceptional powers, or assess the effectiveness and appropriateness of the Commission’s procedures, that exercise may involve a detailed review of a particular investigation or report. However, those are the only bases upon which the Parliamentary Inspector may conduct a detailed review of a particular investigation or report.

[39] However, the present exercise is not an audit of the operation of the CCC Act; nor does it in any way involve a monitoring of the Commission’s compliance with the laws of the State; and nor is it an audit of the use of the powers available under Part 4 of the CCC Act.

[40] The only other possible function is that to assess the effectiveness and appropriateness of the Commission’s procedures (s.195(1)(c). It appears from paragraphs [9] and [10] of the proposed report, that this is the statutory basis which is relied upon to conduct this exercise and present the proposed report.

[41] In the Commission’s view, s.195(1)(c) gives no authority for what is being done here.

[42] “Procedure” is defined in the Shorter Oxford English Dictionary⁶ as:

*“1. The fact or manner of proceeding; a system of proceeding; conduct; behaviour; spec (a) **law** the formal steps to be taken in a legal action; the mode of conducting judicial proceedings; (b) **politics** the mode of conducting business in Parliament.”*

[43] The Macquarie Dictionary⁷ defines “procedure” as:

“noun 1. the act or manner of proceeding in any action or process; conduct. 2. a particular course or mode of action. 3. mode of conducting legal, parliamentary, or other business especially litigation and judicial proceedings”.

⁴ Corruption and Crime Commission “Report on an Administrative Matter Relating to the Functions of the Commission” tabled 14 March 2008.

⁵ Ibid, page 32.

⁶ Shorter Oxford English Dictionary, 6th Edition, Vol. 2, p. 2355

⁷ Macquarie Dictionary, 4th Edition, p. 1134

- [44] What s.195(1)(c) is directed to is a function of assessing the effectiveness and appropriateness of the Commission's procedures in the sense of instructions, standard operating procedures, general directives or the like, prescribing the mode of conduct of its business, investigations and examinations.
- [45] The "process" of reasoning, or "process" by which the Commission has expressed itself, or by which its opinions were reached, in a particular report, do not sit within any ordinary meaning of the word "procedures" in the context of s.195 of the CCC Act.
- [46] The Commission believes the proposed report, and the exercise leading to it, have no lawful foundation in the functions or powers of the Parliamentary Inspector. In the Commission's contention, they are beyond statutory power and the proposed report is not one that can lawfully be tabled, in the exercise of the Parliamentary Inspector's statutory functions or powers.

The "Established Legal Principle"

- [47] The statements about this principle are made at paragraph [16] of the proposed report.
- [48] The three High Court cases there relied upon⁸ were all criminal cases, to which the standard of proof beyond reasonable doubt applied.
- [49] The proposition at paragraph [16] that:

"... an adverse inference should not be drawn from circumstances, unless it is the only inference reasonably open, upon a consideration of all the facts in evidence"

reflects the standard of proof in a criminal trial, which is proof beyond reasonable doubt.

- [50] The proposition expressed in paragraph [16] for which Chamberlain is cited as authority, does not accurately state what was said in that case. The relevant portion is from the joint judgment of Gibbs CJ and Mason J, at p.536:

"... the jury should decide whether they accept the evidence of a particular fact, not by considering the evidence directly relating to that fact in isolation, but in the light of the whole evidence, and that they can draw an inference of guilt from a combination of facts, none of which viewed alone would support that inference. Nevertheless the jury cannot view a fact as a basis for an inference of guilt unless at the end of the day they are satisfied of the existence of that fact beyond reasonable doubt. When the evidence is circumstantial, the jury, whether in a civil or in a criminal case, are required to draw an inference from the circumstances of the case; in a civil case the circumstances must raise a more probable inference in favour of what is alleged, and in a criminal case the circumstances must exclude any reasonable hypothesis consistent with innocence ..." (emphasis added).

⁸ *Peacock v R* (1911) 13 CLR 619; *Plomp v R* (1963) 110 CLR 234, 252; *Chamberlain v R* (No. 2) (1983-4) 153 CLR 521, 536

- [51] Significantly, although the proposed report purports to be stating legal principles which apply to inferences to be drawn in investigations and reports by this Commission, what it does not do is give any consideration to such principles as they apply to royal commissions or investigative bodies.
- [52] That there is an important difference in nature was pointed out by the Chief Justice, the Hon Justice Martin, in Cox v Corruption and Crime Commission⁹:

“It follows from the nature of the function performed by the Commission, and the fact that its findings and conclusions have no operative legal effect, that the published reports of the Commission should not be scrutinised by a court undertaking judicial review as if they were the reasons for decision of a court, administrative body or tribunal making decisions with determinative effect. The published reports of the Commission are ‘not to be construed minutely and finely with an eye keenly attuned to the perception of error’ (Collector of Customs v Pozzolanic Enterprises Pty Ltd (1993) 43 FCE 280, 287. Also see: Minister for Immigration & Ethnic Affairs v Wu Shan Liang [1996] HCA 6; (1996) 185 CLR 259 [30]; Minister for Immigration & Multicultural Affairs; Ex parte Miah [2001] HCA 22; (2001) 206 CLR 57 [23]. Put another way, the ambit of the jurisdiction conferred upon the Commission is to be assessed having regard to the essential character of its misconduct function, which is to make assessments, form opinions and perhaps put forward recommendations, and not, at least in this context, to make authoritative determinations which affect legal rights or obligations.

In the present case, the gravamen of the finding made against Dr Cox by the Commission is abundantly clear from the terms of its report. Given the nature of the function performed by the Commission, and the fact that its report has no operative legal effect, it would be quite wrong to approach the question of whether the Commission had exceeded its jurisdiction by reference to a semantic and technical analysis of the precise terminology used by the Commission in its report – especially where the substance of the report is abundantly clear”, (emphasis added).

- [53] Later in the judgment, dealing with a ground that complained the Commission had failed to enunciate and apply any objective standards to the determination of a particular issue, Martin CJ said¹⁰:

“For the purposes of this assertion I will assume, without necessarily being taken to accept, that there is some necessary minimum content to a report published by the Commission in which it expresses opinions on the subject of misconduct. Given that there is no right of appeal from findings made or opinions expressed by the Commission, and that, at least when expressing opinions as to misconduct, those opinions have no operative legal effect upon rights and obligations, there seems to me to be a serious question as to whether a failure to enunciate the process of reasoning adopted by the Commission in a report presented pursuant

⁹ *Cox v Corruption and Crime Commission* [2008] WASCA 199, at [46][47].

¹⁰ *Ibid*, at [69]

to s.84 of the Act leads to the conclusion that the Commission has exceeded its jurisdiction. There is much to be said for the proposition that the terms of a report published by the Commission must sustain the conclusion that the Commission has departed from the statutory functions imposed upon it before it could be concluded that the Commission has exceeded its jurisdiction. Put another way, a failure by the Commission to enunciate its processes of reasoning may only provide a basis for judicial intervention if that failure sustains the conclusion that the Commission did not correctly address the issues required to be addressed in the exercise of its statutory functions” (emphasis added).

- [54] The content of the Commission’s Report shows clearly that the Commission had full regard to all the evidence – including that of Mr Lee – bearing on the issue of whether or not he knew of the payment by Australand, and that it correctly applied the law as it relates to the drawing of inferences on the balance of probabilities. That is quite sufficient.
- [55] The assumption in the proposed report appears to be that the Commission had to set out and refer to all the evidence relevant to the issue in a particular way and state the legal principles applying to the drawing of inferences in a particular way, in its report. The observations of the Chief Justice referred to above show that to be an untenable assumption.
- [56] When examining the validity of a finding or opinion of an investigative commission, relying on a particular inference based on circumstantial evidence, the question is not whether some other inference was reasonably open (as the proposed report claims) but whether the inference drawn was reasonably open to the Commission on the evidence, and if so, whether the Commission was positively satisfied of it on the balance of probabilities, having regard to all the relevant evidence.
- [57] Here it clearly was, and the Commission’s Report sufficiently demonstrates that evidentiary foundation.

Reference to Evidence

- [58] The Commission’s representations in response to the draft “Executive Summary” are set out in Schedule 1, and in response to the proposed report are set out in Schedule 2.
- [59] The proposed report devotes 17 pages to a discussion on the evidence and what “facts” or inferences might be found from it.
- [60] The proposed report states (at paragraph [19]) that “[t]he relevant evidence which [the Commission] obtained from its investigation may be summarised, in chronological order, as follows ...”
- [61] That “summarised” evidence is then examined in more detail at paragraphs [21]-[75].

- [62] The summary in the proposed report is a selection of the relevant evidence that was considered by the Commission. There is evidence not referred to in the summary (and the subsequent elaboration of it) which (taken with all the other evidence) is capable of affecting the inferences or facts which might be found.
- [63] By way of illustration only, paragraph [19] commences with the meeting on 25 March 2005. But that was not the first contact. On 21 March 2005 an email from Mr Burke to Mr Herkenhoff, which was copied to Mr Lee, outlined two tasks “in assisting Cockburn” (Commission Report (CR)[143]), and on 22 March 2005, another email from Mr Burke to Mr Herkenhoff, copied to Mr Lee and Mr Lewis, detailed two forms of proposed fundraising; being a fundraising letter and the use of PCN as “a legal and legitimate veil for people wishing to contribute through it” (CR [145-[148]). Other circumstances are referred to in Schedule 2 to these representations.
- [64] Given the time constraint, in this part of its representations the Commission will provide a brief general overall response and then move to Schedule 2 to the extent possible in the time available.
- [65] The proposed report states the central question as: “*Did Mr Lee know that Australand had donated to his campaign?*” It says that “*The CCC opinion, that he knew, is based solely on an inference said to be drawn from certain circumstantial evidence*” (paragraph [14]). It concludes that “*that inference has been drawn without taking into consideration all of the relevant circumstances, and the alternative inference which is open: that Mr Lee did not know that Australand had made a contribution, but that was concealed from him*” (paragraph [83]).
- [66] Two issues arise from this:
- whether or not the Commission considered all relevant circumstances in forming its opinions; and
 - whether or not the Commission considered the alternative inference which the proposed report says was reasonably open.
- [67] It is apparent from a fair reading of the whole of the Commission Report that it did consider all the relevant circumstances and did consider the alternative inference open, namely that Mr Lee did not know Australand had made a substantial payment to the costs of his campaign. It is a misrepresentation of the evidence to say it showed that fact was “concealed” from him.
- [68] The Commission, in conducting its investigation, and in formulating its Report, considered all of the information available to it, and all of the relevant circumstances arising from that information. That information included:
- documentation provided by Riley Mathewson, and an interview with Mr and Mrs Riley;
 - documentation provided by Marta Fishing Co;
 - documentation provided by Australand;
 - documentation and information provided by Mr Richard Graham;
 - documentation obtained from financial institutions;
 - documentation provided by the City of Cockburn;

- publicly available information relating to the City of Cockburn;
- the sworn evidence of Mr Lee, Mr Lewis, Mr Graham, Mr Riley, Mr Owens, Mr Herkenhoff, Mr Rotondella, Mr Merenda, Mr Fazio and Mr Burke at public and/or private examinations; and
- in relation specifically to the Commission Report itself;
 - submissions on behalf of Mr Lee received on 19 and 20 November 2007; and
 - section 86 representations on behalf of Mr Lee received on 31 July and 1 August 2008.

[69] In considering that information, the Commission formed opinions in relation to it and its particular evidentiary value. All of the relevant information was considered, with some information given more or less weight, with the result that, in the Commission's opinion, certain circumstances were more probable than others. From a consideration of those circumstances as a whole, and taking into account the Commission's opinions as to some circumstances being more probable than others, the Commission considered that the inference drawn (as to Mr Lee's knowledge) was the only inference reasonably open.

[70] The approach taken by the Commission in formulating its opinion and in its report was to present and consider all of the relevant information, and to address that information, as it arose, (in the context of the whole of the relevant information). That is the structure of the Commission's Report. That did not simply present the information as a set of facts; then consider what inferences were reasonably open on that information. Rather, any possible alternative inferences reasonably open were considered as part of a consideration of the relevant information, throughout the report.

[71] Regarding the facts, the essential point of difference seems to be the reliance on what Mr Lee said that Mr Owens told him at their meeting on 9 May 2005. This is given very little weight in the proposed report. It is implied that Mr Owens was simply guessing, and that Mr Lee was entitled to, and did, ignore what he said Mr Owens told him, such that his first, and only, expectation of what Riley Mathewson's charges might be was when he ultimately received an invoice for \$43,500. This is important to the proposed report, in the context of the alternative inference, said to be reasonably open. The proposed report suggests that Mr Lee had no reason to consider the invoice as a reduced charge (paragraph [48]), and in turn, could not then think of the gift from Riley Mathewson as a "*further discount*"(paragraph [65]).

[72] The Commission took a different view; one which took account of all of the relevant circumstances. The Commission considered that Mr Lee knew, following his meeting with Mr Owens, that Riley Mathewson's charges would amount to some \$50,000 or \$60,000. In forming that opinion, the Commission's consideration included the following circumstances:

- Mr Owens was not guessing, but was in a position to know, given that he was the senior consultant employed by Riley Mathewson who was responsible for Mr Lee's campaign;
- the meeting was held two days after the election, and, according to the Riley Mathewson activity reports, the meeting was "regarding fundraising/accounting issues";

- Mr Owens was unable to recall specifically what was discussed, but said “*it’s obviously about the accounts; the cost of the campaign perhaps*” T 89 [246];
- Mr Lee’s evidence of what Mr Owens said was: “*he was a bit worried because he figured it would be closer to 50 or 60 [thousand dollars]*”. Mr Lee said he said to Mr Owens: “*Well, you’ve got to be joking, how can that be so?*” T149 [244]; and
- in the Commission’s assessment, Mr Lee did not disbelieve Mr Owens, but was concerned - as demonstrated by subsequent events, notably the email that Mr Owens sent to him on the following day, and his meeting with Mr Lewis shortly thereafter.

[73] It was properly open to the Commission to form the opinion (which it did), that Mr Lee understood the Riley Mathewson invoice for \$43,500 was a “*reduced charge*”, and that the gift from Riley Mathewson was a “*further discount*” (paragraphs [280] – [286]). That is, on Mr Lee’s understanding, Riley Mathewson’s charges had effectively reduced from \$50,000 or \$60,000 to a net amount of \$21,913.90. That fact, when considered in light of all of the other relevant circumstances, makes the inference that Mr Lee knew that Australand had made a contribution more probable than the alternative inference that he did not know, in the Commission’s opinion.

[74] Paragraph [17] of the proposed report says that:

“In inferring from certain specific circumstances (see paragraph [35]), that Mr Lee knew that Australand had made “a substantial donation”, the Report does not refer to all of the relevant facts or circumstances, or to the legal principles to be observed ...” (underlining added).

[75] Clearly paragraph [35] does not purport to be referring to all the relevant facts or circumstances or legal principles – it is part of the Executive Summary of the Commission’s Report. And in any event, it is a succinct summary, expressly stating the Commission’s opinion on the particular issue:

“... given the circumstances, including ...” (emphasis added)

those then mentioned.

[76] Other relevant circumstances considered by the Commission are apparent on a fair reading of the whole of the Commission report. They include:

- the various communications between the relevant parties (in meetings, and by email), accepting, of course, that Mr Lee was not a party to some of those communications (paragraphs [143] – [200]);
- the level of involvement of Mr Lewis, as demonstrated by those communications;
- the evidence of Mr Lee concerning his meeting with Mr Owens on 9 May 2005 (paragraph[244]);
- the evidence of both Mr Lee and Mr Lewis regarding their meeting shortly after 9 May 2005 (paragraphs [252] – [255]). The evidence of Mr Lee that he then “*forgot all about it*” [T 205] being consistent with Mr Lewis’ understanding that Mr Lee was seeking his help.
- the failure of Mr Lee to make any enquiries at the relevant time as to any contribution by Australand, despite his meeting with Mr Lewis, and the

subsequent reductions in Riley Mathewson's charges to him (paragraphs [274] – [288]); and

- the discussions following Mr Lee's receipt of the DLGRD letter, and the Commission's opinion that the parties were concerned with providing a "technically correct" response to the DLGRD but one which did not expose the true position – as Mr Riley recognised (paragraphs [315] – [324]).

[77] The attached Schedule 2 considers some of the matters raised in the proposed report in more detail.

Conclusion

[78] A fair reading of the whole of the Commission Report shows that:

- In drawing the inference that Mr Lee knew Australand had made a substantial payment to the costs of his campaign, the Commission did consider all the relevant evidence;
- The Commission did consider the alternative inference, that he did not know;
- The Commission was positively satisfied on the balance of probabilities that Mr Lee did know;
- In drawing that inference, the Commission had regard to the seriousness of it and of the misconduct alleged.

[79] The law does not require a royal or other investigatory commission to refer to the evidence or principles of law in a particular way, so long as the reasons for its findings or opinions are revealed and there is evidence to support them. The Commission's Report does that.

[80] The proposed report, and the exercise which has produced it, have no lawful foundation in the functions or powers of the Parliamentary Inspector. In the Commission's contention, they are beyond statutory power and the proposed report is not one that can lawfully be tabled in the exercise of the Parliamentary Inspector's statutory functions or powers.

[81] In any event, the opinions expressed in the Commission Report were reasonably open to it on a consideration of all the evidence and having regard to the relevant standard of proof, which the Commission Report shows was properly applied. In those circumstances, the Commission's opinions were properly arrived at.

