

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES



Crime and Corruption Commission
Policy and Research
GPO Box 3123 Brisbane Qld 4001
Email: publicisingallegations@ccc.qld.gov.au

Dear Sir/Madam

Publicising Allegations

We refer to the discussion paper on the publication of allegations of corrupt conduct made to the Crime and Corruption Commission.

Kindly accept this submission on behalf of the QCCL.

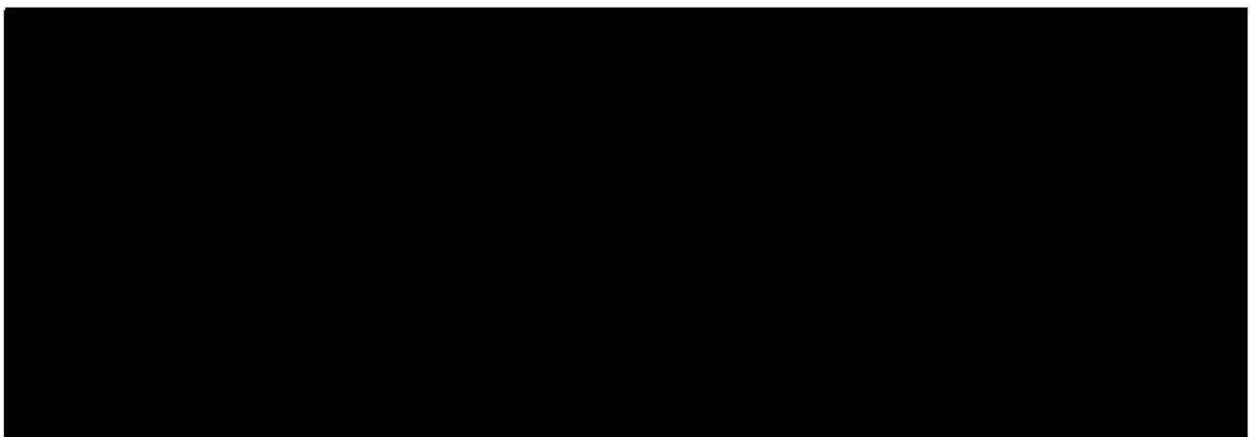
In a situation where there is an allegation made against a person of misconduct or a criminal nature there are usually four stages: the allegation, the investigation, the charge and the hearing.

The right to free speech and the right to a fair trial are two of the most cherished values in a civilised society. However, they can and do come into conflict. Traditionally under our legal system this conflict has been resolved by effectively prohibiting the disclosure of allegations against a person until they have reached a stage where there is sufficient evidence to support a charge. At that point limited publicity is permitted. And then full publicity occurs at the time of trial. We support that traditional arrangement.

Two reasons are traditionally given for this approach. The first is to protect the reputation of persons. Secondly to protect their right to a fair trial.

In any system frivolous or malicious allegations are always likely. People should not have their reputations destroyed until it has been established that there is sufficient evidence to put the case before a court. Once the matter moves into the trial stage then the long-standing principle of open courts applies.

For most people the law of defamation is not an adequate protection in these situations. It is extremely expensive and time consuming.



The second factor is that everyone has right to a fair trial. There is very clear evidence of the potential prejudicial effect that the publication of at least certain facts about a person may have in relation to their prospects of a fair trial. This is particularly true of evidence not admissible at a trial.

There is also a further practical consideration which is noted in the discussion paper. Publicising the fact that someone is a suspect in an investigation may also compromise the effectiveness of that investigation.

Callinan and Aroney in their *Review of the Crime And Misconduct Act 2001*¹ at page 91 noted "Long experience in the law tells us that the publication of a name of a person under investigation very rarely produces any new or useful information or witnesses. In any event, such a witness can still come forward after charge. We think that this is particularly so in relation to official misconduct because in almost all such cases all or most of the relevant witnesses and evidence are likely to be known or accessible."

We would support an amendment to our legislation along the lines of section 56 of the South Australian *Independent Commission Against Corruption Act* as discussed by Callinan and Aroney on pages 107 to 109 of their report.

We trust this is of assistance to you in your deliberations.

Yours faithfully



¹ Most of this report is deeply flawed. This is the only aspect of it with which we agree