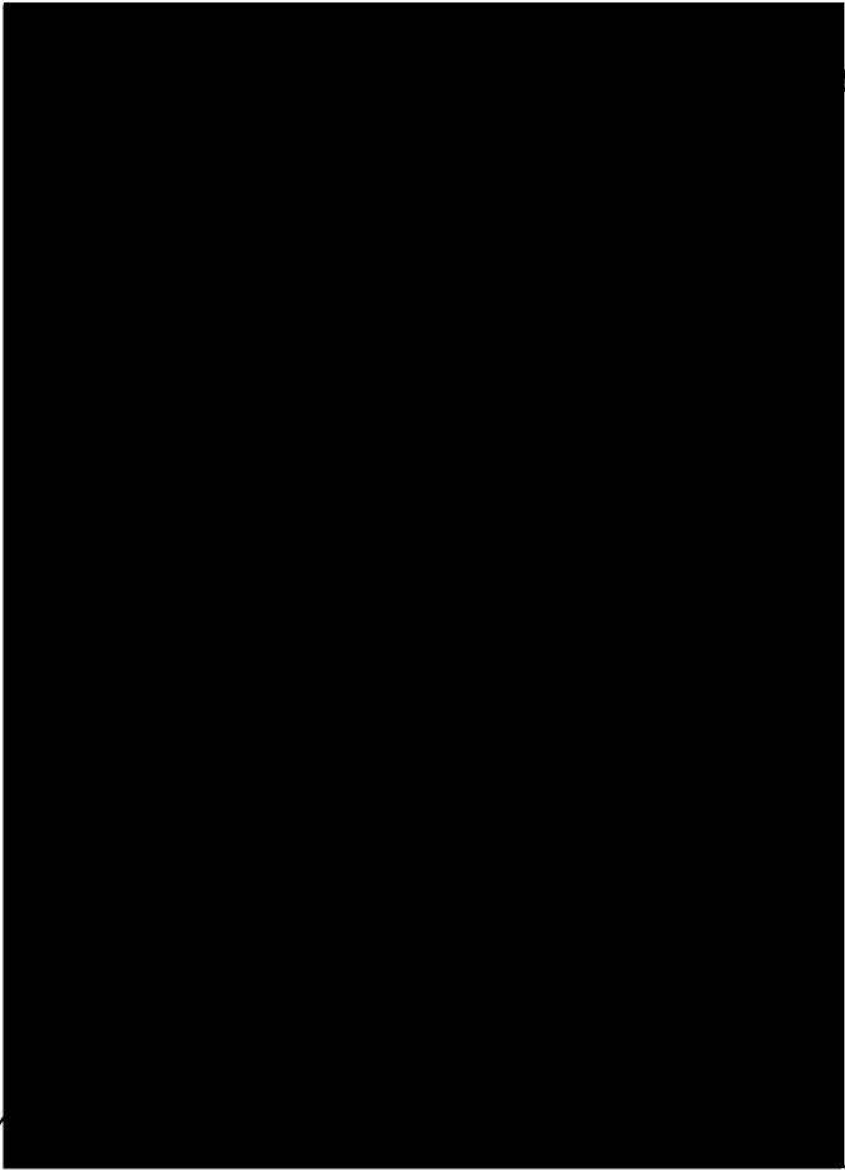


Constance R Andrews LLB



SUBMISSIONS TO THE QLD CCC RE:

Making allegations of corrupt conduct public: is it in the public interest?

Open, transparent and accountable government, is made up of systemic practices, procedures and policy, including Royal Commissions and Inquiries. When transparency and accountability fail at a systemic level the State and its Institutions must come under Public scrutiny. The Fitzgerald Inquiry was an example of this in Queensland. QPS and the Conservative coalition in government was systemically failing at being transparent and accountable. Furthermore, the Courier Mail was publishing many allegations arising from this failure, and there was growing public mood that wanted action to be taken. Many lessons can be learnt from the Inquiry which is the original matrix from which the CCC has grown. Whilst there were a few names like Don Lane and Rus Hinze that were made public and infamously associated with corruption and misconduct, many individuals received fair trials that were not publicised under the, in camera, completely confidential jurisdiction of the Office of the Special Prosecutor headed by Mulholland QC.