SCHEDULE 1

SCHEDULE DETAILING THE CONSIDERATION OF THE DRAFT EXECUTIVE SUMMARY OF A REPORT BY THE PARLIAMENTARY INSPECTOR RELATING TO A COMPLAINT BY MR STEPHEN LEE

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| 5 | <p>The CCC accepts that no-one (from Australand or otherwise) ever told Mr Lee that, and there is no <u>direct</u> evidence that he knew it. The CCC has “<i>inferred</i>” that he must have known, from “<i>circumstances</i>” which it specifies as follows (at [35]):</p> <ul style="list-style-type: none"> • There was a “<i>huge reduction</i>” in Riley Mathewson’s charges. • Mr Lewis of Australand had been “<i>substantially involved</i>” in Mr Lee’s election campaign, and had offered to see Mr Riley about their charges. • “Therefore” Mr Lee must have realised that the “<i>huge reduction</i>” in Riley Mathewson’s charges was due to Australand paying a substantial part of them, as that was the only possible explanation. [Emphasis added] | 35 | <p><i>“In the opinion of the Commission, given the circumstances, including the involvement of Mr Lewis throughout the election campaign, including the PCN fund-raising luncheon, and the huge reduction in charges by Riley Mathewson following Mr Lee’s meeting with Mr Lewis, an Australand General Manager who had been substantially involved in his campaign, Mr Lee well knew that payment of the balance of Riley Mathewson’s costs had been made by Australand. There was no other possible source. In the opinion of the Commission, it follows that Mr Lee knew that the declaration of a gift from Riley Mathewson in his annual return for the year ended 30 June 2005, made on 25 August 2005, was false, and knew that he ought to have declared a gift from Australand.</i> [Emphasis added]</p> | <p>Two important points ought to be made about paragraph [35] of the Commission’s Report and its treatment in the draft Executive Summary (“Executive Summary”). They are:</p> <ul style="list-style-type: none"> • The structure of CR [35] demonstrates a causal relationship; and • The wording of CR [35] is inclusionary. <p>The structure of CR [35] of the Commission’s Report shows the Commission’s reasoning through an analysis of a causal relationship: including the involvement of Mr Lewis in the campaign, followed by the meeting Mr Lee had with him, followed by the huge reduction in Riley Mathewson’s charges.</p> <p>The structure of paragraph [5] of the Executive Summary does not recognise any such analysis of the causal relationship. As presented, there are simply two dot points listed, followed by a conclusion which seems difficult to reach on the basis (only) of the preceding two dot points. The two dot points are merely presented as two distinct facts.</p> <p>If there is any causal relationship represented by paragraph [3] of the Executive Summary, it is the opposite of the relationship as presented in paragraph [35] of the Commission’s Report. The two dot points are listed in reverse order, and the conclusion in the third dot point (attributed to the Commission) flowing from them implies</p> |

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| | | 284 - 286 | | that Riley Mathewson's charges were reduced and Mr Lee must have known that was due to Australand paying part of them. Also the use of the word "Therefore" in quotation marks implies a direct quote from the Commission's Report, which is a misrepresentation. |
| | | 274 - 290 | | The conclusion attributed to the Commission also includes the term " <i>the only possible explanation</i> ". That is not what was said in paragraph [35] of the Commission's Report, which, in a reference to the payment of Riley Mathewson's charges said: " <i>There was no other possible source</i> ". Elsewhere in the Commission's Report (for example paragraphs [284] to [286]) the two potential sources of funds were identified as Riley Mathewson and Australand, followed by a discussion as to why the latter was the only reasonable source available in the circumstances. |
| | | 383 - 396 | | Paragraph [35] of the Commission's Report is a succinct statement of some of the circumstances which form the basis of the Commission's opinion. It is neither necessary nor desirable to detail all of the relevant circumstances in what ought to be a succinct statement. Instead, other areas of the Commission's Report are devoted to a consideration of those circumstances, including paragraphs [274] to [290], and later at paragraphs [383] to [396] in the context of the 2007 submissions. |
| | | 274 - 277 | | Those paragraphs of the Commission's Report discuss a range of circumstances which the Commission has thoroughly considered in reaching its opinion. Included is a discussion of the relevant evidence, not just the evidence of Mr Lee. |
| | | 278 - | | For example, at paragraphs [274] to [277] of the Commission's Report the issue as to whether Mr Lee ever asked Mr Lewis or Mr Riley about any funding by Australand |

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| | | 284 | | is addressed. The only evidence that Mr Lee made any such enquiries at the relevant time is his own evidence, and it is contradicted by that of Mr Lewis and Mr Riley. The Commission has set out its reasons for preferring the evidence of Mr Lewis and Mr Riley in this regard. |
| | | 287 - 289 | | <p>At paragraphs [278] to [284] Mr Lee's knowledge of the Riley Mathewson charges and fundraising activities is discussed, and it is demonstrated that, to his knowledge, the Riley Mathewson charges reduced from \$50,000 or \$60,000 to \$21,913.90. Further discussion follows, in respect of the section 86 representations, at paragraphs [285] to [286].</p> <p>The Commission's Report then went on to explain, at paragraphs [287] to [289], the reasons for its view that any enquires made by Mr Lee regarding possible declarable donations from Australand were made in the context of general fundraising activity prior to the election and the declaration of gifts of \$200 or more, not in the context of any substantial financial support by Australand, which only became necessary after the election.</p> <p>Paragraph [3] of the Executive Summary is clearly a misrepresentation of paragraph [35] of the Commission's Report, read in light of the whole of that Report.</p> <p>Following consideration of the complete circumstances, as detailed elsewhere in the Commission's Report and brought within the ambit of paragraph [35] by its inclusionary wording, the opinion as expressed in paragraph [35] is the only opinion the Commission considered to be reasonably open on the evidence.</p> |
| 6 | An " <i>adverse inference</i> " must not be drawn from " <i>circumstances</i> " unless <u>all</u> of the circumstances are taken into | | | Again the word " <i>donation</i> " is used. The Commission used the phrase " <i>substantial payment to Riley Mathewson in respect of his election campaign</i> " in phrasing its first opinion |

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| | <p>consideration, and after having considered what alternative inferences are reasonably open. That is not only an established legal principle, stated by the High Court, but common sense. The CCC has not done that, but has disregarded the evidence which supports an alternative inference (as well as the sworn evidence of Mr Lee) that he did <u>not</u> know Australand had made any donation.</p> | | | <p>of misconduct. The Commission did so intentionally, as discussed at paragraphs [287] to [289], to differentiate the contribution by Australand from any consideration of potential declarable donations of \$200 or more arising <u>during</u> the election campaign.</p> <p>In any event, the claims in paragraph [6] of the Executive Summary are simply not true. The approach taken, as detailed in the Commission's Report, was to detail and consider <u>all</u> of the circumstances. All of the circumstances have been comprehensively addressed in the Commission's Report. In some cases, opinions have been formed following a consideration of those circumstances that have the effect of diminishing their evidentiary value. One example relates to Mr Lee's claim of computer problems (paragraphs [327] to [378]).</p> <p>The Commission did not disregard evidence which supports an inference that Mr Lee did not know that Australand had made a payment to Riley Mathewson in respect of his campaign. On the contrary, that evidence is presented and discussed in the Commission's Report. One example relates to the issue of whether or not Mr Lee made any such enquiries of Mr Lewis and/or Mr Riley (paragraphs [319] to [323]).</p> <p>It is true that Mr Lee in evidence claimed to have been unaware of any payment by Australand in respect of his election campaign. The Commission is not bound to automatically accept such evidence, and is entitled to assess the probative value of Mr Lee's evidence. The Commission did so, and formed the view from a consideration of the whole of Mr Lee's evidence that he lacked credibility. The Commission adverted to this at paragraph [276] of its Report where it said:</p> |

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| | | | | <p><i>“Mr Lee’s recollection of events was poor, and he repeatedly denied facts which seemed obvious from other evidence, such as the involvement of Mr Lewis in his election campaign.”</i></p> <p>The important point is that the Commission formed its opinions following a thorough consideration of all of the circumstances, as demonstrated in its Report. It is true that there is not a section of the Commission’s Report headed “Consideration of Alternative Inferences Reasonably Open” or similar. But that is not to say that alternative inferences were not considered. All of the evidence was presented, considered and assessed, and then opinions were formed based on the Commission’s assessment of that evidence. On the Commission’s assessment of the evidence, an alternative inference that Mr Lee did not know of a contribution by Australand was ultimately not reasonably open in the circumstances.</p> |
| 7 | The evidence, of what was known to Mr Lee, was: | | | <p>Paragraph [7] of the Executive Summary purports to present the evidence of what was known to Mr Lee.</p> <p>Apart from some factual material regarding a letter from Riley Mathewson and the Riley Mathewson invoices, and with the exception of the bracketed sentence at the end of paragraph [7.13], that is drawn entirely from Mr Lee’s evidence.</p> |
| 7.1 | When Mr Lee agreed to engage Riley Mathewson as his campaign manager, it was on the assurance of Riley Mathewson, confirmed later in writing, that their charges would <i>“substantially be met by fundraising activities presently being undertaken”</i> [138]. (Emphasis added). | 138 | In March 2005 Mr Lee engaged Riley Mathewson to manage his campaign for re-election as the Mayor of the City of Cockburn. That engagement came about following a meeting at the home of Mr Burke on 26 March 2005, at which Mr Lewis, Australand General Manager Residential Division for Western Australia, was also present. Riley Mathewson | The <i>“assurance”</i> given by Riley Mathewson that their <i>“charges”</i> would be substantially met by fundraising is mentioned at [7.1] and [7.4] of the Executive Summary. The Riley Mathewson letter states that <i>“as agreed, costs associated with this campaign will substantially be met by the fundraising activities presently being undertaken”</i> . The use of the word <i>“assurance”</i> may be overstating the nature of the agreement somewhat. Mr Lee, in his evidence consistently uses the word <i>“commitment”</i> , which may more accurately state the nature of the agreement (T 147, T 148, |

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| | | | belatedly confirmed the terms of the engagement by way of letter dated 19 April 2005, also confirming that "costs associated with this campaign will substantially be met by the fundraising activities presently being undertaken". | and T 151). |
| 7.2 | Based on an email he received from Riley Mathewson, part of the way through the campaign, Mr Lee concluded that the total campaign costs would probably be " <i>about \$40,000</i> " [245], (T 147). [Emphasis added]. | T 147 | "What enquiries did you make in that regard to get that answer or that amount [\$40,000]? Because in April I had received an email from Peter [Owens] that's basically said three quarters of the way through the campaign it would have been in the vicinity of \$30,000 based on the information in that email. So I made a perhaps over simple conclusion that another week or another leaflet would be around about \$40,000, ..." [Emphasis added] | |
| 7.3 | After the election (on 9 May 2005) during a discussion with Mr Owens, an employee of Riley Mathewson, Mr Lee said he expected that the total costs would be " <i>round about \$40,000</i> " (T 148). Mr Owens replied that he " <i>figured</i> " they would be " <i>closer to \$50,000 or \$60,000</i> " (T 149-150). | T 148 | "You said to Mr Owens at that meeting as far as you're recollection is concerned that you believed the costs of the election campaign - - - would be around about \$40,000? Yes and then - - - Stop there. What did you – can you recall what he said in response to that? Well, this is – yeah, this is where I was going to say – and then he | The evidence here as presented in the Executive Summary is that of Mr Lee, and what Mr Lee said Mr Owens told him, not what Mr Owens said he told Mr Lee. To the extent that it is implied that Mr Owens may not have known, or may have been guessing, when he so informed Mr Lee, it is relevant to note that Mr Owens was in a position to know Riley Mathewson's costs in respect of Mr Lee's campaign; he was the senior consultant at Riley Mathewson who was responsible for Mr Lee's campaign account. It is also important to note that the comment by Mr Owens was made at a meeting with Mr Lee two days after the election to discuss fundraising/accounting issues. |

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| | | T 89 14/02/07 | <p>seemed to indicate that, well he was a bit worried because he figured it would be closer to 50 or 60 and said, "Well, you've got to be joking, how can that be so?"</p> <p>When asked about his meeting with Mr Lee on 9 May 2005, Mr Owens said:</p> <p>"Not specifically, no, but it's obviously about the accounts; the cost of the campaign perhaps."</p> <p>Can you recall talking to Mr Lee about the amount, the total amount that had been invoiced to him by Riley Mathewson?</p> <p>"Not specifically but I may have. I have no specific memory of that conversation."</p> <p>So it doesn't stand out in your memory?</p> <p>"Not particularly, no".</p> <p>Can you recall what his reaction was? I suppose it was fairly insignificant if you haven't got a recollection of it?</p> <p>I think he probably shared my concern about the amount of money that had been expended, the costs of</p> | |

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| | | | the campaign and the conversation was probably centred around that.” | |
| 7.4 | Mr Lee expressed disbelief at that (“You’ve got to be joking”: T 149). Although he did not know what had been collected from fundraising, he did not think it would be as much as \$50,000 or \$60,000, and he reminded Mr Owens (T 148, T 195) of the original assurance given to him by Riley Mathewson, when he agreed to engage them as campaign manager for himself and his “team” of candidates for the election. | T 148 | <p>“I’m not denying that that was discussed in some way, I’m saying to the best of my recollection we spoke about the campaign, said it was very good, and I said, “Well, I figure it will be roundabout \$40,000 and anyway you guys have made a commitment that a substantial amount of the campaign will be paid for by fundraising activities. I haven’t seen anything from these fundraising activities.”</p> <p>“You said to Mr Owens at that meeting as far as you’re recollection is concerned that you believed the costs of the election campaign - - - would be around about \$40,000?</p> <p>Yes and then - - -</p> <p>Stop there. What did you – can you recall what he said in response to that?</p> <p>Well, this is – yeah, this is where I was going to say – and then he seemed to indicate that, well he was a bit worried because he figured it would be closer to 50 or 60 and said, “Well, you’ve got to be joking, how can that be so?”</p> <p>When asked about his meeting with</p> | <p>Refer [7.1] above regarding the use of the word “assurance”.</p> <p>The assertion that Mr Lee did not know what had been collected from fundraising is stated as fact in the Executive Summary, although, again, that is the evidence of Mr Lee. However, no mention is made of the fact that he knew how much had been raised in response to the Jakovich letter (because the money was paid into his bank account opened for that purpose), and that the PCN lunch (at which Mr Lee was present) was the only other form of fundraising.</p> <p>Paragraph [7.4] of the Executive Summary asserts that “<i>Although he did not know what had been collected from fundraising, he did not think it would be as much as \$50,000 or \$60,000</i>”, however the relevant portion of Mr Lee’s evidence was “<i>No, I guess not but I really had no idea</i>”.</p> |

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| | | T 195 | <p>Mr Lee on 9 May 2005, Mr Owens said:</p> <p>"I reminded Peter [Owens] of the commitment that RMPR [Riley Mathewson] had made. At this stage I wasn't aware – apart from my own bit of fundraising [presumably the Jakovich letter], I wasn't aware how successful or otherwise the PCN fundraising had been.</p> <p>You weren't anticipating the fundraising would amount to 50 or 60 thousand dollars, were you?</p> <p>No, I guess not but I really had no idea but I just reminded Peter that – of that commitment they had made, RMPR."</p> | |
| 7.5 | <p>Later, in a discussion with Mr Lewis of Australand, he said he was a "<i>bit concerned</i>" about Mr Owens' statement (that he figured the campaign costs would be "<i>closer to \$50,000 or \$60,000</i>"), because on his (Mr Lee's) calculations "<i>it doesn't make sense</i>". He told Mr Lewis he suspected that Riley Mathewson might have mixed up his invoices with invoices for "<i>Port Coogee Now</i>", a lobbyist group for which they were also acting. (T 202, T 205).</p> | T 205 | <p>"I was at a meeting with Chris [Lewis] after the election and he asked me, "What did you think of the election outcome?" "Good, good result," but I said, "I'm a bit concerned now because Peter [Owens] has told me that it may be 50 or 60 thousand and I'm a bit fearful that they've mixed up some of the work they were doing for PCN with some of my invoices because on my calculations, it doesn't make sense." He said, "Did you want me to have a word with Des [Riley]?" or words to that effect, and I just said, "Yes, sure," and then</p> | T 202 is Mr Lee's evidence of a discussion he had with Mr Owens, not Mr Lewis. |

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| | | T 202 | forgot all about it.” When I spoke to Peter, I said, “Look, I hope – I suspect that there may be some confusion between invoices of work done for me and invoices of work done for Port Coogee Now and I hope that hasn’t occurred.” | |
| | | T 203 | I said, “Well, I hope there’s not been some mix up between the invoices of work for PCN and invoices of work for us.” | |
| 7.6 | Mr Lewis offered to “have a word with” Mr Riley, a partner in Riley Mathewson, whom he knew (T 205). | T 205 | Quoted in [7.5] above. Mr Lewis’ evidence was as follows: | There is no mention in the Executive Summary of how Mr Lewis knew Mr Riley, or the ongoing relationship between Mr Lewis, as a representative of Australand, and Mr Riley in relation to the PCN account, and Mr Lewis’ involvement in Mr Lee’s campaign. |
| | | T 84 15/02/07 | “Mr Lee and I had met just following the election campaign. He described to me his concern as to the cost of the campaign. It was clear to me that he was seeking my help with that. I met with Riley Mathewson.” | Nor is there any mention in the Executive Summary of Mr Lewis’ evidence in this regard. |
| | | T 107 15/02/07 | “We had a meeting after the election campaign to talk about overall how that campaign had run. His – the issue of his election costs were raised. Clearly I felt he wanted to see – wanted my help. I was happy to provide that. I supported Stephen Lee.” | |
| | | T 109 | “When you came to have this | |

