

WHISTLEBLOWERS ACTION GROUP (QUEENSLAND)

Phone: [REDACTED]

14 October 2016

Commissioner
Crime and Corruption Commission
GPO Box 3123
BRISBANE Q 4001

Dear Commissioner MacSporran

RE: MAKING ALLEGATIONS OF CORRUPT CONDUCT PUBLIC – IS IT IN THE PUBLIC INBTEREST

I refer to your invitation made at the Public Forum on the subject proposal, for additional submissions, and thank you for that invitation.

Further material is now offered based on the opening remarks made by myself, and questions put to me and other witnesses.

The Position

Queensland Whistleblowers Action Group states that publicising allegations of corruption is in the public interest. QWAG adds further comment on some cases put to persons at the forum.

The context for the QWAG position, as stated to the Parliamentary Committee on Legal and Constitutional Affairs two years ago, emanates from QWAG's summary concern that the people of Queensland have a crime and corruption watchdog that is the subject of a credible and accumulating body of allegations and prima facie cases that the CMC/CJC/QCC/CCC (the Four Commissions) may have engaged in:

actions and omissions to act, at various times and or concurrent times, that did, beyond a reasonable doubt, knowingly advantage another by not applying the law in an honest, consistent and accurate manner,
and that this may have occurred particularly with respect to

- 1. sections of the Criminal Code dealing with the disposal, destruction and manufacture of evidence, and,*
- 2. sections of whistleblower protection legislation dealing with criminal detriments to whistleblowers, including punitive transfers and termination*

by public sector agencies and the Ministry.

The Problem

The Four Commissions have been the problem, in our view, regarding the development of corruption in public administration. Qld Whistleblowers propose that twenty years of allegedly tolerated and defended corruption within the Ministry and its agencies has undermined our institutions, reduced the capability of our public service to levels that threaten the welfare of the community, and generated waste beyond the ability of the State to fund. It will be from this malady of Ministry that future allegations of corruption will emerge.

The Four Commissions who have failed, to QWAG's assessment, to address corruption when it arose in the past will be conflicted in dealing with disclosures of similar fact and or same source corruption that will arise in the future.

The Proposals

QWAG has proposed that this deteriorating situation be addressed by independent investigation of the existing allegations against the Four Commissions, the Legal Services Commission and other watchdog arms of the Executive. QWAG has also recommended doing away with the CCC, and strongly advocates the establishment of a whistleblower protection authority. The possibility that the CCC is putting before us now, however, is that Queensland give more power to the CCC to suppress public knowledge of its performances in its investigatory role, and trust the CCC to use such powers properly.

Perspective - Trust and Regulatory Capture are the issues, Law and Justice in public administration is what is at risk

Trust. The Four Commissions are already the subject of allegations by whistleblowers of dishonesty, tricks and breaches of natural justice regarding actions by the Four Commissions when investigations have been undertaken by the Four Commissions on a confidential basis.

Thus a whistleblower agreed to keep an investigation into members of the judiciary confidential, where the Four Commissions undertook in writing to use a lawyer from another state to do the inquiry. Without telling the whistleblower, the Four Commissions then employed a member of the Queensland judiciary to do the inquiry.

Thus the Four Commissions, allegedly, received allegations against a police detective, and completed inquiry into those allegations without the need to tell the detective of the allegations nor to interview the detective. The Four Commissions allegedly then tricked the Parliament by reporting to Parliament that natural justice had been afforded the police detective.

Regulatory Capture. Further, the Four Commissions have been the subject of allegations of having been captured by the agencies under the Four Commissions purview, agencies who would in effect become the recipients of these new powers. An

example of this is the “coordinating of media responses” by the Four Commissions with an educational institution that the Four Commissions was investigating. This highly questionable investigative process was excused by the Four Commissions as “normal protocol”.

Thus, with nearly all allegations of misconduct against agencies or their officers being referred by the Four Commissions to the agencies to investigate, the umbrella of the suppression orders will be delivered to the agencies, agencies like police, like health, like racing.

When agencies allegedly reprise the whistleblower (a crime and corruption) who seeks redress through the agency grievance procedures for those reprisals, the Four Commissions allegedly then regard the crime as a workplace grievance, and leave it to the agency to determine the criminality of the agencies actions.

