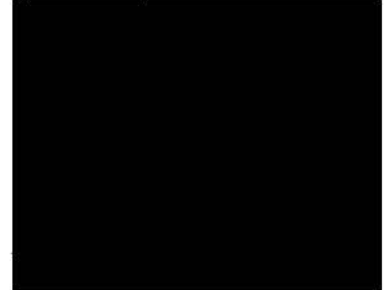


Your reference

Our reference



Ipswich City Council



Mr AJ MacSporran QC
Chairperson
Crime and Corruption Commission
GPO Box 3123
Brisbane QLD 4001

30 June 2016

Dear Mr MacSporran QC

Ipswich City Council Submission in response to the Discussion Paper on Making Allegations of Corrupt Conduct Public

Thank you for your letter dated 1 June 2016 inviting the Ipswich City Council (ICC) to make a submission to the Crime and Corruption Commission (CCC) regarding the Discussion Paper on Making Allegations of Corrupt Conduct Public. This is an issue of significant importance to the local government sector and we are pleased to provide you with the following comments.

1. Summary

- 1.1 The ICC is of the view that allegations or information relating to corrupt conduct should not be allowed to be made public until the CCC has undertaken an investigation and determined whether or not the complaint has merit.
- 1.2 This is because the dissemination of any information about a complaint that identifies an individual has the potential to cause irreparable damage to both the reputation of the person the subject of the complaint and any persons making the complaint. It also may jeopardise any ongoing investigation by either the CCC, or the relevant agency if the matter is referred back by the CCC.

2. The Role of the Crime and Conduct Commission

- 2.1 The CCC has the primary function of raising standards of integrity and conduct in units of public administration and ensuring that complaints about corruption are dealt with in an appropriate way. The *Crime and Corruption Act 2001 (Qld)* (CC Act) states that the public interest is one of the overarching principles that is to guide the performance of the CCC's corruption functions.

2.2 The ICC recognises that an appropriate balance needs to be struck between the public interest in exposing corruption in the public sector and the public interest in avoiding prejudice to individual rights (including the right to privacy, a fair trial and to not have one's reputation unnecessarily damaged). The ICC is of the view that the potential adverse effects of making allegations of corrupt conduct public outweigh any arguments in favour of transparency in the handling of complaints and investigations.

3. Public Interest Considerations

3.1 This submission focuses on the public interest considerations against the disclosure of allegations or information relating to corrupt conduct before the CCC has made a determination that there has been corrupt conduct. The following factors weigh in favour of keeping information relating to complaints confidential:

- (a) the protection of the reputation of the person who is the subject of the complaint, which may be irreparably damaged once the allegations are made public;
- (b) where the person against whom the allegations of corrupt conduct are made is a politician there is the potential for prejudice to the political process, including as regards the election of public officials; and
- (c) the safeguarding of the processes of relevant prosecuting bodies and an accused person's right to a fair trial.

4. Premature disclosure of complaints can cause irreparable damage to reputations

4.1 The existence of a complaint being made to the CCC, or the fact that the CCC is investigating a matter, is frequently reported in the press. However, as the South Australian Attorney-General, John Rau has previously observed, more often than not, investigations produce unreliable or blatantly false leads and these statements can cause damage to the reputation of persons the subject of an investigation.¹

4.2 Indeed, the High Court has observed that a mere statement that a person is under investigation together with the reporting of suspicious circumstances may be enough for the public to draw an inference of guilt.² This is the very reason why the rules of natural justice³ require that where a person's reputation could be affected by the outcome of an administrative investigation, whether personal, business or commercial, that person must be given an opportunity to respond to any adverse material. The publication of information relating to a complaint that has been made to the CCC, before a person has had an opportunity to respond,

¹ John Rau, "No media feeding frenzy for SA's Independent Commissioner Against Corruption", *The Advertiser*, 22 November 2012.

² See *Mirror Newspapers Ltd v Harrison* (1982) 149 CLR 293 and *Favell v Queensland Newspapers Pty Ltd* (2005) 79 ALJR 1716.

³ See in particular the matter of *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564.

runs counter to the fundamental principles of natural justice and has the potential to cause irreparable damage to the person concerned, no matter what the outcome of the investigation ultimately is.