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| | | 15/02/07 | <p>meeting with Mr Riley and Mr Owens now on 31 May, you were acting on behalf of Mr Lee, were you?---No.</p> <p>Who were you acting on behalf of?---Australand, my employer.</p> <p>Australand?---Yes.”</p> <p>“Were you wearing your Australand hat because you thought, at the end of the day, that Australand would have to make a contribution?---Yes.</p> <p>So when you had these figures in mind, you had in mind a figure that Australand would have to pay to satisfy the account for Mr Lee?---We were happy to support Mr Lee.”</p> | |
| 7.7 | Mr Lee had not, as yet, received any invoice for Riley Mathewson’s charges, and knew only that Mr Owens had said he “ <i>figured</i> ” they might be “ <i>closer to \$50,000 to \$60,000,</i> ” than the figure of about \$40,000 which Mr Lee told Mr Owens was what he expected they would be. | | | See [7.3] and [7.4] above. |
| 7.8 | Nor did Mr Lee know, as yet, how much had been collected from fundraising. | | | See [7.4] above. |
| 7.9 | The first (and only) invoice which Mr Lee got from Riley Mathewson, for its charges was on 20 June 2005, for \$43,500. That was close to the \$40,000 that he had told Mr Owens he expected it would be. | | | |

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| 7.10 | The invoice did not say it was a reduced charge, and no-one told him it was. | | | The evidence of Mr Lee was that Mr Owens had told him, at a meeting two days after the election, that he was a bit worried because he figured it would be closer to \$50,000 or \$60,000 (see [7.3] above). Mr Lee knew the invoice for \$43,500 was a reduced charge. |
| 7.11 | However, there was a shortfall of about \$21,000 between Riley Mathewson's invoiced charge of \$43,500, and funds collected from fundraising. Mr Riley told Mr Lee that Riley Mathewson would make a donation to his campaign fund of \$21,586.30, which it then did, by a Riley Mathewson cheque. That, as Mr Lee saw it, met Riley Mathewson's "commitment" (T 202). | 264 | | <p>Mr Lee knew that Mr Owens had told him that the Riley Mathewson charges were likely to amount to \$50,000 or \$60,000. Mr Lee said Mr Owens told him that at a meeting two days after the election. Mr Owens was in a position to know, and the Riley Mathewson time sheets show that the purpose of the meeting was to discuss "fundraising/accounting issues".</p> <p>Mr Lee then had a meeting with Mr Lewis at which it was clear to Mr Lewis that Mr Lee was seeking his help. Then, Mr Lee received an invoice from Riley Mathewson on 20 June 2005 for \$43,500, and there was an exchange of cheques on the following day whereby Mr Lee provided Riley Mathewson with a cheque for \$43,500.73, and Riley Mathewson provided Mr Lee with a cheque for \$21,586.83. Mr Lee knew this was to occur, as he arrived at the meeting to exchange the cheques with a typed receipt for Mr Riley.</p> <p>Mr Lee knew, then, that the Riley Mathewson charges had reduced from \$50,000 or \$60,000 to \$43,500, and then to a net amount of \$21,913.90.</p> <p>This issue is considered and discussed in the Commission's Report, including a reference to the section 86 representations.</p> |
| 7.12 | Mr Lee disclosed all the campaign donations received, including the Riley Mathewson donation and a donation from "Port Coogee Now". | | | |
| 7.13 | In February 2006, Mr Lee received a letter from "Local Government" asking | 318 – 324 | | This issue is considered and discussed in the Commission's Report, including a reference to the 2007 submissions. |

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| | that he confirm with Riley Mathewson that its gift of \$21,586.30, which he had declared, was not from any other source. He asked Mr Riley whether this was correct. Mr Riley said it was. (Mr Riley later admitted to a CCC investigator that he had lied to Mr Lee, and that the true source, never disclosed to Mr Lee, was Australand). | 287 - 288 | | Importantly, there is no evidence (apart from that of Mr Lee, which is contradicted by the evidence of Mr Lewis and Mr Riley) that Mr Lee made any enquiries as to whether Australand had provided or would provide funds to Riley Mathewson in respect of his election campaign at the relevant time. That is, during the period after the election on 7 May 2005 and prior to filing his annual return on 25 August 2005. It was during that period that Mr Lee had the meeting with Mr Owens, then met with Mr Lewis, then received the Riley Mathewson invoice and exchanged cheques. Yet, the evidence is that Mr Lee failed to ask either Mr Lewis or Mr Riley during that period whether Riley Mathewson were prepared to so significantly reduce their charges because there had been a contribution by Australand. |
| 8 | All of that evidence was before the CCC, but none of it is referred to, as supporting a conclusion, reasonably open, that: | | | See [6] above. The approach of the Commission was to consider all of the circumstances in reaching its opinions. That was done. All of the information available to it was assessed. Some of it was considered to have more or less probative value. That was weighed, and opinions formed. The Commission did not set out to reach any particular opinion, favourable or adverse. The Commission, after consideration of all of the circumstances, was of the view that it ought to form certain adverse opinions in the circumstances. The evidence supporting an alternative inference was not disregarded, but, in the opinion of the Commission, was outweighed by the evidence supporting the opinions it made, such that those opinions were the only ones reasonably open to it. |
| 8.1 | Mr Lee did not know, or believe , that Riley Mathewson's <u>correct</u> charge was "\$50,000 or \$60,000", which Mr | | | Here it is suggested in the Executive Summary, for the first time that, not only did Mr Lee not know that Riley Mathewson's charges were likely to be \$50,000 or \$60,000, |

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| | Owens had “ <i>figured</i> ” it would be “ <i>closer to</i> ” than Mr Lee’s expected figure of “ <i>about \$40,000</i> ”. He suspected that that was wrong, and that Mr Owens was mixing up Riley Mathewson’s charges for him with charges for work done by Riley Mathewson for “Port Coogee Now”. [Emphasis added]. | | | <p>but that he did not <u>believe</u> that to be the case. But, on Mr Lee’s evidence, Mr Owens, his campaign manager at Riley Mathewson, told him so just two days after the election. Mr Lee believed it sufficiently to discuss the matter shortly thereafter with Mr Lewis; a discussion from which Mr Lewis understood Mr Lee was seeking his help.</p> <p>Regarding the claim that Mr Lee suspected that Mr Owens <u>was</u> mixing up invoices, Mr Lee’s evidence, was somewhat less certain (see [7.5] above.):</p> <p>“I’m <u>a bit fearful</u> that they’ve mixed up <u>some of the work</u> they were doing for PCN with some of my invoices.”</p> <p>“Well, I <u>hope</u> there’s not been some mix up between the invoices of work for PCN and invoices of work for us.”</p> <p>“I suspect that there may be <u>some confusion</u> between invoices of work done for me and invoices of work done for Port Coogee Now and I hope that hasn’t occurred.”</p> |
| 8.2 | When Mr Lee later received Riley Mathewson’s invoice, in June 2005, for \$43,500 he had no reason to think it was a reduced charge. The invoice did not say it was. And it was consistent with the calculation he had made, part of the way through the campaign, that Riley Mathewson’s charge was likely to be about \$40,000. | | | <p>See [7.10] and [8.1] above regarding the suggestion that Mr Lee had no reason to think it was a reduced charge.</p> <p>The evidence is that Mr Lee did not ask at this point how it came to be that Riley Mathewson had reduced its charges from \$50,000 or \$60,000 to \$43,500.</p> <p>Regarding the “calculation”, Mr Lee’s evidence was that he “<i>made a perhaps over simple conclusion</i>” (see [7.2] above).</p> |
| 8.3 | When Mr Lee received a donation of \$21,586.93 from Riley Mathewson, he had no reason to think that the true donor was Australand. No-one told him that. It covered the shortfall | 274 - 311 | | The evidence is, indeed, that no-one told Mr Lee that the true donor was Australand, but also that, at the relevant time, he made no such enquiries to determine whether that was in fact the case. That is because it was not necessary for any of them to “tell” him that; nor for him to “ask” – |

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| | between the campaign funds which had been raised, and Riley Mathewson's invoice, and made good Riley Mathewson's <u>assurance</u> , when he agreed to engage them, that their charges would substantially be met from fundraising. Australand had not given him such an assurance, had no obligation to meet that shortfall, and had never said it would. [Emphasis added]. | | | <p>because he knew. It is the Commission's opinion, from a consideration of all of the circumstances, that "<i>Mr Lee was well aware that Riley Mathewson were only willing to offer such a massive reduction to him because they were to receive the funds from some other source – and it could only be Australand</i>" [284]. The circumstances leading to that opinion are discussed in the Commission's Report at paragraphs [274] to [284], and further at paragraphs [285] to [311] in addressing submissions on behalf of Mr Lee.</p> <p>Again, the word "<i>assurance</i>" is used in the Executive Summary to describe the agreement between Mr Lee and Riley Mathewson. Mr Lee's understanding was that it was a "<i>commitment</i>". (See [7.1] above).</p> <p>Australand had not given Mr Lee an assurance that it would meet any shortfall. But it was involved in Mr Lee's election campaign, and it did organise the main fundraising activity, being the PCN lunch. Mr Lee did meet with Mr Lewis after he was told of the likely Riley Mathewson costs by Mr Owens, and Mr Lewis' understanding (from that meeting) was that Mr Lee was seeking his help. Mr Lewis may not have communicated any obligation on the part of Australand to Mr Lee, but he clearly felt such an obligation (as is clear from his evidence and his subsequent actions).</p> |
| 8.4 | Therefore there was no reason for Mr Lee to believe that Australand had made any donation to his campaign. | | | To accept this proposition is to accept Mr Lee's evidence over that of Mr Lewis and Mr Riley, and to accept that, in all of the circumstances, Mr Lee was entitled to and did accept blindly what occurred on the surface, without making any enquiry, despite all he knew about the involvement of Mr Lewis and his relationship with Riley Mathewson, and despite his obligations arising from his position as Mayor of the City of Cockburn. The <u>whole</u> of the evidence must be considered. |
| 9 | The CCC has been very selective, in considering the " <i>circumstances</i> " from | | | See [6] above in relation to the Commission's consideration of all of the circumstances. |

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| | <p>which it has drawn the inference that Mr Lee knew that there had been a “massive reduction” in “Riley Mathewson’s bill” or “account”, and that he must have realised that Australand had made a substantial payment to Riley Mathewson. It is a mis-description of what Mr Owens said he “figured” it would be “closer to”, to say that was a “bill” or an “account”, later “reduced”. The Report does not explain why, in the opinion of the CCC, upon consideration of <u>all</u> of the evidence, its inference is the only one open. It does not even <u>consider</u> any alternative, or the evidence that would support it. It has focussed exclusively on the adverse inference.</p> | T 89 14/02/07 | | <p>See [7.3] above in relation to the presentation of Mr Lee’s evidence of what Mr Owens said, as evidence of what Mr Owens himself said.</p> <p>Also, Mr Owens said that his meeting with Mr Lee was “<i>obviously about the accounts</i>”.</p> <p>Again, the fact that Mr Lee discussed what he said Mr Owens had told him with Mr Lewis goes to Mr Lee’s understanding, and belief, in what he said Mr Owens told him.</p> |
| 10 | <p>The evidence before the CCC established that Australand and Riley Mathewson concealed from Mr Lee the “<i>convoluted arrangements</i>” they made, whereby Riley Mathewson reduced the charge of \$76,597 for which it had raised invoices (but which, as the CCC has accepted, Mr Lee never got, and which were cancelled) and Australand paid a substantial part of the reduced charge; and that they concealed from him that Australand had made a donation to his campaign expenses.</p> | 274 - 311 | | <p>Again, it is noted that the word “<i>convoluted</i>” does not appear in the Commission’s Report.</p> <p>The evidence is that neither Mr Lewis nor Mr Riley told Mr Lee of the mechanics of the arrangement, and that Mr Lee did not ask. It was simply not necessary for him to know that. It was of no consequence to him. But there is no evidence those arrangements were deliberately concealed from him. The only evidence of any concealment, (and it was by Mr Lee, not concealment from him) was following the DLGRD letter when Mr Riley spoke of a meeting with Mr Lee and when he said he lied in confirming the answer Mr Lee proposed to give to the DLGRD was correct. This was discussed in the Commission’s Report at paragraphs [319] to [323].</p> <p>The Commission’s conclusions regarding the Riley</p> |

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| | | | | Mathewson invoices, including its consideration of submissions on behalf of Mr Lee, are presented at paragraphs [274] to [311] of its Report. |
| 11-16 | | | | The matters raised in these paragraphs have been addressed above in respect of their relationship to the Commission's Report. |

SCHEDULE 2

SCHEDULE DETAILING THE CONSIDERATION OF THE DRAFT REPORT BY THE PARLIAMENTARY INSPECTOR RELATING TO A COMPLAINT BY MR STEPHEN LEE

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| Para | The Evidence | |
| 19 | <p>The relevant evidence which the CCC obtained from its investigation may be summarised (in chronological order) as follows:</p> <p>26 March 2005: At a meeting attended by Mr Lee, Mr Owens (an employee of Riley Mathewson), Mr Lewis (of Australand) and Mr Burke, who was a consultant to Australand, Mr Lee agrees to engage Riley Mathewson Public Relations (RM) as his election campaign manager. An assurance is given by Mr Owens (an employee of RM) that RM's costs would be "<i>substantially met</i>" from fundraising. (Mr</p> | <p>The evidence set out in paragraph 19 of the proposed report is a <u>selection</u> of the relevant evidence that was considered by the Commission.</p> <p>The following occurred prior to 26 March 2005:</p> <ul style="list-style-type: none"> • 21 March 2005: Email from Mr Burke to Mr Herkenhoff, copied to Mr Lee, outlining two tasks "<i>in assisting Cockburn</i>" [143]. • 22 March 2005: Email from Mr Burke to Mr Herkenhoff, copied to Mr Lee and Mr Lewis, detailing two forms of proposed fundraising; being a fundraising letter and the use of PCN as "<i>a legal and legitimate veil for people wishing to contribute through it</i>" [145 – 148]. • 23 March 2005: Email from Mr Lee to Mr Owens, with a copy to Mr Burke, attaching some candidate profiles, and response by Mr Owens on the same day [163]. • 23 March 2005: Email from Mr Burke to Mr Owens and Mr Herkenhoff, copied to Mr Lee and Mr Lewis [165]. • 24 March 2005: Email from Mr Herkenhoff to Mr Lewis, copied to Mr Lee, Mr Burke, Mr Owens and Mr Riley, and response by Mr Burke on the same day [159 – 161]. • 24 March 2005: Email from Mr Owens to Mr Lee and Mr Jakovich, being the draft "Jakovich" letter, and response by Mr Lee on the same day [168]. <p>Mr Lee's evidence of the meeting at Mr Burke's home on 26 March 2005 was that this was the first time he met Mr Owens, and the first time it was suggested that he employ Riley Mathewson. Mr Lee said that, to the best of his recollection, he was introduced to Mr Owens at that meeting, and from that discussion he decided to engage Riley Mathewson [T 159]; [172]. Mr Lee said, later, that "<i>a substantial amount of the costs of the campaign</i></p> |

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| | <p>Lee's evidence was to the effect that he engaged RM because of that assurance, which was important to him).</p> <p>18 April 2005: Mr Lee receives an email from Mr Owens of RM, which indicates to him that RM's costs to that date were about \$30,000. Mr Lee estimates the total RM costs, to the end of the campaign, will be "about \$40,000".</p> <p>19 April 2005: Written confirmation is received by Mr Lee from RM, that RM's charges would be "substantially met" from fundraising [138] (RM is involved in organising fundraising).</p> <p>26 April 2005: Luncheon held by "Port Coogee Now" (a group supporting the proposed Port Coogee development) to raise funds for Mr Lee's campaign. Mr Lewis of Australand assists in drawing up a guest list.</p> | <p>would be met through fundraising and this was a very important aspect for me before I took them on" [T 195].</p> <p>There is evidence, from the emails listed above, that Riley Mathewson was already involved in Mr Lee's election campaign, and had, prior to this meeting, prepared a draft fundraising letter. Mr Lee had, prior to this meeting, exchanged emails with Mr Owens in relation to the candidate profiles and the draft fundraising letter.</p> <p>It is stated in the proposed report that an assurance was given by Mr Owens [at the meeting on 26 March 2005] that Riley Mathewson's costs would be substantially met from fundraising. Mr Owens was asked whether there were any arrangements made [during the meeting] about how Riley Mathewson's services would be paid, and he said it was discussed. He said funds would be raised by fundraising, and that one of the means of that would be through PCN [T 63]. Whether this amounted to an "assurance" is not clear, but in any event, the Riley Mathewson letter of 19 April 2005 states: "as agreed, costs associated with this campaign will substantially be met by the fundraising activities presently being undertaken". Mr Lee, in his evidence, consistently used the word "commitment" (T 147, T 148, and T 151).</p> <p>There were also some activities that occurred between the meeting at Mr Burke's home on 26 March 2005, and Riley Mathewson's letter of 19 April 2005, including the meeting at Australand on 4 April 2005.</p> <p>That last sentence creates an entirely misleading impression. It does not represent the nature or extent of Mr Lewis' involvement in Mr Lee's election campaign. Mr Lewis was a recipient of Mr Burke's detailed email on 22 March 2005, was a party to a number of other emails that were circulated regarding Mr Lee's election campaign, was present at the meeting at Mr</p> |