Public Administration being subject to Law. Finally, the proposal will be a further displacement of the justice system from public administration since the advent of the CJC/CMC/QCC/CCC.

Already, the Four Commissions is subject to allegations that it has displaced High Court precedents on destruction of documents with the Four Commission's own rogue legal opinion, and displaced protections given to persons under Queensland law with Four Commissions rights, allegedly sanctioned by the Four Commissions, given to agencies to engage in the criminal non-enforcement of the same laws.

Now it is proposed to displace open investigations, where the accused is given the presumption of innocence, by suppression orders where agencies are presumed to have good intentions. Open investigations encourage potential witnesses to participate, and attract community concern where similar fact allegations are unaddressed and accumulating. Open investigations discourage the tricks in processes that the Four Commissions allegedly use to defeat whistleblowers and their disclosures, and to defeat the calls of the community for proper investigations.

Your panel at the public forum requested participants to address, or showed interest in the following scenarios, amongst others:

1. The vexatious politician and the defamation laws
2. The sensationalised or politicised media reporting
3. The loss of reputation of the accused, with prominence given to the videoing of alleged police brutality
4. The warning given to wrongdoers, providing the opportunity for evidence to be destroyed
5. Suppression order lasting for a set period of time (six months was described) or until a particular event occurred (the decision to prosecute or not to prosecute, or other)
6. What if Queensland had a crime commission that could be trusted.

7. What about putting resources into prevention or corruption, as with programs that the Four Commissions already are developing

The vexatious politician and defamation laws. The position was put of politicians making unfounded claims about opponents, that some of the mud will stick, and that defamation laws are very difficult and time consuming for the aggrieved person to achieve redress.

QWAG submits that Queensland recently went through an election where a principal candidate (no names at your request) was subjected to a series of allegations found by the Four Commissions to be baseless. In this case, the person won in a landslide, reducing the size of the side that made the allegations to half a football team. The point is that the electorate is educated about the standards and the practices of its politicians. Any allegation made reflects upon the accuser and the accused in proportion to the credibility of both parties, but this judgment is not made by the public until some reasonable process has been applied to the allegations. The public practice the wisdom of the presumption of innocence, and is even suspicious of politicized processes that are applied to allegations serving politicized allegations of corruption.

The notion that the rights to free speech and to a free press should be surrendered for the protection of the reputations of politicians appears to be so out of balance as to be a nonsense. The misbehavior of politicians and the impact of that misbehavior on the workings of the Four Commissions has been tackled universally within other jurisdictions, without removal of the freedoms of speech and of the press.

The notion of overcoming any shortcomings in our defamation laws by surrendering free speech and freedom of the press is equally out of balance and misdirected. Reforming defamation laws would appear to be the first place for investigation before surrendering these freedoms.

Sensationalised or politicised media reporting. The response of the public, to hold to the adage of presumption of innocence, remains whether the uninvestigated allegation comes through the media from a politician or from the media directly. The media too can be politicised, and a major daily newspaper and a government funded television outlet is regularly accused of such alleged bias. Radio personalities carry similar reputations. The population is thus experienced and educated about the reliability of the media in general and of certain media sources in particular. This experience has only reinforced the benefits of following the adage of the presumption of innocence.

‘..... Watch’ programs and ‘Facts Checking’ programs are derived from the expectation that politicians and media outlets commonly mislead the public

The loss of reputation of the accused, with prominence given to the videoing of alleged police brutality. The Four Commissions are conflicted in considering this and other issues relating to corruption in the police force. Events have raised concerns that the police force is no better than it was before the Fitzgerald Inquiry, and a major component

of that perception has been videoed evidence of police behavior. Both the community and honest police persons appear to be demanding that police wear body videos so as to be able to show what has happened in events involving allegations of police brutality. The notion that we as a community can record police actions on body videos and fail to release such videos in the face of allegations of deaths, hospitalisation and brutalization of members of the public by police belongs now to history. The notion that the Four Commissions can prosecute members of the public or whistleblowers for sending videos of police action through social media, while police alleged to have engaged in such activity escape investigation and / or are allowed to destroy video evidence of their actions may be alarming to those who remember the profile of the police force before the disclosures by Col Dillon to the Fitzgerald Inquiry. The publishing of police videos of alleged police brutality is now part of the accountability system that the public demand for the police forces, in Queensland, in Australia and in other democracies around the world.