- 4.3 This is because, in the digital media age, a bad news story about a well known or public figure can go viral. Even if the person is ultimately cleared, such an outcome may arise months down the track and the reporting of that development inevitably will not receive the same level of attention. Any reputational damage by the early reporting of corrupt conduct allegations is therefore very likely to not be addressed in the public arena.
- 4.4 It was for these reasons that the South Australian Government enacted the *Independent Commissioner Against Corruption Act 2012 (SA)* which, unlike the *Crime and Corruption Act 2001 (Qld) (CC Act)*, includes a number of provisions which deal with public statements and the publication of information and evidence. For example, section 56 makes it an offence for any person to, without authorisation, publish information which might enable persons associated with a complaint or investigation to be identified.
- 4.5 The ICC is of the view that the Queensland Act should be amended to include a similar provision to ensure that investigations into alleged corrupt conduct by the CCC will be conducted in private. This is because the premature and unnecessary publication of information concerning a complaint or investigation may, if the complaint is not made out or is in fact mischievous, will inevitably cause prejudice to the reputation of a person which in practice cannot easily be remedied.
- 4.6 Section 177 of the CC Act provides that generally, a hearing is not open to the public unless the CCC considers it to be in the public interest. Confidentiality obligations are also imposed upon relevant CCC officers with respect to information that comes within their knowledge (section 213 and 214 of the CC Act). However, as it is currently drafted, there is nothing in the CC Act to generally prevent making public allegations of corrupt conduct.
- 4.7 It is also very important that the identity of the informant or 'whistle-blower' is kept confidential in order to facilitate and encourage public interest disclosures of wrongdoing in the public sector. This is an express object of the *Public Interest Disclosure Act 2010 (Qld) (PID Act)*, which also seeks to protect whistle-blowers from reprisals. Section 65 of the PID Act states that a person must not intentionally or recklessly disclose confidential information concerning a public interest disclosure (including the identity of the person who made the PID and the person against whom the PID has been made) which a person gains because of their involvement in the administration of the PID Act. It would be consistent with the intent behind these provisions for restrictions to also be placed on the making public of information relating to CCC investigations, to protect both the whistleblower and the person the subject of the complaint.

5. Premature disclosure of complaints can damage the political process

5.1 The ICC also believes that the potential for inappropriate or unfounded comments to be used in the press for political advantage is a central concern. For example, in 2006 the Crime and Misconduct Committee (CMC) reported concerns about false and misleading comments made to the media by some candidates during the 2004 Gold Coast City Council election.⁴ The CMC found that this conduct corrupted the integrity of the electoral process. This concern was again highlighted in 2012 following the Queensland state election in which numerous allegations were referred to the CMC relating to candidates.⁵

5.2 Professor Charles Sampford has submitted that public reporting of complaints to the CCC should have no place in Queensland politics and that a reckless disclosure of a complaint should render the discloser open to an action in defamation with damages.⁶

6. Premature disclosure of complaints can damage subsequent prosecutions and a person's right to a fair trial

6.1 Finally, it is important to note that the CCC is an investigative body whose functions depend upon its ability to, amongst other things, compel the production of documents, compel a witness to give evidence, obtain search warrants, seize property and gather intelligence. The publication of complaints has the potential to adversely affect the ability of the CCC to exercise its investigatory powers and make appropriate referrals to prosecuting agencies.

6.2 As Messrs Callinan QC and Aroney highlighted in their report, the publication of the identity of a person under investigation for official misconduct very rarely produces any useful information or witnesses.⁷

6.3 Professor Charles Sampford has also stated that:⁸

If a complainant really believes that another may be doing something wrong, the last thing they should contemplate is alerting the alleged wrongdoer and thereby giving the latter an opportunity to destroy evidence, coerce potential witnesses, or concoct and share stories

⁴ Crime and Misconduct Commission, *Independence, Influence and Integrity in Local Government: A CMC Inquiry into the 2004 Gold Coast city council election*, CMC 2006 available at <http://www.ccc.qld.gov.au/research-and-publications/browse-by-topic-1/local-government>

⁵ Parliamentary Crime and Misconduct Committee, *Three yearly review of the Crime and Misconduct Commission, report no.86, Legislative Assembly of Queensland*, May 2012, at pp. 76 to 78 available at <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2012/5412T12.pdf>.

⁶ Hon Ian Callinan & Professor Nicholas Aroney, *Review of the Crime and Misconduct Act and related matters: report of the Independent Advisory Panel*, Crown Law, Queensland Government, 28 March 2013 at pp.75.

⁷ Hon Ian Callinan & Professor Nicholas Aroney, *Review of the Crime and Misconduct Act and related matters: report of the Independent Advisory Panel*, Crown Law, Queensland Government, 28 March 2013 at pp.91.

⁸ Professor Charles Sampford, Submission to the Parliamentary Crime and Corruption Committee on the Crime and Corruption Commission available at <https://www.parliament.qld.gov.au/documents/committees/PCCC/2015/five-year-review/submissions/015.pdf>


among potential witnesses. Such publicity reduces the chance of the alleged wrongdoer being caught.

If a complainant makes the complaint public and thereby reduces the likelihood of wrongdoers being prosecuted, it would suggest an ulterior motive – generally political or economic advantage.

- 6.4 The ICC agrees that the publication of a complaint or investigation has the potential to undermine the very process which the CCC is conducting.

The ICC is of the view that from a public interest point of view there is very little utility in making an allegation against a person public until the CCC has made a determination that the complaint has merit. We would be pleased to discuss any aspect of this submission with you.

Yours sincerely



Jim Lindsay
Chief Executive Officer