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| <p>27 April 2005: Mr Lee declares the promise of a gift (as yet unquantified) by PCN, as required by the regulations [142].</p> <p>7 May 2005: Mr Lee is re-elected as mayor.</p> <p>9 May 2005: Mr Lee and Mr Owens discuss the election campaign. RM has not yet sent Mr Lee any invoice or account for its charges. Mr Lee says he expects the charges will be <i>"about \$40,000"</i> (the estimate he made on 18 April), says he hasn't yet been told what funds have been raised, and reminds Mr Owens of RM's commitment, that the charges would be <i>"substantially met"</i> from funds raised. Owens says that he <i>"figures"</i> that the costs would be <i>"closer to \$50,000 to \$60,000"</i>, but does not say what they are.</p> <p>9 May 2005: Mr Lee makes his declaration of <i>"notifiable gifts"</i>, which includes the promise of a donation by PCN.</p> <p>10 May 2005: Mr Owens sends an email to Mr Lee, saying that he was <i>"reconciling our fundraising efforts against campaign costs and will let you know the details"</i>. RM still has not sent any invoice or account to Mr Lee.</p> <p>Shortly after 9 May 2005: Mr Lee meets Mr Lewis (of Australand). Election campaign is discussed. Mr Lee says he is a <i>"bit concerned"</i> (because Mr Owens had said the campaign costs may be <i>"closer to \$50,000 to \$60,000"</i>) and says he suspects that RM might have mixed up invoices for some of the work they had been doing for PCN, with</p> | <p>Burke's home on 26 March 2005 and the meeting at Australand on 4 April 2005, in addition to his role in relation to the PCN luncheon.</p> <p>The information detailed in the Commission's report regarding the early communication of the parties with respect to Mr Lee's campaign [143 – 200] is important, as it goes to Mr Lee's meeting with Mr Lewis shortly after 9 May 2005, to Mr Lee's expectations of Mr Lewis, to Mr Lewis' understanding of Mr Lee's expectations, and to Mr Lewis' own sense of obligation.</p> <p>The stated position is the position <u>according to the evidence of Mr Lee</u>. The <u>comment attributed to Mr Owens is Mr Lee's recollection of what Mr Owens said</u>. Mr Owens was unable to recall the details of the meeting, but said that <i>"it's obviously about the accounts; the cost of the campaign perhaps"</i>. [T 89]; [246]. To the extent that it is implied, here and elsewhere in the proposed report, that Mr Lee thought Mr Owens was guessing, and that Mr Lee could, and did, ignore what Mr Owens told him, it ought to be noted that:</p> <ul style="list-style-type: none"> • Mr Owens was in a position to know – he was the senior consultant at Riley Mathewson who was responsible for Mr Lee's campaign account; • The meeting was held two days after the election; • The Riley Mathewson activity reports show that Mr Owens liaised with Mr Lee "regarding fundraising/accounting issues"; and • It is clear that Mr Lee understood that Riley Mathewson's charges were likely to be some \$50,000 or \$60,000 because he relayed that information to Mr Lewis shortly thereafter. <p>Again, the evidence is that of Mr Lee. Mr Lee's evidence in this regard was:</p> <p><i>"I was at a meeting with Chris [Lewis] after the election and he asked me, "What did you think of the election outcome?" "Good, good result," but I said, "I'm a bit concerned now because Peter [Owens] has told me that it</i></p> |

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| | <p>invoices for his work, "because on my calculations it doesn't make sense". Mr Lewis offers to speak to Mr Riley, a principal of RM, with whom he has a business relationship. Mr Lee still has not received any invoice or account.</p> | <p>may be 50 or 60 thousand and I'm a bit fearful that they've mixed up some of the work they were doing for PCN with some of my invoices because on my calculations, it doesn't make sense." He said, "Did you want me to have a word with Des [Riley]?" or words to that effect, and I just said, "Yes, sure," and then forgot all about it" [T 205].</p> <p>"When I spoke to Peter, I said, "Look, I hope – I suspect that there may be some confusion between invoices of work done for me and invoices of work done for Port Coogee Now and I hope that hasn't occurred" [T 202].</p> <p>"I said, "Well, I hope there's not been some mix up between the invoices of work for PCN and invoices of work for us" [T 203].</p> <p>Mr Lewis' evidence was as follows:</p> <p>"Mr Lee and I had met just following the election campaign. He described to me his concern as to the cost of the campaign. It was clear to me that he was seeking my help with that. I met with Riley Mathewson" [T 84, 15/02/07].</p> <p>"We had a meeting after the election campaign to talk about overall how that campaign had run. His – the issue of his election costs were raised. Clearly I felt he wanted to see – wanted my help. I was happy to provide that. I supported Stephen Lee" [T 107, 15/02/07].</p> <p>"When you came to have this meeting with Mr Riley and Mr Owens now on 31 May, you were acting on behalf of Mr Lee, were you?---No.</p> <p>Who were you acting on behalf of?---Australand, my employer.</p> <p>Australand?---Yes."</p> <p>Were you wearing your Australand hat because you thought, at the end of the day, that Australand would have to make a contribution?---Yes.</p> <p>So when you had these figures in mind, you had in mind a figure that Australand would have to pay to satisfy the account for Mr Lee?---We were</p> |

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| <p data-bbox="197 225 264 248">Para</p> <p data-bbox="293 778 1133 836">16 May 2005: Lewis meets Owens and gets details of RM's charges, and funds raised.</p> <p data-bbox="293 839 1133 991">31 May 2005: Mr Lewis meets with Mr Riley and Mr Owens. Mr Lee is not present, and is not told of the meeting. RM's charges total \$76,597.49. (Mr Lee has never been told that, and had still received no invoice or account from RM). Mr Lewis and Mr Riley agree on a proposal put by Mr Lewis, that:</p> <ul data-bbox="344 995 1133 1246" style="list-style-type: none"> • RM's charges will be reduced to \$65,288.32 • RM will invoice Mr Lee for \$43,500.73 • RM will make a donation to Mr Lee's campaign fund of \$21,586.83, which (together with other donations received or promised) would cover the \$43,500.73 invoiced. • Australand would, through a company called Marta Fishing Co, pay \$43,500.73 to Riley Mathewson, which would result in Riley Mathewson getting a net \$65,4145.63. <p data-bbox="293 1249 1133 1307"><i>(The CCC accepts that these "convoluted arrangements" were never disclosed to Mr Lee.)</i></p> | <p data-bbox="1160 252 1675 284"><i>happy to support Mr Lee</i>" [T 109, 15/02/07].</p> <p data-bbox="1160 316 2074 531">It is clear from the evidence of both Mr Lee and Mr Lewis that Mr Lee had understood what he said Mr Owens told him to be true, that he was concerned about that. However, he said that after his meeting with Mr Lewis he <i>"forgot all about it"</i>. Mr Lewis made no mention of Mr Lee's claim that he was <i>"a bit fearful that they've mixed up some of the work they were doing for PCN with some of my invoices"</i>. Mr Lewis said: <i>"He described to me his concern as to the cost of the campaign"</i>.</p> <p data-bbox="1160 563 2074 778">The "business relationship" Mr Lewis had with Mr Riley and PCN was no mere incidental and unconnected relationship. It was Mr Lewis who had been arranging payment of RM invoices to PCN by Australand. As the Commission Report notes (paragraph [18]), Australand had been paying the invoices issued by RM for work that firm did on the PCN account. The payments were made through Marta Fishing Co, and over 18 months to the end of March 2005, had totalled almost \$500,000.</p> <p data-bbox="1160 1249 2074 1377">The word <i>"convoluted"</i> does not appear in the Commission's Report. In any event, so far as they concerned Mr Lee himself, the arrangements were not convoluted. The Commission's assessment of the evidence about this was set out at CR [280] - [286]:</p> |

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| | | <p>[280] On 9 May 2005 Mr Owens met Mr Lee and told him that the Riley Mathewson bill was likely to run to \$50,000 or \$60,000. Mr Lee denied receiving invoices totalling some \$76,000, and the evidence does not establish that he did. However, even on his own evidence it is clear that, on 9 May 2005, Mr Lee knew that the Riley Mathewson account was likely to run to \$50,000 or \$60,000, and that the fundraising luncheon would not have raised anything close to that amount.</p> <p>[281] Mr Lee met Mr Lewis shortly after his meeting with Mr Owens on 9 May 2005, two days after the election. Mr Lee mentioned the Riley Mathewson charges to Mr Lewis, and Mr Lewis thought it was clear Mr Lee was seeking his help. In fact, Mr Lewis' understanding following the meeting was that he ought to negotiate the costs with Riley Mathewson as it was a cost that would have to be borne by Australand. Mr Lee said that after his meeting with Mr Lewis he "forgot all about it". Mr Lee did not make any subsequent enquiries with Mr Lewis or Riley Mathewson, despite knowing that he could potentially be personally liable for \$30,000 or \$40,000. In the opinion of the Commission, he did not do so because he left the meeting with Mr Lewis with the clear belief and intent that Mr Lewis, on behalf of Australand, would resolve the matter in the way Mr Lewis in fact understood it. In the Commission's assessment, Mr Lee by then was very much aware the monies raised fell substantially short of Riley Mathewson's charges, and that was his reason for approaching Mr Lewis. Obviously the only way Mr Lewis would satisfy them, was by a payment from Australand. That was what he was seeking.</p> <p>[282] Then, Some time prior to 21 June 2005 (his lawyers say it was on 17 June 2005) Mr Lee had become aware that he was to be issued an invoice by Riley Mathewson for \$43,500.73, and was to receive a "gift" from Riley Mathewson for \$21,586.83, resulting in a net amount to be paid by Mr Lee of \$21,913.90. At that time,</p> |

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| | | <p>Mr Lee also knew that PCN would be making a gift to him of \$15,820, leaving an amount of \$6,093.90 to be effectively funded by Mr Lee. So, from Mr Lee's perspective, charges by Riley Mathewson in respect of his election campaign had reduced from \$50,000 or \$60,000 as advised by Mr Owens, to \$21,913.90.</p> <p>[283] At no time did Mr Lee ask Mr Riley or Mr Lewis how it came about that his bill had reduced from \$50,000 or \$60,000 to \$21,913.90. The evidence of both Mr Riley and Mr Lewis is that he did not. In the Commission's opinion he didn't have to. He knew that this had resulted from his meeting with Mr Lewis. There was no need at that time for Mr Lee to directly ask whether Australand had funded the remainder of the bill because he knew that it had.</p> <p>[284] It is inconceivable to think that Mr Lee simply accepted that the accounts issued by Riley Mathewson in respect of his election campaign had reduced from \$50,000 or \$60,000 to \$21,913.90. Even if Mr Lee thought that Mr Lewis was able to negotiate a reduction from \$50,000 or \$60,000 to \$43,500.73, being the amount for which Mr Lee was ultimately invoiced, it strains credibility to think that Riley Mathewson would then offer a further discount (by way of "gift") to Mr Lee of \$21,586.83 without compensation or benefit. The only other possible source of funding, was Australand. Given the involvement of Mr Lewis throughout the election campaign, including the PCN fundraising luncheon, and his involvement in negotiations with Mr Riley regarding the campaign cost, it is clear Mr Lee was well aware that Riley Mathewson were only willing to offer such a massive reduction to him because they were to receive the funds from some other source – and it could only be Australand.</p> <p>[285] In their section 86 representations Mr Lee's lawyers say that Mr Lee did ask Mr Riley why Riley Mathewson was making a gift of \$21,586.83 and was told it was a: "Write-down of costs because the fund-raising was not as successful as it could have been and was a gift from Riley Mathewson to Mr Lee". They also say specific reference needs to be made to an email from Mr Riley to</p> |

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| | <p>17 June 2005: Mr Lee is told by Mr Riley that he will be invoiced by RM for \$43,500.73, but that RM will donate \$21,586.83 to his campaign fund. That donation, plus donations from fundraising activities, will cover RM's invoice.</p> <p>20 June 2005: Mr Lee receives the RM invoice, which he pays, and RM gives him a Riley Mathewson cheque, as a donation of \$21,586.30 to his campaign fund (<i>This invoice is the only invoice for charges that Mr Lee ever got. It does not say that it is a "reduced" charge, and Mr Lee is not told that it is.</i>)</p> <p>21 June 2005: Australand makes a payment of \$43,500.73, via Marta Fishing Co, to Riley Mathewson.</p> <p>22 June 2005: PCN donates \$15,820 [24].</p> <p>25 August 2006: Donations from PCN (of \$15,820) and RM (of</p> | <p>Mr Lee dated 17 June 2005 which "clearly states" that Riley Mathewson was gifting that sum to Mr Lee. They contend the existence of that email must be "pivotal" in any conclusions to be drawn about the matter.</p> <p>[286] The Commission notes a "write-down of costs" was given by Mr Riley to explain the reduction of the account from \$50-\$60,000 to \$43,500.73; it could not therefore reasonably be given as the explanation of the <u>further</u> reduction (effected by way of a "gift") of \$21,586.83. A later submission by Mr Lee's lawyers in their section 86 representations tends to highlight this. They submitted that: "Mr Lee believed that [Riley Mathewson] had reduced its charges to \$43,500.73 by writing-down costs ... and then gifted an amount" (of \$21,586.83). The email of 17 June 2005 could hardly be regarded as "pivotal" in respect of the nature of the transaction – it simply reflected the way the arrangement had been structured. Mr Lee had asked for it for the purpose of making his declaration of the "gift".</p> <p>Of course, the Commission accepted Mr Lee did not know anything about the <u>mechanism</u> involving Marta Fishing Co. which was used by Australand to make the payment. But it is not correct to say that was "concealed" from him – that was something of no concern to him and there was no reason to explain it to him.</p> <p>Mr Lee knew it was a "reduced" charge as a result of his understanding of what Mr Owens had told him on 9 May 2005.</p> |

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| | <p>\$21,586) declared by Mr Lee in his annual return [142].</p> <p>February 2006: Mr Lee has a letter from DLGRD, asking him whether the (disclosed) donation of \$21,586.30 from RM was funded by any other party, and if not, whether he has confirmed this with RM. Mr Lee meets Mr Riley, who confirms to him that the RM donation was <u>not</u> funded by anyone else. (This is a lie, as Mr Riley admitted later, to CCC investigators).</p> | <p>This is considered and discussed at CR [318] to [324]. The evidence of Mr Lewis was that they discussed “<i>whether Australand had a direct account or relationship with Riley Mathewson</i>” at a meeting at which all three were present [T 127, 19/02/07; [318]. It was the Commission’s opinion that Mr Lewis’ evidence of this meeting illustrated “<i>that Mr Lee was more concerned with providing a “technically correct” response to DLGRD, than actually revealing that Australand had made a substantial financial contribution to the cost of his campaign</i>” [318].</p> <p>The information provided by Mr Riley, of a separate meeting with Mr Lee at which he said he “lied”, was also considered and discussed at CR [319] to [320], and after a consideration of some Statutory Declarations provided as part of the section 86 representations, the Commission was of the opinion that: “<i>the “lie” of which Mr Riley spoke to the investigator on 14 February 2007, was confirming that the proposed answer referred to at paragraph [6] of Mr Lee’s statutory declaration, was correct</i>” [323] (emphasis added). Paragraph 6 of Mr Lee’s Statutory Declaration states: “<i>Des confirmed that the donation was indeed from Riley Mathewson Public Relations and not from anyone else</i>” [323].</p> <p>In the proposed report the phrase “<i>not funded by anyone else</i>” is used; which is a broader concept than what is stated in Mr Lee’s Statutory Declaration: “<i>not from anyone else</i>”. The donation of \$21,586 was <i>from</i> Riley Mathewson – it was a Riley Mathewson cheque; but it was <i>funded</i> by Australand. The question asked by the DLGRD was whether the donation was funded by another party, and Mr Lee said it was not, and that he had confirmed that with Riley Mathewson (CR [313]) - this was the “lie” which Mr Riley was talking about.</p> |
| 20 | <p>Of clear relevance to the question of whether it may safely be inferred that Mr Lee knew that Australand had made a contribution (apart from the fact that he was never told that it had, of course) is:</p> <ul style="list-style-type: none"> the assurance given by RM to him on 26 March 2005; | <p>Again, the Commission had regard to all this evidence, and more. There was discussion at that meeting, on Mr Owens’ evidence, as to meeting Riley Mathewson’s costs through fundraising, and the subsequent letter from Mr Owens confirmed the <i>agreement</i> reached at that meeting. Mr Lee understood it to be a “<i>commitment</i>”.</p> |

