

[REDACTED]  
[REDACTED]  
[REDACTED]  
11 May 2020

Committee Secretary

Legal & Community Safety Committee

Parliament House

George Street

Brisbane QLD 4000

Dear Sir/Madam

Inquiry into the Electoral Commission of Queensland's online publication of the preliminary and formal counts of the votes cast in the 2020 quadrennial local government election and the Bundamba and Currumbin state by-elections held on 28 March 2020.

My submission concerns events which occurred prior to the Local Government election for a mayor and 10 divisional councillors for Fraser Coast Regional Council on 28 March 2020.

There had been much discussion, including on social media about the content of How-to-Vote (HTV) cards and information from returning officers. At least two candidates had produced HTV cards which only identified themselves as the only candidate to vote for and to put the numeral one against their name on the ballot paper. The HTV cards were approved then they were not approved by returning officers

I found that all the information was verbal and there had been nothing put into writing either by the returning officers or from the Electoral Commission. To obtain clarity on the matter I wrote an email direct to the Electoral Commissioner Mr Pat Vidgen to his personal email address on 11 March 2020. The text was as follows:

*"Dear Mr Vidgen,*

*I am a concerned voter living in the Fraser Coast Regional Council area.*

*There has been much discussion about the information coming from returning officers concerning the content of How-to-Vote (HTV) cards. It has been stated that a candidate cannot have a HTV card with just the number 1 against his/her name. It has been stated by returning officers that a candidate has to list preferences, even if they don't want to, for the HTV card to be approved by ECQ.*

*None of this information has been put into writing and cannot be validated.*

*I refer you to Section 83(4) Local Government Electoral Act 2011 "An elector is only required to record a first preference vote for 1 or more, but not necessary all of the candidates"*

*I also refer you to the to the dictionary in the Act, How-to-vote card mean:*

*(a) (ii) lists the names of any or all of the candidates for the election with a number indicating an order of voting preferences against the names of any or all of the candidates.*

*The Local Government Electoral Act 2011 is quite explicit about HTV Cards for Optional Preferential voting.*

*I am sure that you will be aware of the fact that if a returning officer or your commission provide incorrect information to candidates that would be grounds to take the matter to the Court of Disputed Returns.*

*Will you please confirm in writing by return, your adjudication on how a candidate can or cannot preference his HTV card."*

On Wednesday 18 March 2020 I received the following response:

*"Dear Mr Barrowcliffe*

*Thank you for your email regarding how-to-vote cards.*

*The Electoral Commission of Queensland (ECQ) has recently updated and enhanced information and examples available to candidates on its website in [Fact Sheet 8](#) about how-to-vote cards which you may find useful.*

*Kind regards*

*Executive Officer"*

As the response was from an un-named person and not address the matters, I raised in my email I wrote another email direct to email address of the Electoral Commissioner Mr Pat Vidgen. It read

*Dear Mr Vidgen,*

*This reply to my email sent directly to you on 11 March 2020 does not address the matters which I raised.*

*The reply raises serious questions as to the competency of your commission, your staff and information provided.*

*The content of "Fact Sheet 8" which I was given a link to in the email was titled "How to Vote Cards". The content of "Fact Sheet 8" on the ECQ web site is titled "Applying for and making a decision", two entirely different subjects. As a matter of record, I have taken captures of the two different fact sheets.*

*The voting process in local Government elections where there are divided single seat divisions is OPTIONAL PREFERENTIAL VOTING, as is the case with Fraser Coast Regional Council.*

*Section 83(4) Local Government Electoral Act 2011 "An elector is only required to record a first preference vote for 1 or more, but not necessary all of the candidates"*

the dictionary in the Act states, How-to-vote card mean:

*(a) (ii) lists the names of any or all of the candidates for the election with a number indicating an order of voting preferences against the names of any or all of the candidates.*

*An elector has the option of recording one vote, a preference of some of the candidates or preferences of all of the candidates.*

*A candidate also has the option of indicating on a HTV card how to record a single vote, a preference of some of the candidates or a preference for all of the candidates.*

*The dictionary meaning of the word ANY is one, in whatever quantity or number great or small, a great or unlimited amount.*

*The dictionary meaning of the word ALL is a large number of many, a whole or totality of things or quantities, every, the entire number without exception.*

*The ECQ has approved of HTV cards which have only indicated to vote for one candidate. The ECQ has withdrawn that approval which is contrary to the provisions of the Local Government Electoral Act 2011.*