Confidentiality and Reputation of alleged subject officers

When dealing with allegations as such, all too often when published the Public ignore the word allegation and instead just read those allegations as fact. This is what damages the reputation of subject officers; "allegation", "allegedly" are just legalese or jargon to the public at large, so therefore the mud sticks. There must be *limits on available information*, and *rules defining confidentiality*. The amount of information that the public have access to whilst there is an active complaint under, or on the eve of investigation by the CCC must also be balanced with the Public Interest. For example, the severity of breach of duty by a subject officer and the resulting level of harm to others, must be balanced against the right to that officers' Fair Trial and damage to that officers' reputation. This is because there is always the risk of vexatious complaints, and furthermore that allegations contained in a complaint will *not* be substantiated. As it is in the judiciary, a practice not to comment on matters currently being heard before a Court, so to the CCC could *limit* the amount of information available to the public regarding allegations and subject officers under investigation. Maybe the Media information allowed to be released could only be general, not naming subject officers specifically, but being allowed to facilitate accountability and transparency by discussions and publications on the type/category of allegation. This way individual subject officers would avoid loss of reputation and the public would be aware of any systemic issues that needed redress. Furthermore in the period prior to allegations being investigated there could be statutory obligations on both parties to the proceedings to maintain confidentiality, until the complaint was cleared of being vexatious, or frivolous.

Fair trial and limits on information that identify individuals

Tony Fitzgerald QC in his report noted that the issues of corruption were systemic and cultural institutional problems. The *criminal litigation* arising from *the very public allegations of crime and misconduct*, was conducted in an *extremely confidential manner*, for example the Special Prosecution Reports are sealed for 60 years which is longer than most Western nations' classified military files. When it comes to any type of allegation, Public commentary on untested and unsubstantiated allegations have the potential to, and do go viral on social media platforms. Any defamatory loss could be remedied by Defamation laws in Queensland and other jurisdictions, but how can the CCC ensure a fair trial if the world at large has already made an opinion or judgement? *Chamberlain v the Queen* was perhaps the most broadcast trial in Australia and a textbook example of a miscarriage of justice. Thus, placing *limits on information* that can identify individual subject officers who would be respondents to complaints or under investigation prevents the undue prospect of damaging the chance of a fair trial and would assist in preventing miscarriages of justice. However, once the investigation and findings have been concluded, and, if an allegation against a subject officer has found to be substantiated, those findings may be in the public interest to publish. This of course would be at the discretion of the CCC, and these may include cases where a substantiated allegation is a useful teaching example, analytical, or statistical tool where the public interest is served by publication of the CCC's findings in that instance.

Effectiveness and efficacy solutions – some suggestions

The CCC exists because corruption and misconduct do unfortunately occur. For the CCC to be effective in continuing the efficaciously achieve the long-term goals set out in the Fitzgerald Report, there must be consideration of the following:

1. Limiting the availability of information that can publicly identify an individual who is the subject of a complaint that has yet to be investigated, via:
 - a. Confidentiality applying to All parties to a matter, until that matter is deemed non-vexatious or is finalised;
 - b. Statutory penalties for breach of confidentiality specifically in this context- for example, as the Hon. Mr Springborg outlines in his submissions – 85 Penalty units or 1 year Imprisonment.
2. A General Public database for the categories and contents of findings by CCC without identifying individuals - similar to the manner in which the Queensland Courts report crimes involving minors – for research and educational purposes;
3. A Professional Use database for the Judiciary and its officers, and other Professionals relevant to the Administration of Law, Law Enforcement, and its Agencies e.g. ESC, which would grant access to findings by the CCC that identifies individuals for professional purposes only;
4. Publishing statistical and analytical information on allegations brought before the CCC to demonstrate and reassure the Queensland Public that the CCC is maintaining vigilance for systemic or culturally engrained Crime or Misconduct concerning Institutions within the CCC's jurisdiction;
5. The CCC could maintain regular contact with the Queensland Public via Forums, with submissions and dissemination of information regarding the role of the CCC in the Queensland community.

6. Regularly implement feedback from the community, including individuals with specific expertise; and from organisations such as QLS, the PCCC, and other relevant organisations.
7. The CCC could regularly publish in the Courier Mail recent and relevant work it is doing to support the Queensland community.
8. Involve Queensland's various Tertiary Institutions, via mentoring programmes, work experience programmes, and shared research resources, with the view to expanding a niche professional body who are experts in the identification of crime, misconduct, and the specialist management of whistleblowing complaints, public complaints, and how these elements interact within the organisational cultures of our State Institutions.

Thank you for taking the time to consider my submissions.

Yours Faithfully,

Constance R Andrews

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