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| | <ul style="list-style-type: none"> his expectation, based on the email from RM on 18 April 2005, that the total campaign costs would be about \$40,000; his reaction of disbelief when Mr Owens said he "<i>figured</i>" that RM's charges would be "<i>closer to \$50,000 or \$60,000</i>"; his later discussion with Mr Lewis, when he said "<i>It doesn't make sense</i>", and opined that some of PCN's invoices might have got mixed up with his; the fact that the only invoice Mr Lee ever received from RM did not state that it was "<i>reduced</i>". <p>That evidence, summarised in the preceding paragraph, is referred to in more detail below.</p> | <p>That expectation (which he had from 18 April 2005), was superseded by what Mr Lee said Mr Owens told him at their meeting on 9 May 2005.</p> <p>Mr Lee said his reaction was: "<i>Well, you've got to be joking, how can that be so?</i>" [T 149] Whether that amounts to "disbelief", as the proposed report suggests, or some other emotion, is immaterial. The point is that, as discussed above, it is clear from the evidence of both Mr Lee and Mr Lewis that Mr Lee had understood what he said Mr Owens told him to be true.</p> <p>Again, that is Mr Lee's evidence of what he told Mr Lewis. Mr Lewis made no mention of Mr Lee expressing his suspicion about the possible mixing up of invoices.</p> <p>Mr Lee knew it was a "<i>reduced</i>" charge as a result of his understanding of what Mr Owens had told him on 9 May 2005.</p> |
| | Riley Mathewson's Assurances that its Charges to Mr Lee would be Substantially met from Fund Raising | |
| 21 | On 26 March 2005, a meeting was held at the home of Mr Brian Burke, attended by him, Mr Lee, Mr Lewis of Australand, and Mr Owens of RM, to discuss Mr Lee's election campaign. PCN had been using the services of RM for some 18 months, to promote the proposed Port Coogee development. It was proposed at the meeting that RM would be Mr Lee's campaign manager, and would assist in fund-raising: proposed report [17], [19]. | |
| 22 | At that meeting, Mr Owens assured Mr Lee that the costs associated with his election campaign would be " <i>substantially</i> " met from proposed fundraising (activities, which included a fundraising letter to be signed by Glen Jakovich, a well known local identity, and a fundraising luncheon to be arranged and hosted by PCN). Mr Lee agreed to appoint RM as his campaign manager. He said in evidence (T 195) that the assurance given by RM, that " <i>a substantial amount of the costs of the campaign would be met through fundraising ... was a very important aspect for me before I took them on</i> ". There is no reason to | Mr Lee's evidence of the meeting at Mr Burke's home on 26 March 2005 was that this was the first time he met Mr Owens, and the first time it was suggested that he employ Riley Mathewson. Mr Lee said that, to the best of his recollection, he was introduced to Mr Owens at that meeting, and from that discussion he decided to engage Riley Mathewson [T 159]; [172]. Mr Lee said, later, that " <i>a substantial amount of the costs of the campaign would be met through fundraising and this was a very important aspect for me before I took them on</i> " [T 195]. |

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| | <p>suppose, nor does the proposed report suggest, that this was not in fact the case, although at [19] the proposed report somewhat glosses over this important point (that it was RM's assurance), saying:</p> <p><i>"The intention of those present was that the costs of the election campaign would be substantially met from fund-raising, and that it was not intended for Mr Lee to contribute in any substantial way."</i></p> | <p>Mr Owens was asked whether there were any arrangements made [during the meeting] about how Riley Mathewson's services would be paid, and he said it was discussed. He said funds would be raised by fundraising, and that one of the means of that would be through PCN [T 63]. Again, with reference to the use of the word "assurance" in the proposed report, it is noted that Riley Mathewson's letter of some three weeks later states "as agreed" indicating confirmation of the "agreement" reached at the meeting on 26 March 2005.</p> <p>Regarding the PCN luncheon, it is somewhat of a stretch to say that it was "arranged and hosted" by PCN. The evidence is that the luncheon was arranged by Riley Mathewson and Mr Lewis, and was held "under the banner" of PCN according to the evidence of Mr Herkenhoff [T 25, 15/02/07]. PCN's Mr Fazio, who signed the luncheon invitation written by Riley Mathewson, said he was not even invited to the lunch [T 99, 14/02/07]. The evidence of PCN's Mr Merenda, who attended the lunch and paid for it, was that he had very little involvement, if any, in organising the luncheon.</p> <p>The assertion that the Commission's report "somewhat glosses over" the "important point" that Riley Mathewson had given an assurance that "a substantial amount of the costs of the campaign would be met by fundraising ..." is unfair and unjustified. It implies the Commission was attempting to trivialise the point. In fact, that portion of the Commission's Report quoted, arguably makes the overall point even more strongly in Mr Lee's favour.</p> |
| 23 | <p>By letter dated 19 April 2005, RM confirmed the oral assurance which had been given to Mr Lee at the 26 March meeting, stating that "costs associated with this campaign will substantially be met by the fundraising activities presently being undertaken": [138].</p> | <p>The letter confirmed the "agreement" that had been reached during the meeting of 26 March 2005. The proposed report accurately quotes from paragraph 138 of the Commission's Report, however on the letter from Riley Mathewson, the words "as agreed" appear immediately before the section quoted.</p> |
| | <p>Mr Lee estimates that total charges will be "about \$40,000"</p> | |
| 24 | <p>As the proposed report states ([26]) on 18 April 2005, Mr Lee received an email from Mr Owens, which suggested that the campaign costs to that date had reached about \$30,000. Mr Lee's evidence was that from that, he calculated and believed that the total campaign costs were likely to be about \$40,000. It is not suggested by the proposed report that he did not have that belief.</p> | <p>Mr Lee's evidence, in relation to any "calculation" was that he "made a perhaps over simple conclusion" [T 147].</p> <p>It is not suggested by the Commission's Report that Mr Lee did not have that belief, <u>at that time</u> - but it is the Commission's assessment that his belief at that time was superseded by his understanding following his meeting with Mr Owens on 9 May 2005, that the costs were in the order of \$50,000 to</p> |

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| | | \$60,000. |
| | Fundraising Luncheon | |
| 25 | On 26 April 2005, the PCN fundraising luncheon was held. Mr Lee attended. All proceeds from the luncheon were collected by PCN, but it did not then account for the collections to Mr Lee, no doubt because it would have to calculate what the net result was, after expenses. The proposed report at paragraph [279] states <i>"It is reasonable to infer from the PCN cheque account that there were some 18 paying guests at the fundraising function, paying \$1,000 each"</i> , but there is no evidence that Mr Lee knew how much was raised by the luncheon, nor does the CCC Report suggest that he did. | The Commission's Report merely notes that Mr Lee was present at the lunch [234]. |
| | Post-election discussion with Mr Owens about RM's charges | |
| 26 | The election was held on 7 May 2005. Mr Lee was re-elected. Two days later, Mr Owens of Riley Mathewson met Mr Lee. [281] Mr Lee's evidence was that he still expected that the total costs of the campaign would be "around \$40,000" (T 148), based on the estimate that he made on 18 April 2005 (when he received RM's email which suggested that the costs to that date were about \$30,000). | With reference to Mr Lee's "expectation", Mr Lee's evidence was: "Well, I figure it will be roundabout \$40,000" [T 148]. |
| 27 | He said in evidence that at his meeting with Mr Owens he discussed the successful campaign, and that when the question of the campaign costs was raised he said (T 148): <i>"Well, I figure it will be round about \$40,000 and anyway you guys have made a commitment that a substantial amount of the campaign will be paid for by fundraising activities. I haven't seen anything from these fundraising activities."</i> It is not suggested in the proposed report that this was not what Mr Lee said. | |
| 28 | Mr Lee said (T 149) that Mr Owens then seemed <i>"a bit worried ..."</i> , because <i>"he figured it would be closer to 50 or 60 (thousand dollars)"</i> , to which Mr Lee said <i>"Well, you've got to be joking, how can that be so?"</i> He reminded Mr Owens (T195) of the <i>"commitment"</i> RM had made (that a <i>"substantial amount"</i> of the campaign cost would be met through fundraising). At that time, he said in evidence, (T 195) he did not know <i>"how successful the PCN fundraising had been"</i> but agreed that he was not anticipating that it would have been as much as <i>"\$50,000 or \$60,000"</i> , although he <i>"really had no idea"</i> . | |

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| 29 | Mr Lee also said in evidence (T 194) <i>"I felt very strongly that Riley Mathewson obviously would have to ... I may have a case for Riley Mathewson to have to carry any shortfalls because "substantial" to me would mean almost completely"</i> . The proposed report does not suggest that this view (which would be a reasonable one, having regard to Mr Owens' earlier assurance on the basis of which RM was engaged) was not genuinely held by Mr Lee. | <p>Mr Lee actually said: <i>"Okay, so I figured it was going to be in the vicinity of \$40,000 and my wife and I had obviously discussed this and I felt <u>very</u> strongly because I had a commitment from Riley Mathewson in writing that a substantial part of the campaign would be met by fundraising so I felt <u>fairly</u> strongly that RMPR obviously would have to carry any shortfalls because substantial to me would mean almost completely"</i> [T 194]. Emphasis added.</p> <p>Regarding the suggestion that the Commission's Report does not suggest that this view was not genuinely held by Mr Lee, again, his understanding following his meeting with Mr Owens on 9 May 2005 is important. The Commission's Report, [at 284] states:</p> <p><i>"It is inconceivable to think that Mr Lee simply accepted that the accounts issued by Riley Mathewson in respect of his election campaign had reduced from \$50,000 or \$60,000 to \$21,913.90. Even if Mr Lee thought that Mr Lewis was able to negotiate a reduction from \$50,000 or \$60,000 to \$43,500.73, being the amount for which Mr Lee was ultimately invoiced, it strains credibility to think that Riley Mathewson would then offer a further discount (by way of "gift") to Mr Lee of \$21,586.83 without compensation or benefit. The only other possible source of funding, was Australand. Given the involvement of Mr Lewis throughout the election campaign, including the PCN fund-raising luncheon, and his involvement in negotiations with Mr Riley regarding the campaign cost, it is clear Mr Lee was well aware that Riley Mathewson were only willing to offer such a massive reduction to him because they were to receive the funds from some other source – and it could only be Australand."</i></p> |
| Discussion between Mr Lee and Mr Lewis | | |
| 30 | Mr Lee later met with Mr Lewis. Each gave evidence in the public examinations in February 2007, regarding this meeting. | The meeting was held between 9 and 16 May 2005 when Mr Lewis met with Mr Owens to ascertain details of Riley Mathewson's charges. |
| 31 | Mr Lee's evidence was: (T 205) <i>"I was at a meeting with Chris (Lewis) after the election and he asked me, "What did you think of the election outcome?" "Good, good result," but I said, "I'm a bit concerned now because Peter (Owens) has told me that it may be 50 or 60 thousand and I'm a bit fearful that they've mixed up some of the work they were doing for "Port Coogee Now"</i> | <p>The remainder of Mr Lee's evidence was: <i>"and I just said, "Yes, sure," and then forgot all about it"</i> [T 205].</p> <p>The Commission considered this [at 281]:</p> <p><i>"Mr Lee met Mr Lewis shortly after his meeting with Mr Owens on 9 May</i></p> |

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| | <i>with some of my invoices because on my calculations, it doesn't make sense." He said, "Did you want me to have a word with Des (Riley)?" or words to that effect".</i> | <i>2005, two days after the election. Mr Lee mentioned the Riley Mathewson charges to Mr Lewis, and Mr Lewis thought it was clear Mr Lee was seeking his help. In fact, Mr Lewis' understanding following the meeting was that he ought to negotiate the costs with Riley Mathewson as it was a cost that would have to be borne by Australand.ⁱ Mr Lee said that after his meeting with Mr Lewis he "forgot all about it".ⁱⁱ Mr Lee did not make any subsequent enquiries with Mr Lewis or Riley Mathewson, despite knowing that he could potentially be personally liable for \$30,000 or \$40,000. In the opinion of the Commission, he did not do so because he left the meeting with Mr Lewis with the clear belief and intent that Mr Lewis, on behalf of Australand, would resolve the matter in the way Mr Lewis in fact understood it. In the Commission's assessment, Mr Lee by then was very much aware the monies raised fell substantially short of Riley Mathewson's charges, and that was his reason for approaching Mr Lewis. Obviously the only way Mr Lewis would satisfy them, was by a payment from Australand. That was what he was seeking."</i> |
| 32 | <i>Mr Lewis' evidence (at 107) was "he had a meeting after the election campaign to talk overall about how that campaign had run. The issue of his election costs was raised. Clearly I felt he wanted to see ... wanted my help. I was happy to provide that".</i> | The remainder of Mr Lewis' evidence was: "I supported Stephen Lee" [T 107, 15/02/07]. |
| 33 | <i>At T107 he was further questioned by counsel assisting, on the incorrect assumption that RM's invoices, which it had drawn up but not sent to Mr Lee, had been received by Mr Lee. He agreed that it was his understanding that RM's costs were to be "substantially met by fundraising". He was then asked "By the end of the campaign, did it come to your knowledge that in fact the fundraising had fallen substantially short of the tax invoices RM had sent to Mr Lee?" Mr Lewis replied "Yes". He also agreed that "that there was a shortfall in excess of \$50,000".</i> | <p>The proposed report implies criticism of the Commission (or counsel assisting) for asking questions on what it describes as "incorrect" or "wrong" assumptions, which the Commission later accepts to be so.</p> <p>Such expressed or insinuated criticism ignores the nature of the Commission's Inquiry. It is not an adversarial proceeding in a court, with a party seeking to make out a case. It is an investigation, the purpose of which is to ascertain the truth. As in any investigation, things which seem to be true or likely on the material available at an early stage, may on further investigation be found not to be so. The questions are being asked to find out – not to advance a "case".</p> <p>The important point is, of course, what assessment or opinion the Commission expresses in its report.</p> <p>In this instance, there was evidence that Riley Mathewson had issued two invoices to Mr Lee (for \$6,301.00 and \$69,095.26 respectively) with a further</p> |

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| | | <p>one to follow (in an amount of \$1,201.22) on or after 9 May 2005. That they were subsequently marked "cancelled" was consistent with that being done following Mr Lewis' negotiations with Riley Mathewson after Mr Lee had expressed his concern at the cost.</p> <p>Mr Lee claimed in evidence that he did not receive the invoices. But that remained an open issue, until the Commission was presented with statutory declarations from Mrs Lee in November 2007 and July 2008. Having regard to all the evidence on that issue, the Commission ultimately accepted that the invoices were not received by either Mr or Mrs Lee (CR [243]).</p> <p>The statement that:</p> <p style="padding-left: 40px;"><i>"As the Report accepts, Mr Lee had never received the invoices (which were on RM's file and marked "cancelled") and he did <u>not</u> know what RM's charges were."</i></p> <p>Insofar as it speaks of Mr Lee's state of knowledge, is correct only up to the time of his meeting with Mr Owens on 9 May 2005. From that point, he <u>did</u> know that Riley Mathewson's charges were likely to amount to some \$50,000 or \$60,000.</p> |
| 34 | The underlined words show that the assumption on which these questions were based was that Mr Lee knew what RM's charges actually were, because RM had sent him its invoices. But that was wrong. As the proposed report accepts, Mr Lee had never received the invoices (which were on RM's file and marked " <i>cancelled</i> ") and he did <u>not</u> know what RM's charges were. | This point has been addressed above. |
| 35 | Mr Lewis' evidence about the meeting (T 107 - 109) was that when he met Mr Lee to discuss how the campaign had run, Mr Lee had expressed concern about RM's charges, which he said (T 121) were " <i>very high</i> ". Mr Lewis was asked " <i>Did he actually specify you an estimate as to that amount?</i> ". He replied " <i>No, he didn't</i> ". | |
| 36 | Mr Lewis said (T 84) " <i>It was clear in my mind that he was seeking my help with that</i> ". When asked by counsel assisting " <i>Your help in what sense? A financial sense?</i> " Mr Lewis replied " <i>To see if I could in some way reduce that cost</i> ". He elaborated on that (T 85), saying that he | |

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| | believed that Mr Lee had approached him <i>"most likely because of my relationship with Riley Mathewson"</i> . | |
| 37 | At para [28] the proposed report comments on that evidence as follows: <i>"Instead of approaching Riley Mathewson directly and entering into negotiations, perhaps taking some comfort in their prior agreement that the campaign costs would substantially be met from fund-raising, Mr Lee approached Mr Lewis. Mr Lewis understood from Mr Lee's approach that Mr Lee was seeking his help, and he subsequently entered into negotiations with Riley Mathewson on the basis that Australand would be required to make a contribution. In the Commission's opinion, Mr Lewis' understanding of what Mr Lee was asking for (and expecting) was correct."</i> (Underlining added) | |
| 38 | The underlined passage from the proposed report implies that the evidence of Mr Lewis was that he "understood" that Mr Lee was seeking (and expecting) Mr Lewis to negotiate with RM <i>"on the basis that Australand would be required to make a contribution"</i> . However, as noted above, the evidence of Mr Lewis at T 84 was that he understood that he was being asked, because of his relationship with Riley Mathewson, to approach Mr Riley of that firm, to see if he could get the costs reduced. His evidence was not that he (or Australand) was being asked for <i>"financial assistance"</i> , or to <i>"make a contribution"</i> . | <p>Mr Lewis gave further evidence on this matter as follows:</p> <p><i>"Mr Lee and I had met just following the election campaign. He described to me his concern as to the cost of the campaign. It was clear to me that he was seeking my help with that. I met with Riley Mathewson" [T 84, 15/02/07].</i></p> <p><i>"We had a meeting after the election campaign to talk about overall how that campaign had run. His – the issue of his election costs were raised. Clearly I felt he wanted to see – wanted my help. I was happy to provide that. I supported Stephen Lee" [T 107, 15/02/07].</i></p> <p><i>"When you came to have this meeting with Mr Riley and Mr Owens now on 31 May, you were acting on behalf of Mr Lee, were you?---No.</i></p> <p><i>Who were you acting on behalf of?---Australand, my employer.</i></p> <p><i>Australand?---Yes."</i></p> <p><i>Were you wearing your Australand hat because you thought, at the end of the day, that Australand would have to make a contribution?---Yes.</i></p> <p><i>So when you had these figures in mind, you had in mind a figure that Australand would have to pay to satisfy the account for Mr Lee?---We were happy to support Mr Lee" [T 109, 15/02/07].</i></p> |