*The withdrawal of a HTV card which indicates only one name is also contrary to the information contained in Fact Sheet 8, How to vote cards, which states "lists the names of any or all candidates with numbers indicating an order of voting preference against the names of any or all of the candidates;"*

*In the interests of accuracy and clarity the information on Fact Sheet 8 How to vote cards, should read "lists the name of all of the candidates with a number against one of the candidates or with numbers indication an order of voting preference against any or all of the candidates".*

*I look forward to your response and rectification of the misinformation given and published by the ECQ.*

On 23 March 2020 at 7.13pm I received a phone call from a mobile phone number. The person said he was from the Electoral Commission and said he was calling me about a complaint I had made to the Electoral Commission. I replied that I had not made a complaint, but I had written two emails to the Electoral Commissioner requesting how a candidate can or cannot preference his HTV card and that he has failed to respond to them. The caller at first would not give me his name but on insisting he reluctantly gave me his name as [REDACTED]. When I asked for his surname, so I had a reference name for any further communication. He said he was the only person named [REDACTED]. I then asked him what his position was, and he said he was the Team Leader. I then insisted again that he gave me his surname. He eventually did and gave it as [REDACTED]. His demeanor was overbearing and condescending throughout the telephone conversation.

A discussion ensued whether a candidate could nominate one person or as a returning officer had stated that a HTV card had to contain a number against the name of all candidates. I stated that the local government election was optional preferential voting and that a candidate has the option to only nominate him/herself on the HTV. Optional being the operative word. ██████ stated that a HTV card had to contain a number against the name of all of the candidates. I challenged him on that statement and referenced the dictionary meaning in the Local Government Electoral Act 2011. He stated that the Electoral Commission had had a legal opinion that all candidates had to be number on a HTV card. I still disagreed with him and asked for a copy of the legal opinion. He refused to provide me with a copy legal opinion. I told him that I was most sceptical that the Electoral Commission had such an opinion. He replied it is all in the act. I then requested that he provide me in writing the relevant sections of the act.

The conversation went for 18 minutes and 1 second and I decided to end the conversation as nothing was being achieved with the attitude adopted by ██████. ██████ later sent me an email. The text of the email was:

*"Hi Dave,*

*Here's the Act reference for you.*

*It's in the Definitions part of the Local Government Electoral Act 2011 in Schedule 2 on page 176 (of mine anyway).*

*Cheers*

████████

After my phone call from ██████ I spoke with two persons who had contacted the Electoral Commission about the HTV Cards and they both stated that they had spoken to a person who only gave his name as ██████ and that he had a legal opinion that the HTV cards containing only a number against the name of only one candidate was not in compliance with the Local Government Electoral Act 2011.

The Local Government Electoral Act 2011 states the following, and the pertinent parts are highlighted in red:

**83 How electors must record a vote on a ballot**

***paper—optional-preferential voting***

(1) *This section applies if the system of voting at an election is optional-preferential voting.*

(2) *An elector must record a vote in accordance with—*

(a) *if the elector votes using electronically assisted voting—the procedures approved under section 75A (3);*

*or*

(b) *otherwise—subsection (3) or (4).*

(3) *An elector records a vote on a ballot paper by—*

(a) *to record a first-preference vote—writing on the ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of the candidate for whom the elector wishes to cast a first-preference vote; and*

(b) *to record a preference vote—writing the numerals 2, 3, and so on (in regular arithmetical sequence by intervals of 1 whole numeral) in other squares to record the order of the elector's preferences for the other candidates.*

(4) *An elector is only required to record a first-preference vote on a ballot paper but may also record preference votes for 1 or more, but not necessarily all, of the candidates.*

These definitions are contained in the dictionary of the act

***first-preference vote***, *recorded on a ballot paper, means the number 1, or a tick or cross, written in a square opposite the name of a candidate on the ballot paper.*

***election material*** *means anything able to, or intended to—*

(a) *influence an elector about voting at an election; or*

*(b) affect the result of an election.*

**how-to-vote card means—**

*(a) a card, handbill or pamphlet, relating to an election for which optional-preferential voting applies, that—*

*(i) is or includes—*

*(A) a representation of a ballot paper or part of a ballot paper; or*

*(B) something apparently intended to represent a ballot paper or part of a ballot paper; or*

*(ii) lists the names of any or all of the candidates for the election with a number indicating an order of voting preference against the names of any or all of the candidates; or*