The warning given to wrongdoers, providing the opportunity for evidence to be destroyed. The expression of such a concern, coming from the Four Commissions which is itself subject to so many allegations of failures to act where agencies or agency officers have allegedly destroyed or disposed of documents sought for evidence, suggests that this public forum process may be a game or other distortion that is not being taken seriously by its initiator. QWAG's experience is that government agencies allegedly destroy documents sought by whistleblowers in support of their public interest disclosure as a matter of routine procedure. QWAG is aware of one effort where the police, upon seeking to investigate an allegation that an agency had destroyed a video sought for litigation already on foot, were told by the lawyers for the agency that no officer from the agency would talk to the police. The prevalence of this type of crime in the public sector, if allegations are true, has already escaped the influence of the Four Commissions which are compromised by the allegations against the Four Commissions over the Heiner and Rainbow matters.

The notion that the protection of documents is a public good that the Four Commissions can save with this proposal to suppress public disclosure of alleged corruption is, QWAG submits, a blatant pretense attempting to deny that this public good may have already been surrendered to the agencies by the Four Commissions.

Suppression order lasting for a set period of time. The suggestion was made that the suppression order could be imposed for a set period (six months was described) or until a particular event occurred (the decision to prosecute or not to prosecute, or other). The problem for whistleblowers with this scheme is that they will have been reprised within days or weeks, the evidence will have been affected, and the options to counter these criminal acts through public disclosures of these actions will have been lost if public disclosures are made unlawful.

QWAG submits that the secret to fighting corruption is to ensure that the whistleblower survives. If the whistleblower survives, then the whistleblower's public interest disclosure survives too. If the disclosure survives, then the pressure upon the Four

Commissions, and upon other watchdog authorities such as the Ombudsman, to address the disclosed corruption, is maintained, usually with the assistance of the media or social media. If the whistleblower does not survive, the disclosure does not survive, and the corruption continues and builds, with the Four Commission and other watchdog bodies such as the Ombudsman now compromised if not captured by the corruption for not addressing the corruption when it was first disclosed.

The scenario where Queensland had a crime commission that could be trusted. The QWAG position, opposing the suppression of public disclosures of corruption allegations (with exceptions such as where children are involved or with national security), would not change if the Four Commissions had the trust of the members of QWAG to act honestly in the use of these powers. QWAG submits that only open accountability ensures that watchdog regulators remain trustworthy, and that a move to powers that would enable a watchdog regulator like a crime commission to act in secret would only lead to a loss of trust ... *absolute power corrupts absolutely*. One concern of QWAG is that, by participating in this public forum, QWAG may be giving legitimacy to the proposal from the Four Commissions which, on summary reflection, may be proposing new powers for itself with arguments made only of straw

Putting Resources into Prevention. For a crime commission, or other watchdog regulator such as the Ombudsman, to engage in prevention has the danger of putting the watchdog into conflict with its principal role fighting the wrongdoing. If the watchdog has engaged in programs within agencies to prevent corruption, the disclosure of corruption can be seen to be a failure of the watchdog's prevention program. A prime example of this may have been with the Commonwealth Ombudsman and wrongdoing in Defence. The conflicted position, when it arose for the Ombudsman's Office, was 'resolved' by the Ombudsman's Office telling the current victims of wrongdoing in Defence that the Ombudsman's Office was taking a longer view regarding wrongdoing in Defence, and was not going to put that at risk by helping a Defence victim subjected to existing wrongdoing. The Ombudsman's Office went public in the media and in academic papers and Senate Committee hearings with its high opinion of the improved justice procedures in Defence. There have been ten inquiries into military justice issues in ten years since this conflicted position was adopted by the Commonwealth Ombudsman's Office, and the Federal Government is resisting repeated calls for a Royal Commission into the Military Justice System.

The prevention of corruption is a role for the public service agencies and the Public Service Commission. Some watchdog body needs to respond, however, to the hard end of the corruption challenge, which is where prevention efforts have failed and corruption has been disclosed.

Yours sincerely

G McMAHON
President