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| 39 | Furthermore, Mr Lewis also said, (at T 122) that he did <u>not</u> realise, at the time of his meeting with Mr Lee that Australand <i>"might have to make a contribution towards (Mr Lee's) election campaign"</i> . | |
| 40 | It was put to Mr Lee (T 206.1) by counsel assisting, that Mr Lewis' evidence was that Mr Lee had asked him to meet Mr Riley (regarding the RM costs). That was not Mr Lewis' evidence. When that proposition was put to Mr Lewis (T 121) he did not agree. He simply said <i>"It was clear in my mind he was asking for my help"</i> - not that Mr Lee actually asked him to go and see Riley Mathewson about the account. When Mr Lewis got details of RM's charges - not from Mr Lee, who did not have them, but from RM - he concluded that RM had <i>"basically just mismanaged the campaign"</i> and that <i>"the costs had blown out significantly"</i> (T 122). He worked out <i>"the shortfall"</i> between the funds raised and charges. It was <u>then</u> , he said <i>"that the decision was made"</i> . There is no evidence that Mr Lee was told anything of this. | <p>It is not clear whether the matter put to Mr Lee by counsel assisting was that he had asked Mr Lewis to meet Mr Riley (<u>regarding the RM costs</u>), but in any event, Mr Lee's evidence was that he did not ask Mr Lewis to meet with Mr Riley.</p> <p>Mr Lewis said <i>"It was easier for me to go off and seek the information off Riley Mathewson"</i> [T 122].</p> <p>Regarding the <i>"shortfall"</i> and the <i>"decision"</i>, Mr Lewis said: <i>"It was really a case of ... looking at the costs versus the donation and looking at that shortfall that the decision was made"</i> [T 122].</p> |
| 41 | Neither Mr Lewis nor Mr Lee gave evidence that it was ever stated, or implied, that Australand was to make any contribution towards RM's costs. Mr Lee's evidence was to the effect that he thought that if RM's charges (for which he had not yet been invoiced by RM) were "\$50,000 or \$60,000", that would be excessive, and perhaps the result of a "mix up" between his account and the PCN account with Riley Mathewson. Mr Owens had <u>not</u> told him what the RM charges actually were, just that he <i>"figured"</i> they would be <i>"closer to \$50,000 or \$60,000"</i> , than \$40,000. | <p>The claim in the proposed report that <i>"Mr Lee's evidence was <u>to the effect that he thought that if RM's charges ... were "\$50,000 or \$60,000", that would be excessive, and perhaps the result of a "mix up" between his account and the PCN account with Riley Mathewson"</u></i> seems to be based on a combination of what Mr Lee said Mr Owens told him, and what Mr Lee said he told Mr Lewis [Emphasis added]:</p> <p>Mr Lee's evidence of his meeting with Mr Owens was:</p> <p><i>"he seemed to indicate that, well he was a bit worried because he figured it would be closer to 50 or 60 and said, "Well, you've got to be joking, how can that be so? [T 148]" Mr Lee did not say that he thought those charges were "excessive"</i>.</p> <p>It was when Mr Lee relayed this information to Mr Lewis that he said he raised the possibility of some "mix-up" with work done for PCN: <i>"I'm a bit concerned now because Peter [Owens] has told me that it may be 50 or 60 thousand and I'm a bit fearful that they've mixed up some of the work they were doing for PCN with some of my invoices because on my calculations, it doesn't make sense"</i> [T 205].</p> |

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| | | <p>Regarding Mr Lee's meeting with Mr Owens, again, the stated position is the position according to the evidence of Mr Lee. The comment attributed to Mr Owens is Mr Lee's recollection of what Mr Owens said. Mr Owens was unable to recall the details of the meeting, but said that "<i>it's obviously about the accounts; the cost of the campaign perhaps</i>". [T 89]; [246]. To the extent that it is implied that Mr Lee thought Mr Owens was guessing, and that Mr Lee could, and did, ignore what Mr Owens told him, it ought to be noted that:</p> <ul style="list-style-type: none"> • Mr Owens was in a position to know – he was the senior consultant at Riley Mathewson who was responsible for Mr Lee's campaign account; • The meeting was held two days after the election; • The Riley Mathewson activity reports show that Mr Owens liaised with Mr Lee "regarding fundraising/accounting issues"; and <p>It is clear that Mr Lee understood that Riley Mathewson's charges were likely to be some \$50,000 or \$60,000 because, on his own evidence, he relayed that information to Mr Lewis shortly thereafter.</p> |
| | The Riley Mathewson invoice and its donation | |
| 42 | <p>The next that Mr Lee heard about the matter was that he received an invoice (the first and only one) from RM for \$43,500.73 (T 198). He was asked to write a cheque out to RM for that sum (which could <u>not</u> be "<i>substantially met</i>" from the funds raised: However, he was told in an email from Mr Riley that RM would make a donation of \$21,586.83, which it did. That covered the difference between the funds raised, and RM's invoice. Mr Lee's evidence was that when he asked Mr Riley why not simply give RM a cheque for the difference (of about \$22,000) Mr Riley replied that he had legal advice about the way the gift of \$21,586 should be made. So that was how it was done. Neither Mr Riley, nor anyone else, told Mr Lee that Australand was making any contribution.</p> | <p>Mr Lee said he "<i>forgot all about it</i>" following his meeting with Mr Lewis shortly after 9 May 2005, and the evidence is that he made no further enquiries of either Mr Riley or Mr Lewis despite knowing he could potentially be personally liable for \$30,000 or \$40,000 [281].</p> <p>Regarding the exchange of cheques, Mr Lee's evidence was: "<i>I said to Des, 'Why are we doing it this way? Why don't you – why don't I just give you a cheque for the 21,000' – whatever it was, and he said, 'Because I've had legal advice on the gift that I'm giving you and this is the way I've been advised to do it'</i>" [T 199].</p> <p>The legal advice sought by Mr Riley is discussed in the Commission's Report [304] – [305], and it clear that that advice was "<i>based on materially incorrect or incomplete facts</i>" because the term "<i>client</i>" was used instead of the Marta Fishing Co or Australand.</p> <p>Mr Riley was not asked what he told Mr Lee about this legal advice when they exchanged cheques. Mr Riley was asked: "<i>Did you have any</i></p> |

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| | | <i>discussion with Mr Lee as to who was going to pay the balance of this account</i> and he said "No, I did not". Mr Riley could not recall Mr Lee making any enquiry of him as to "why it was that Riley Mathewson would be prepared to do this" [make the "gift"]. [T 50, 14/02/07] |
| 43 | <p>The net result was that Mr Lee's campaign expenses were covered by the funds raised, plus the donation from RM. That outcome was consistent with the oral assurance given to Mr Lee by his campaign manager, RM, in March 2005 (confirmed in writing on 19 April 2005) that the campaign costs would be met "substantially" by fundraising. It was consistent also with:</p> <ul style="list-style-type: none"> • Mr Lee's expectation, once he received RM's email on 19 April 2005, that the total campaign costs would be "about \$40,000" (RM's invoice being \$43,500.73); • his reaction to Mr Owens' statement on 9 May 2005 (that he "figured" that RM's costs would be "closer to \$50,000 to \$60,000" than \$40,000) that this could not be correct ("You've got to be joking") and must be a "mix up" between his account and PCN's account with RM; and | <p>See 19 above regarding the use of the word "assurance" to describe the agreement that Riley Mathewson's charges will substantially be met by fundraising.</p> <p>Again, Mr Lee's expectation was superseded by his understanding following his meeting with Mr Owens on 9 May 2005.</p> <p>Mr Lee's reaction to Mr Owens was not that "this could not be correct". Mr Lee said he said: "Well, you've got to be joking, how can that be so?" [T 149].</p> <p>Regarding the "mix up" - Mr Lee said that he said to Mr Owens "Well, I hope there's not been some mix up between the invoices of work for PCN and invoices of work for us" [T 203]. Mr Lee said he said to Mr Lewis: "I'm a bit fearful that they've mixed up some of the work they were doing for PCN with some of my invoices because on my calculations, it doesn't make sense" [T 205]. Mr Lee did not say there "<u>must be a mix-up</u>"; he was merely "a bit fearful". [Emphasis added].</p> |
| | Meeting between Mr Lewis and Mr Riley | |
| 44 | The charges which had actually been raised by RM for Mr Lee's campaign costs totalled \$76,597.49. It is not clear when those charges were raised, but although the 3 invoices for the charges had been made out, addressed to Mr Lee, the CCC has accepted that he never received them (although in the public examination of Mr Lewis, counsel assisting (T108) mistakenly referred to them as "the invoices that Mr Lee had received"). | <p>The Riley Mathewson charges, according to the dates on the invoices, were raised on 30 March 2005, 26 April 2005 and 9 May 2005 (although the Commission accepts these invoices were not received by Mr Lee).</p> <p>At the time that question was put to Mr Lewis, it was not a "mistake". As discussed at 33 above, it was not until after receipt of the section 86 representations in July 2008 that the Commission was satisfied that Mr Lee had not received the invoices.</p> |
| 45 | On 31 May 2005 Mr Lewis of Australand met Mr Riley and Mr Owens, of Riley Mathewson. Before then, on 16 May 2005, he had obtained | |

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| | from RM details of the invoices totalling \$76,597.49 and the amount of funds raised. His evidence was that he had <i>"looked at various components of those, and then obviously looked to Riley Mathewson to discount or reduce the account"</i> (T109). | |
| 46 | As a result of Mr Lewis' negotiations with him, Mr Riley agreed to reduce the RM account from \$76,597.49 to \$65,288.32 (T109), to invoice Mr Lee for \$43,500.73, and to make a "donation" to Mr Lee's election campaign of \$21,586.83 (which would mean that Mr Lee's net payment to RM would be only \$21,913.90, which was about the total of campaign donations). In turn, Australand, through a company called Marta Fishing Co, was to pay \$43,500.73 to RM. That, added to the (net) \$21,913.90 paid by Mr Lee to RM, would result in RM receiving, in full satisfaction, \$65,414.63. | |
| 47 | It is not suggested in the proposed report, nor is there any evidence, that Mr Lee ever knew of <u>any</u> of these <i>"convoluted arrangements"</i> (as Hardy Bowen aptly describes them) made between Mr Lewis and Mr Riley. The CCC accepts that he knew nothing of Marta Fishing Co, or what payment Australand made (via Marta Fishing) to RM; nor that RM's charges, originally, were \$76,597.49; nor what reduction in those charges was agreed between Mr Riley and Mr Lewis. All of this was, for reasons best known to Australand and RM, concealed from Mr Lee. Perhaps it was because Australand knew that Mr Lee like a majority of Council members, favoured the Port Coogee development, which save for a few minor amendments had already been substantially approved, and Australand did not want Mr Lee to know it had donated, as it would then be necessary for him to declare it. | <p>Again, the word <i>"convoluted"</i> is does not appear in the Commission's Report (here it seems to be attributed to the Hardy Bowen complaint to the PI).</p> <p>Regarding the arrangements being <i>"concealed"</i> from Mr Lee, it is relevant to note that Mr Lee understood (from his meeting with Mr Owens) that Riley Mathewson's charges were likely to be some \$50,000 or \$60,000, he knew of his discussion with Mr Lewis, he knew of Mr Lewis' offer to approach Des Riley, he knew of Mr Lewis' involvement in his election campaign, and he knew that the invoice he ultimately received for \$43,500 was a reduced charge and that it, along with Riley Mathewson's "gift", followed his discussion with Mr Lewis. Mr Lee was the person who held the obligation to disclose, and yet he says he <i>"forgot all about it"</i> after his meeting with Mr Lewis.</p> <p>If the reference to the arrangements being <i>"concealed"</i> from Mr Lee relates to the period after Mr Lee's receipt of the DLGRD letter in early 2006, then that is not relevant to the disclosure he ought to have made in his annual return in August 2005. In any event, it was the Commission's assessment that the discussions between the parties at that time were not concerned with "concealing" the arrangements from Mr Lee, but with providing a "technically correct" response to DLGRD [318] – [324].</p> <p>Regarding the view in the proposed report that the Port Coogee development had been substantially approved, <i>"save for a few <u>minor</u></i></p> |

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| | | <i>amendments</i> ", it is true that the council motions were described as "minor modifications", and that it was considered that the variations did not change the intent of the structure plan and there was no need to readvertise for public comment. [Emphasis added]. The Commission noted that three of the four variations involved an increase in density and that "[t]he number of dwellings within the Structure Plan area is proposed to increase by 248 (15%) and the number of people will also increase by 407 (10%) 405]. |
| | The evidence of Mr Lee's knowledge about campaign costs | |
| 48 | <p>The <u>only</u> direct evidence of what Mr Lee knew about the campaign costs was therefore as follows:</p> <ul style="list-style-type: none"> • The email from RM of 18 April 2005 suggested to him that his campaign costs to that date were about \$30,000, from which he deduced that his <u>total</u> campaign costs were likely to be "about \$40,000". • On 9 May 2005 when he told Mr Owens that he thought the costs would be about \$40,000, and Mr Owens said he "figured" they would be "closer to \$50,000 or \$60,000", which Mr Lee thought excessive, and suspected there must be a "mix up" between his account and PCN's. • When he later told Mr Lewis his concern, and also mentioned RM's assurance that donations collected would substantially meet the campaign costs, Mr Lewis said he would speak to Mr Riley of RM about RM's costs. <p>• Mr Lee later received an invoice (the <u>only</u> one) from RM, for</p> | <p>Mr Lee said he "made a perhaps over simple conclusion" [T 147].</p> <p>See 41 above.</p> <p>Mr Lee said he mentioned Riley Mathewson's "commitment" in his discussion with Mr Lewis:</p> <p><i>"We – we were having a meeting, whatever it was, a catch-up at a coffee shop. We were talking about – we were talking about the campaign and he said, "It was a good campaign". I said, "Yes", I said, "but unfortunately I'm not sure that the fundraising was that successful and I'm not sure – and I'm not entirely convinced that Riley Mathewson haven't confused some of my costs with PCN's costs, but I've spoken to Peter [Owens] about that and reminded Peter [Owens] of RMPR's commitment to" – and I can't remember the precise words but it was along these lines – "to meet the costs substantially through fundraising". He said, "I know a little bit about PCN. Would you like me just to check they haven't mixed up any of the – any of the invoices, mixed up any of their work, PCN's work, with your work?", and I said, "Yeah" [T 151].</i></p> <p>Mr Lee understood that this was a reduced charge as a result of his meeting with Mr Owens on 9 May 2005.</p> |

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| | <p>\$43,500.73. He was <u>not</u> told that this was a reduced charge, nor did the invoice indicate that it was.</p> <ul style="list-style-type: none"> When he gave RM a cheque for that invoice, RM made a donation to his campaign fund of \$21,586.83 which covered the "shortfall" between RM's invoice for \$43,500.73, and donations received from fundraising. | |
| | Declarations by Mr Lee of donations | |
| 49 | Mr Lee declared the donations from RM and from PCN (well known as a strong supporter and campaigner for Australand's Port Coogee development). He has given sworn evidence that he believed, when he made the declarations, that they were correct, both as to amount and source. | |
| 50 | When he received a letter of enquiry from DGLRD in 2006 (mentioned earlier) he was asked to confirm that the source of the RM gift of \$21,586.93, which he had declared was not from anyone else, and to advise (in writing) whether he had confirmed this with Riley Mathewson. So he met Mr Riley, the principal of RM, his former campaign manager, and asked him whether his proposed answer, that the donation had been made only by RM, and not by anyone else, was correct. Mr Riley confirmed that it was; but Mr Riley has since admitted to a CCC investigator that he had lied to Mr Lee ([319]). | The information provided by Mr Riley, of a separate meeting with Mr Lee at which he said he "lied", was considered and discussed [319, 320], and after a consideration of some Statutory Declarations provided as part of the section 86 representations, the Commission was of the opinion that: " <i>the "lie" of which Mr Riley spoke to the investigator on 14 February 2007, was confirming that the proposed answer referred to at paragraph [6] of Mr Lee's statutory declaration, was correct</i> " [323]. Paragraph 6 of Mr Lee's Statutory Declaration states: " <i>Des confirmed that the donation was indeed from Riley Mathewson Public Relations and not from anyone else</i> " [323]. |
| | What reason was there for Mr Lee <u>not</u> to disclose any donation? | |
| 51 | If Mr Lee knew that Australand had made any donation, his evidence was that he would have declared it. It was put to the CCC, in submissions made on Mr Lee's behalf in 2007, that there was no logical reason why, had Mr Lee known that Australand had made a donation, he would not have declared it. The CCC's response (at [382]) was that his reason for not declaring it was to "disguise" the financial involvement of Australand in his campaign, so that he would not be required to disclose an interest in relation to any matters before Council involving Australand. | |
| 52 | That reply fails to refer to the evidence, relevant to this question, that: <ul style="list-style-type: none"> Mr Lee <u>had</u> declared the donation made by PCN, which was a lobby group well known as a supporter of Australand's Port Coogee development; | In the Commission's opinion that is quite a different proposition from declaring a donation from the developer itself. In any event, the reason for using PCN was as a "veil" for people wishing to contribute through it, thereby |