*(iii) otherwise directs or encourages the casting of preference votes, other than first-preference votes, in a particular way;*

By definition a HTV card is election material as it “*means anything able to, or intended to—*

*(a) influence an elector about voting at an election; or*

*(b) affect the result of an election.”*

As the voting is optional preferential voting, a candidate has the option to *list the names of ANY or ALL of the candidates for*

*the election with a number indicating an order of*

*voting preference against the names of ANY or ALL of the candidates;*

I contend that the act and the definitions are clear and unambiguous, and that any candidate has the legislative right to choose the way he or she publishes their HTV card to influence the electors. Furthermore, for a candidate to be directed by any member of the staff of the Electoral Commission to list an order of preferences of the candidates on the HTV card is tantamount to turning optional preference voting into full preference voting.

The actions of the Electoral Commissioner Mr Pat Vidgen, the Team Leader [REDACTED] and the Returning Officers raises serious concerns as to their conduct and the

failure of them to ensure that the Local Government Electoral Act 2011 is fully complied with. The written responses demonstrated nothing more than one of obfuscation.

Another question which has to be asked of the Electoral Commissioner, was it only within the local government area of Fraser Coast Regional Council area that the Returning Officers and the Electoral Commission made such determinations about HTV cards or was it throughout Queensland. If it was only in the Fraser Coast Regional Council area why was that so.

The committee has an obligation to closely scrutinise the conduct of the Electoral Commissioner and his staff and should require the production of the legal opinion referred to by [REDACTED].

Yours faithfully

Dave Barrowcliffe

**Dave Barrowcliffe**

**Mobile:** [REDACTED]

**Email:** [REDACTED]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** FW: 140 - ECQ-42365 How to vote cards for Preferential Voting

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Dear Mr Vidgen,

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The reply raises serious questions as to the competency of your commission, your staff and information provided.

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I look forward to your response and rectification of the misinformation given and published by the ECQ.

Regards

Dave Barrowcliffe

**Dave Barrowcliffe**

**Phone:** [REDACTED]

**Mobile:** [REDACTED]

**Email:** [REDACTED]

---

**From:** [REDACTED]



**Sent:** Wednesday, 18 March 2020 10:50 AM  
**To:** [REDACTED]  
**Subject:** RE: 140 - ECQ-42365 How to vote cards for Preferential Voting

Dear Mr Barrowcliffe

Thank you for your email regarding how-to-vote cards.

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Kind regards  
**Executive Officer**

 1300 881 665

 [REDACTED]

 L20/1 Eagle Street, Brisbane, Queensland, 4000



[ecq.qld.gov.au](http://ecq.qld.gov.au)

banner

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**From:** [REDACTED]  
**Sent:** Wednesday, 11 March 2020 3:06 PM  
**To:** [REDACTED]  
**Subject:** How to vote cards for Preferential Voting

Dear Mr Vidgen,

I am a concerned voter living in the Fraser Coast Regional Council area.

There has been much discussion about the information coming from returning officers concerning the content of How-to-Vote (HTV) cards. It has been stated that a candidate cannot have a HTV card with just the number 1 against his/her name. It has been stated by returning officers that a candidate has to list preferences, even if they don't want to, for the HTV card to be approved by ECQ.

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The Local Government Electoral Act 2011 is quite explicit about HTV Cards for Optional Preferential voting.

I am sure that you will be aware of the fact that if a returning officer or your commission provide incorrect information to candidates that would be grounds to take the matter to the Court of Disputed Returns.

Will you please confirm in writing by return, your adjudication on how a candidate can or cannot preference his HTV card.

Regards

Dave Barrowcliffe

**Dave Barrowcliffe**

**Phone:** [REDACTED]

**Mobile:** [REDACTED]

**Email:** [REDACTED]

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** How to vote cards for Preferential Voting

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Regards

Dave Barrowcliffe

**Dave Barrowcliffe**

**Phone:** [REDACTED]

**Mobile:** [REDACTED]

**Email:** [REDACTED]

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** How to Vote cards  
**Date:** Monday, 23 March 2020 7:42:03 PM

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Hi Dave,

Here's the Act reference for you.

It's in the Definitions part of the Local Government Electoral Act 2011 in Schedule 2 on page 176 (of mine anyway).

Cheers

[REDACTED]  
Team Leader  
Elections



[REDACTED] L20/1 Eagle Street, Brisbane, Queensland, 4000

[ecq.qld.gov.au](http://ecq.qld.gov.au)

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