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| | <ul style="list-style-type: none"> Australand's proposals for development had, in the main, by the time of the May 2005 election, been approved by a majority of Council (including Mr Lee) and only comparatively minor variations to the approved development were yet to be dealt with. <p>Furthermore, it is not suggested, and there is no evidence, that Mr Lee had any financial interest in Australand or its Port Coogee development - so why would he be concerned about disclosure? What advantage or benefit to him could it possibly have been?</p> | <p>allowing donations of \$200 or more to remain anonymous and to be received under the banner of PCN. Further, the issue of Australand's contribution was not in the context of the receipt of donations of \$200 or more during the election campaign, and did not arise until after the election.</p> <p>See 47 above.</p> |
| | No direct evidence that Mr Lee knew that Australand had made a donation | |
| 53 | As observed earlier, there is no direct evidence that Mr Lee knew Australand had made a donation. The sworn evidence of each of Messrs Riley, Lewis & Owens is that <u>none</u> of them told him of the Australand payment, or anything about the "convoluted arrangements" between Australand, Riley Mathewson and Marta Fishing Co. described earlier. Nor does the proposed report suggest that Mr Lee <u>was</u> told. | <p>The phrase "<i>convoluted arrangements</i>" appears again, although the word "<i>convoluted</i>" does not appear in the Commission's Report.</p> <p>The Commission's Report also details that the evidence is that Mr Lee did not ask Mr Lewis or Mr Riley, at the relevant time, whether Australand had made a direct or indirect contribution to his election campaign [277] – that was because he did not need to ask.</p> |
| 54 | The CCC has, nevertheless, formed and expressed a " <i>First Misconduct Opinion</i> " (from which the remaining " <i>Misconduct Opinions</i> " flow) on the basis of its opinion (at [37]) that Mr Lee " <i>failed to declare a gift from Australand in his annual return, despite <u>knowing</u> [emphasis added] that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign ...</i> " | |
| | The CCC's "<i>inference</i>" that he knew | |
| 55 | The opinion that he had that knowledge is based entirely on an inference, drawn from the "circumstances" summarised in para [35] of the proposed report (underlining added): | Paragraph 35 of the Commission's Report is a succinct statement of the Commission's opinion including some of the reasons for it. It is important to remember that paragraph 35 is <u>inclusionary</u> , and takes into account the relevant circumstances as presented and discussed elsewhere in the |

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| | <p><i>"In the opinion of the Commission, given the circumstances, including the involvement of Mr Lewis throughout the election campaign, including the PCN fund-raising luncheon, and the <u>huge reduction in charges by Riley Mathewson</u> following Mr Lee's meeting with Mr Lewis, an Australand General Manager who had been substantially involved in his campaign, Mr Lee well knew that payment of the balance of Riley Mathewson's costs had been made by Australand. There was no other possible source. In the opinion of the Commission, it follows that Mr Lee knew that the declaration of a gift from Riley Mathewson in his annual return for the year ended 30 June 2005, made on 25 August 2005, was false, and knew that he ought to have declared a gift from Australand".</i></p> | Report. |
| 56 | <p>The proposed report also comments later, at [283]:</p> <p><i>"At no time did Mr Lee ask Mr Riley or Mr Lewis how it came about that <u>his bill had reduced from \$50,000 or \$60,000 to \$21,913.90</u>. The evidence of both Mr Riley and Mr Lewis is that he did not. In the Commission's opinion he didn't have to. He knew that this had resulted from his meeting with Mr Lewis. There was no need at that time for Mr Lee to directly ask whether Australand had funded the remainder of the bill because he knew that it had".</i></p> <p>and at [284]</p> <p><i>"It is inconceivable to think that Mr Lee simply accepted that <u>the accounts issued by Riley Mathewson in respect of his election campaign had reduced from \$50,000 or \$60,000 to \$21,913.90</u>. Even if Mr Lee thought that Mr Lewis was able to negotiate a reduction from \$50,000 or \$60,000 to \$43,500.73, being the amount for which Mr Lee was ultimately invoiced, it strains credibility to think that Riley Mathewson would then offer a further discount (by way of "gift") to Mr Lee of \$21,586.83 without compensation or benefit. The only other possible source of funding, was Australand. Given the involvement of Mr Lewis throughout the election campaign, including the PCN fund-raising</i></p> | |

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| | <p><i>luncheon, and his involvement in negotiations with Mr Riley regarding the campaign cost, it is clear Mr Lee was well aware that Riley Mathewson were only willing to offer such a <u>massive reduction to him</u> because they were to receive the funds from some other source – and it could only be Australand.</i></p> | |
| | <p>The CCC's major premise: a "huge reduction" in RM's "account"</p> | |
| 57 | <p>The underlined references (at [35]) to a "<i>huge reduction in RM's charges</i>"; and to a reduction in his "<i>bill</i>" from "\$50,000 or \$60,000" (at [283]); and (at [284]) to "<i>a massive reduction</i>" in "<i>the accounts issued by RM ... from \$50,000 or \$60,000</i>" appear to treat what Mr Owens said on 9 May 2005, that he "<i>figured</i>" that RM's charges were likely to be "<i>closer to \$50,000 or \$60,000</i>", than Mr Lee's expectation of "<i>about \$40,000</i>", as if it were a statement of what RM's charges actually were, and that Mr Lee, at that point, accepted that the RM "<i>charges</i>" were "<i>\$50,000 to \$60,000</i>", not just the range of what Mr Owens "<i>figured</i>" they "<i>closer to</i>".</p> | |
| 58 | <p>That proposition, which underlies the CCC's "<i>opinion</i>", does not bear objective scrutiny.</p> | |
| 59 | <p>First, what Mr Owens said, that he "<i>figured</i>" the RM charges were likely to be "<i>closer to \$50,000 or \$60,000</i>" than Mr Lee's expected "<i>about \$40,000</i>" was <u>not</u> a statement of what RM's "<i>charges</i>" actually were, but what he "<i>figured</i>" they would be "<i>closer</i>" to. It is putting a considerable "spin" on what Owens "<i>figured</i>", to refer to that as a "<i>bill</i>," or an "<i>account</i>", for "\$50,000 or \$60,000", or as the proposed report refers to it at [284] an "<i>account issued</i>" by RM. That simply mis-describes the evidence.</p> | <p>The evidence is that of Mr Lee (and it is only part of his evidence – see 60 below), and his recollection of the language used by Mr Owens at their meeting on 9 May 2005. On Mr Lee's evidence, he <u>understood</u> that Mr Owens told him that Riley Mathewson's charges may be \$50,000 or \$60,000 - he relayed that information to Mr Lewis a short time afterwards and said he was concerned about it [T 205]. Whether or not a "<i>bill</i>" or "<i>account</i>" issued is not the point. The point is that Mr Lee understood what Mr Owens told him and was a bit concerned about it. Of course, Mr Lee knew that Mr Owens was in a position to know what Riley Mathewson's charges were likely to be, as the senior consultant at Riley Mathewson responsible for his account, and he knew that the meeting was held only two days after the election. The Riley Mathewson activity reports show that the purpose of the meeting was to discuss fundraising/accounting issues. The evidence of Mr Owens was that the meeting was "<i>obviously about the accounts; the cost of the campaign perhaps</i>" [T 89, 14/02/07].</p> |
| 60 | <p>Secondly, Mr Lee's reaction to it was, as he told Mr Owens, that it could not be right ("<i>You must be joking</i>") as that range seemed excessive, and inconsistent with the figures he was given in RM's email in April 2005, from which he had deduced that the final figure</p> | <p>There is no evidence that Mr Lee told Mr Owens that "<i>it could not be right</i>", or that "<i>the range seemed excessive</i>", or that "<i>there <u>must</u> be a mix-up</i>". [Emphasis added]. Regarding the figure that Mr Lee had "<i>deduced</i>", he said he "<i>made a perhaps over simple conclusion</i>" [T 147].</p> |

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| | would be about \$40,000; and that therefore there must be a "mix-up". | <p>Mr Lee's evidence was:</p> <p><i>"he [Mr Owens] seemed to indicate that, well he was a bit worried because he figured it would be closer to 50 or 60 and I said, "Well, you've got to be joking, how can that be so?" [T 148].</i></p> <p><i>"Then you found out, to your shock and horror, on 9 May that it was actually going to be in the region of 50 to 60 thousand dollars. Is that right? - - - That was the indication I got from Peter, yes, that's right. I reminded Peter of the commitment RMPR had made" [T 195].</i></p> <p><i>"Peter Owens had already told you that the total cost of the campaign was going to be in the region of 50 to 60 thousand dollars? - - - Yep. [T 200].</i></p> <p><i>"Mr Owens had already told you that it had cost between 50 and 60 thousand dollars, had he not? - - - He suspected it was up around that amount, yes" [T 201].</i></p> <p><i>"When I spoke to Peter, I said, "Look, I hope – I suspect that there may have been some confusion between invoices of work done for me and invoices of work done for Port Coogee Now and I hope that hasn't occurred" [T 202].</i></p> <p><i>"And you believed that Mr Owens' estimate that the total costs would be between 50 and \$60,000? - - - Mr Owens said he thought that might be the case to which I said, "Well, I hope there's not been some mix up between invoices of work for PCN and invoices of work for us" [T 203].</i></p> <p><i>"Did you ask Mr Riley whether there was a mix up? - - - I was dealing with Peter and Peter spoke to - - - I can't recall if I did or if I did not" [T 203].</i></p> |
| 61 | Thirdly, there is no evidence, nor does the proposed report suggest, that Mr Owens, or anyone else, told him there had been <u>any</u> reduction in "RM's account" or "bill". | The Commission's Report does suggest that, on Mr Lee's understanding there had been a reduction in Riley Mathewson's charges. |
| 62 | Fourthly, the invoice itself did not state that there had been any reduction in RM's charges. It did not, for example, say " <i>Charges: \$50,000, but reduced to \$43,500.73</i> ", as might be the expected notation, if there <u>had</u> been any reduction in charges, particularly a | This is merely an assumption that if an invoice represented a reduced charge then it would be expected that that be indicated on the invoice, and further, in the last sentence, that it would be reasonable for Mr Lee to expect to be told. As discussed above, in the opinion of the Commission, Mr Lee |

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| | "massive" one. Notations like that are not infrequently made in the tax invoices of legal practitioners and other professionals, if the charge, although correctly calculated, has been reduced. But nothing in the RM invoice suggested that there had been a reduction at all. If there had been, surely it would have been reasonable for Mr Lee to expect to be told? | knew the invoice represented a reduced charge. |
| 63 | The proposed report, it should be noted, does not specify what the "massive reduction" in "RM's charges", or "account", or "bill", was. Nor could it. The <u>only</u> "account" Mr Lee actually received was the invoice for \$43,500, which was about what he had expected. That was not, on its face, a "reduced charge". So, what was the "massive reduction", which in the CCC's opinion Mr Lee must have realised had resulted from an undisclosed donation by Australand? Was it a reduction from what Mr Owens' "figured" the charges would be "closer to"? | The Commission's Report discussed this at [284]. The Commission did not take a narrow view of "account", and accepted from Mr Lee's evidence that he understood from what he said Mr Owens told him that the Riley Mathewson's charges were likely to come to \$50,000 or \$60,000. The "massive reduction" then was from \$50,000 or \$60,000 to the net amount ultimately paid by Mr Lee of \$21,913.90. |
| 64 | At [284] the CCC appears to accept, as a reasonable inference, that Mr Lee may have thought that Mr Lewis had negotiated "a reduction from \$50,000 or \$60,000 to \$43,700"; but then asserts that it "strains credibility" to think that RM would then "offer a further discount". | The Commission's Report said: "Even if Mr Lee thought that Mr Lewis was able to negotiate a reduction from \$50,000 or \$60,000 to \$43,500.73, being the amount for which Mr Lee was ultimately invoiced, it strains credibility to think that Riley Mathewson would then offer a further discount (by way of "gift") to Mr Lee of \$21,586.83 without compensation or benefit" [284]. |
| 65 | This so-called "further discount" (which in the opinion of the CCC Mr Lee must have known was the result of a payment to RM by Australand) was the donation of \$21,586.83 which RM made (by its cheque) to Mr Lee. Of course, it could only be thought <u>by Mr Lee</u> to be a "further discount" if he knew, or believed that the invoiced charge of \$43,500 was a "discounted" charge. But no-one said that it was, and the invoice did not say so. | In the opinion of the Commission, Mr Lee knew that the invoice for \$43,500 was a reduced charge, for the reasons already discussed, including the whole of Mr Lee's evidence regarding what he said Mr Owens told him (see 60 above), the fact that he knew Mr Owens was in a position to know what Riley Mathewson's charges were likely to be, the timing of the meeting, and what he said he relayed to Mr Lewis about his discussion with Mr Owens. |
| 66 | As the proposed report acknowledges ([283]) there had been "a prior agreement" – that is, an assurance orally and in writing - by RM that their charges would be "substantially met" by donations. Why, then, does the proposed report make the assertion ([284]) that it "strains credibility" that RM would make a donation to cover the shortfall between its invoiced charge of \$43,500.73, and the funds that had been raised? Why should Mr Lee conclude that Australand, which had given no such assurance to Mr Lee, would make a donation to meet the shortfall, rather than RM, the party that had given the assurance? | See 19 above regarding the use of the word "assurance" to describe the agreement that Riley Mathewson's charges will substantially be met by fundraising. In relation to the comment "strains credibility", the Commission's Report clearly links the prior reduction from \$50,000 or \$60,000, to the invoiced amount of \$43,500: "Even if Mr Lee thought that Mr Lewis was able to negotiate a reduction from \$50,000 or \$60,000 to \$43,500.73, being the amount for which Mr Lee was ultimately invoiced, it strains credibility to think that Riley Mathewson would |

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| | | <p><i>then offer a further discount (by way of "gift") to Mr Lee of \$21,586.83 without compensation or benefit" [284].</i></p> <p>In relation to why Mr Lee should conclude that Australand would make a donation, rather than Riley Mathewson, the Commission's Report states:</p> <p>"The only other possible source of funding, was Australand. Given the involvement of Mr Lewis throughout the election campaign, including the PCN fund-raising luncheon, and his involvement in negotiations with Mr Riley regarding the campaign cost, it is clear Mr Lee was well aware that Riley Mathewson were only willing to offer such a massive reduction to him because they were to receive the funds from some other source – and it could only be Australand" [284].</p> |
| 67 | The proposed report ([283]) suggests that Mr Lee could have approached RM directly about their charges, <i>"perhaps taking some comfort in their prior agreement that the campaign costs would substantially be met from fund-raising"</i> . Given the oral and written assurance from RM, which Mr Lee believed gave him a basis for a claim against RM to cover any shortfall, it would hardly be surprising if RM made a donation, to honour that assurance, much less that it would <i>"strain"</i> his, (or anyone else's) <i>"credibility"</i> . | |
| 68 | The proposed report fails to explain why the <u>only</u> inference reasonably open was that Mr Lee <u>must</u> have known that Australand had paid RM, despite the assurance that RM had given to Mr Lee, which placed RM under a moral (and possibly legal) obligation to meet the shortfall. And an obvious reason for Mr Lee accepting Mr Lewis' offer to talk to Mr Riley about RM's charges was that Mr Lewis knew Mr Riley, and had a business association with him (which was what Mr Lewis said he thought was the reason, as noted earlier). | |
| | CCC's reliance on evidence of Mr Lewis | |
| 69 | At [262] the proposed report refers to evidence given by Mr Lewis, about being approached by Mr Lee, in early 2006, after Mr Lee had received the DLGRD letter. (Mr Lee's evidence was that Mr Lewis had told him that Australand had not made any donation to his campaign): <p style="text-align: center;"><i>"When Mr Lee had raised this matter with you you were aware at least it was all to do with donations in his 2005 campaign?---Yes.</i></p> | |

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| | <p><i>Did you then tell him about the donation from Australand?---No. Any reason for that?---No reason. Was it because he already knew?---I don't know if he already knew, you would need to ask Mr Lee. Well, was the - - -?---But I think it's obvious that Australand have – we met with Des Riley, the bill is being reduced and he pays a much reduced bill. So it was obvious that what?---That obviously there has been a contribution. A contribution from Australand?---I would feel so, yes"</i></p> | |
| 70 | <p>The proposed report, at [263] places some reliance on this evidence from Mr Lewis</p> <p><i>"In the Commission's assessment, the effect of the evidence, then, is that it was <u>obvious to Mr Lee</u>, as a result of his meeting with Mr Lewis shortly after the election and the subsequent reduction in the Riley Mathewson invoices, <u>that Australand had made a contribution</u> to Riley Mathewson in respect of Mr Lee's election campaign. The Commission is satisfied that was so. The evidence of Mr Riley was that the payment was to come from Marta Fishing Co, and he knew that that entity was associated with Australand. However, there is no evidence that Mr Lee knew about Marta Fishing Co nor the actual mechanics of the payment of part of his Riley Mathewson campaign costs by Australand".</i></p> | |
| 71 | <p>There are several problems with the use of that evidence, to support an inference that Mr Lee knew that Australand had made a "contribution". First, the CCC cannot use, as a "circumstance" from which to draw an inference that Mr Lee knew Australand had made a contribution, evidence of what Mr Lewis "would feel" was "obvious". The question is, what <u>facts</u> may reasonably support that inference - not what someone "felt". Furthermore, Mr Lewis' reason for "feeling" it was "obvious" was that when he gave that evidence he was under the mistaken belief (shared by counsel assisting) that Mr Lee had received RM's invoices for charges totalling \$76,597, and therefore knew that he got a "much reduced bill" after Mr Lewis met with Mr Riley. (Even if – and there is no evidence that he did - Mr Lee <u>had</u> known that RM's bill was "much reduced" why would it be "obvious" to him "that Australand had made a contribution"? Would it "strain credibility" for him to think that RM accepted that its charges were excessive, and</p> | <p>The Commission did not rely on what Mr Lewis "felt": it agreed with his statement that in the circumstances it was obvious that Australand had made a contribution to RM's costs.</p> <p>The <u>facts</u> which may reasonably support an inference that Mr Lee knew that Australand had made a substantial payment to Riley Mathewson in respect of his election campaign are:</p> <ul style="list-style-type: none"> • Mr Lee's understanding following his meeting with Mr Owens on 9 May 2005 that Riley Mathewson's charges were likely to come to \$50,000 or \$60,000; • Mr Lee's discussion with Mr Lewis shortly thereafter (which must be considered in light of Mr Lewis' involvement in Mr Lee's election campaign, and, as the proposed report notes at paragraph [68], Mr Lee's knowledge of the business relationship between Mr Lewis and Mr Riley); |

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| | had reduced them, perhaps persuaded by Mr Lewis to do so?) | <ul style="list-style-type: none"> • Mr Lee's evidence that (despite its significance), he "forgot all about it" following his meeting with Mr Lewis; • Mr Lewis' evidence of his meeting with Mr Lee in which it was obvious to him Mr Lee was seeking his help. • The invoice for the amount of \$43,500 instead of an amount in the order of \$50,000 - \$60,000; • The further reduction by way of gift of \$21,586.83; • The only two sources available to meet Riley Mathewson's charges - Riley Mathewson and Australand – and Riley Mathewson had already reduced their charges; and • The failure of Mr Lee to make any enquiries of either Mr Riley or Mr Lewis at the relevant time as to whether there had been any contribution by Australand, notwithstanding all of the circumstances of which he was aware, and that he was the person who held the obligation to disclose. |
| 72 | <p>The CCC's apparent reliance on what Mr Lewis said he "would feel" is repeated at [277]</p> <p><i>"The Commission is satisfied that Mr Lee did not ask Mr Lewis or Mr Riley, at the relevant time, that is, after the election, whether Australand had made any direct or indirect financial contribution to his election campaign. In the opinion of the Commission, there was no need for Mr Lee to ask such a direct question of either Mr Lewis or Mr Riley because the circumstances were such that he knew that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign. <u>Mr Lewis said so. He considered that it was obvious that Australand had made a contribution to Riley Mathewson in respect of Mr Lee's election campaign. Although that acknowledgement came during questioning about a conversation he had with Mr Lee in June 2006, Mr Lewis was referring to the earlier period when he negotiated the deal with Mr Riley when he made reference to the fact that it ought to have been obvious to Mr Lee that Australand had made a contribution</u>".</i></p> | |
| | Enquiries by Mr Lee as to whether Australand had made any contribution | |

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| 73 | At [275] the proposed report refers to Mr Lee's evidence, that not only did he <u>not</u> know that Australand had made any contribution to RM's charges (and the proposed report accepts that he was never told) but that he asked both Mr Riley and Mr Lewis whether Australand had made any contribution, and was told it had not. | <p>The Commission does not accept that Mr Lee made any such enquiries of either Mr Riley or Mr Lewis at the relevant time, being between the election and when he filed his annual return. This is discussed at CR [274] to [277], and the Commission's opinions on this issue at [287] and [288] (reproduced below):</p> <p><i>"The references to Mr Lee repeatedly asking whether Australand had made a donation to his campaign because if they had he would need to declare it, in the Commission's assessment of the evidence all related to the general fund-raising activity prior to the election, requiring declaration of individual gifts of \$200 or more. And the answer to that question was always – correctly – that Australand had not. Any concern expressed by Mr Lee prior to the election about declarable donations must also be considered in light of PCN, and the understanding of the parties that it acted as an effective "veil" for those wishing to contribute through it. In that sense, the question of individual declarable donations would not arise, as the donor was considered to be PCN and not the individual contributors to PCN.</i></p> <p><i>The need for Australand to make the financial contribution it did, only arose <u>after</u> the election, when Mr Lee was told (on his evidence) the costs would be in the region of \$50-\$60,000. Any enquiries Mr Lee made <u>prior</u> to the election do not bear upon this issue, because the issue arose only <u>after</u> the election. The presently relevant time is after 7 May 2005."</i></p> |
| 74 | That evidence of Mr Lee (see T205 and T209) appears to have been referring to the enquiries he made, after he received the DLGRD letter in 2006 which prompted his enquiries. At [277] the proposed report says <i>"The Commission is satisfied that Mr Lee did not ask Mr Lewis or Mr Riley ... <u>after</u> the election, whether Australand had made any direct or indirect financial contribution ..."</i> . The proposed report says, at [276] that the CCC prefers the evidence of Mr Riley and Mr Lewis on this issue, for several reasons, including that it is <i>"corroborative"</i> . How each could <i>"corroborate"</i> the evidence of each other, as to whether each was (separately) asked this by Mr Lee is unexplained. In any event, the evidence of Mr Lewis was that he never told Mr Lee that Australand had made a contribution, and Mr Riley has admitted that he <u>was</u> asked, and lied to Mr Lee, and told him Australand had not contributed. | <p>The Commission's Report considered the evidence of the parties of discussions following Mr Lee's receipt of the DLGRD letter at 315 to 324, and said, regarding the "lie" by Mr Riley:</p> <p><i>"It is clear enough that the "lie" of which Mr Riley spoke to the investigator on 14 February 2007, was confirming that the proposed answer referred to at paragraph [6] of Mr Lee's statutory declaration, was correct"</i> [323].</p> <p>The reference to the evidence of Mr Riley and Mr Lewis being <i>"corroborative"</i> [at 276] is a reference to their evidence of a meeting with Mr Lee following Mr Lee's receipt of the DLGRD letter at which all three were present. The suggestion of a separate meeting between Mr Lee and Mr Riley did not arise until after Mr Riley contacted a Commission investigator after had given evidence on 14 February 2007 [319 – 320]. Mr Lee did not</p> |

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| | | make mention of this separate meeting until a Statutory Declaration he made on 22 July 2008 (which was received by the Commission on 1 August 2008) [323]. |
| 75 | Why would Mr Riley lie to Mr Lee, and tell him Australand had no made a contribution when he knew it had? The obvious answer is that Mr Riley did not want Mr Lee to know, and just as obviously, nor did Mr Lewis. That is clearly inconsistent with the proposition, stated by the proposed report, that it was "obvious" to Mr Lee that Australand had contributed. | Again, this issue was considered by the Commission at 319 – 324, and in the opinion of the Commission, " <i>the "lie" of which Mr Riley spoke to the investigator on 14 February 2007, was confirming that the proposed answer referred to at paragraph [6] of Mr Lee's statutory declaration, was correct</i> " [323]. |
| | The basis of the CCC's Misconduct Opinions | |
| 76 | Regulation 30C of the Local Government (Election) Regulations 1997 only provided for the disclosure of gifts made, or a promise (of a gift) made, during a "disclosure period", which ends on the day on which a member makes a declaration prior to taking office. Mr Lee made his declaration (which included the promise of a donation by "Port Coogee Now" (PCN) on 9 May 2008. The CCC's view was that he knew (but only "by mid-May 2008") that Australand "had made or would be required to make" a gift, but since that was <u>after</u> he had made his declaration, he was "not required by the Act or Regulations to disclose a financial interest" ([410]). | <p>The reference in the proposed report to [410] of the Commission's Report seems to be a reference to: "<i>there was no requirement by Mr Lee to disclose a financial interest</i>". In fairness, reference should also be made to other areas of the Commission's Report, which identified that the reason for this was due to a technical flaw in the financial interest disclosure provisions, for which there was an Amendment Bill before Parliament.</p> <p>The Commission's Report discussed the interaction of the <i>Local Government Act 1995</i> and the <i>Local Government (Elections) Regulations 1997</i> (the elections disclosure regime), and concluded that: "<i>There is an obvious lacuna in the legislative and regulatory regime</i>" relating to that interaction [112].</p> <p>The Commission's Report discussed the financial interest disclosure provisions of the <i>Local Government Act</i>. The Commission identified that: "<i>the interaction of the legislation and the regulations leads to the anomalous result that there is no need for a member to disclose an interest in a matter arising for consideration by council where the member has received a gift from the person who has an interest in the matter if the gift was made after the member has taken office</i>" [125].</p> <p>The Commission noted that proposed amendments in the <i>Local Government Bill 2008</i> would effectively close the gap identified by the Commission [126 – 128].</p> |
| 77 | Having concluded that there was no breach of those provisions by Mr Lee the proposed report ([415]) cites clause 3.5 of " <i>City of Cockburn Code of Conduct</i> ": | |

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| | <i>"Elected members shall ensure that there is no actual or perceived conflict of interest or incompatibility between their personal (i.e. non-financial) interests and the impartial and independent fulfilment of their civic duties. Any such interests shall be disclosed immediately before the matter is discussed and noted in the minutes of any meeting attended by individuals in their capacity as an Elected Member of Council"</i> | |
| 78 | It interprets this ([416]) as not being intended to exclude from disclosure (under the Code of Conduct) <i>"an interest of a financial nature that does not fall within the <u>financial</u> interest provisions"</i> (of the Local Government Act). That interpretation is, perhaps, arguable; but that is not what the plain words of clause 3.5 actually say. Clause 3.5 refers only to <i>"non-financial"</i> interests. | That interpretation by the Commission arises from the technical flaw in the financial interest disclosure provisions [113 – 118], of which the drafters of the City of Cockburn Code of Conduct were unlikely to have been aware. |
| 79 | The proposed report then goes on to consider some <i>"Guidelines"</i> issued by the DLGRD, which suggest that when a member is deciding whether an <i>"interest"</i> should be disclosed, <i>"it is helpful to answer the following questions"</i> : <ul style="list-style-type: none"> • <i>If you were to participate in assessment or decision making without disclosing, would you be comfortable if the public or your colleagues became aware of your association or connection with an individual or organisation?</i> • <i>Do you think there would be a later criticism of perceived undisclosed partiality if you were not to disclose?</i> | |
| 80 | These Guidelines are not, of course, legislation, or regulations. They are simply, <i>"Guidelines"</i> . | |
| 81 | The proposed report, however, makes particular reference to these Guidelines. It says (at [422]) <i>"The nature and extent of the involvement of Mr Lewis, in his capacity as a General Manager of Australand, in Mr Lee's re-election campaign, was alone certainly a circumstance affecting the perception of Mr Lee's impartiality on matters affecting Australand which came before Council. However, given all the circumstances, including that Australand made a substantial payment to Riley Mathewson in respect of Mr Lee's election campaign, there can be no doubt of a public perception that he</i> | |

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| | <i>had an interest affecting his impartiality, had the public known of the payment.</i> " (underlining added) | |
| 82 | It is not entirely clear from that passage, given the underlined words, whether the CCC is saying that even if Mr Lee was <u>not</u> aware that Australand " <i>had made, or would be required to make</i> " a substantial donation to Riley Mathewson, a failure to declare that Mr Lewis of Australand had been " <i>involved</i> " in his election campaign was a breach of clause 3.5 of the Code of Conduct. If that is the proposition, it is one which would have serious implications: any member of council would be obliged to declare, if a matter came before council affecting any of his or her past election campaign supporters, a " <i>conflict of interest</i> ". | The Commission's Report said that it was the " <i>nature and extent</i> " of Mr Lewis' involvement in Mr Lee's election campaign, not merely that he had been " <i>involved</i> ", that was " <i>a circumstance affecting the perception of Mr Lee's impartiality</i> " [422]. |
| 83 | Ultimately, however, the CCC's finding of misconduct depends on its inference that Mr Lee knew, by mid-May 2005, that Australand " <i>had made, or would be required to make a substantial (unspecified) donation to his campaign fund</i> ", and that although the failure to declare it did not breach the law as it then stood, it was a breach of clause 3.5 of the Code of Conduct, and also a "breach of discipline" which <u>could</u> constitute a disciplinary offence under the Public Sector Management Act, as defined by Section 80 of that Act. For the reasons stated previously that inference has been drawn without taking into consideration all of the relevant circumstances, and the alternative inference which is open: that Mr Lee did not know that Australand had made a contribution, but that was concealed from him. | <p>The phrase used by the Commission on stating its misconduct opinion was that Mr Lee knew that: "<i>Australand had made, or would be required to make a substantial payment to Riley Mathewson in respect of his election campaign</i>"; not "<i>donation to his campaign fund</i>" [441].</p> <p>The inference that Mr Lee knew this is drawn from the following facts:</p> <ul style="list-style-type: none"> • Mr Lee's understanding following his meeting with Mr Owens on 9 May 2005 that Riley Mathewson's charges were likely to come to \$50,000 or \$60,000; <ul style="list-style-type: none"> ○ Mr Owens was not guessing, but was in a position to know, given that he was the senior consultant employed by Riley Mathewson who was responsible for Mr Lee's campaign; ○ The meeting was held two days after the election, and, according to the Riley Mathewson activity reports, the meeting was "regarding fundraising/accounting issues"; ○ Mr Owens was unable to recall specifically what was discussed, but said "<i>it's obviously about the accounts; the cost of the campaign perhaps</i>" T 89 [246]; ○ Mr Lee's evidence of what Mr Owens said was: "<i>he was a bit worried because he figured it would be closer to 50 or 60 [thousand dollars]</i>". Mr Lee said he said to Mr Owens: "<i>Well, you've got to be joking, how can that be so?</i>" (See 60 above for a summary of Mr Lee's evidence in this regard). ○ The Commission considered that Mr Lee did not disbelieve Mr Owens, but was concerned, as demonstrated by |

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| | | <p>subsequent events, being the email that Mr Owens sent to him on the following day, and his meeting with Mr Lewis shortly thereafter;</p> <ul style="list-style-type: none"> • Mr Lee’s discussion with Mr Lewis shortly after his meeting with Mr Owens, which must be considered in light of Mr Lewis’ involvement in Mr Lee’s election campaign (demonstrated by the early email communication and the two meetings he attended); • Mr Lee’s evidence that he “<i>forgot all about it</i>” following his meeting with Mr Lewis; • Mr Lewis’ evidence of his meeting with Mr Lee in that he thought it was obvious Mr Lee was seeking his help. • The Riley Mathewson invoice for the reduced amount of \$43,500; • The further reduction by way of a “gift” from Riley Mathewson of \$21,586.83; • The two sources available to meet Riley Mathewson’s charges - Riley Mathewson and Australand – and Riley Mathewson had already reduced their charges; and • The failure of Mr Lee to make any enquiries of either Mr Riley or Mr Lewis at the relevant time as to whether there had been any contribution by Australand, notwithstanding all of the circumstances of which he was aware (including the nature and extent of Mr Lewis’ involvement in his election campaign), and that he was the person who held the obligation to disclose; <p>Although the Commission determined that “<i>there was no requirement for Mr Lee to declare a financial interest</i>” [410], it should be remembered that that is in the context of the technical flaw in the financial interest disclosure regime, expressed by the Commission as follows:</p> <p><i>“the interaction of the legislation and the regulations leads to the anomalous result that there is no need for a member to disclose an interest in a matter arising for consideration by council where the member has received a gift from the person who has an interest in the matter if the gift was made <u>after</u> the member has taken office”</i> [125].</p> <p>For all of these reasons, the inference that Mr Lee knew that: “<i>Australand</i></p> |

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| | | <p><i>had made, or would be required to make a substantial payment to Riley Mathewson in respect of his election campaign” was more probable than the alternative inference which the PI says is [reasonably] open: “Mr Lee did not know that Australand had made a contribution, but that was concealed from him”.</i></p> <p>The approach taken by the Commission in formulating its opinion and in its Parliamentary Report was to present and consider all of the relevant information, and to address that information, <u>as it arose</u>, (in the context of the whole of the relevant information). That is the structure of the Parliamentary Report. The Parliamentary Report did not simply present the information as a set of facts; <u>then</u> consider what inferences were reasonably open on that information. Rather, any possible alternative inferences reasonably open were considered <u>as part of</u> a consideration of the relevant information, throughout the report.</p> <p>In considering that information, the Commission formed opinions in relation to it and its particular evidentiary value. All of the relevant information was considered, with some information given more or less weight, with the result that, in the Commission’s opinion, certain circumstances were more probable than others. From a consideration of those circumstances as a whole, and taking into account the Commission’s opinions as to some circumstances being more probable than others, the Commission considered that the inference drawn was the only inference reasonably open.</p> |

ⁱ Riley Mathewson Public Relations Activity Report, page 6 (E10963), *loc cit*.

ⁱⁱ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p.205, *loc cit*.