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21 October 2016

Submission to Crime and Corruption Commission

1. I, as a private citizen welcome the opportunity to make a submission to the examination of the issue “Making allegations of corrupt conduct public – Is it in the public interest”. In a sentence, it is in the public interest that allegations of corrupt conduct are made public and people should be encouraged to report allegations of corrupt conduct, not deterred.
2. Transparency and accountability equally applies to the Crime and Corruption Commission. Truth, fact and evidence are also part of transparency and accountability. The question has to be asked why and what is the real motivation for the CCC calling for submissions from the public concerning making allegations of corrupt conduct public.
3. In the published introduction under the heading ‘Background’ The following statement is made *“Publicising allegations of corrupt conduct may adversely affect the ability of the Crime and Corruption Commission (CCC) to perform its corruption function, damage the reputation of the person alleged to have engaged in corrupt conduct, and compromise the fair trial of persons charged with corruption. However, identifying a solution that ensures allegations of corrupt conduct are kept confidential must be balanced against the right to freedom of speech within current legal restraints and the need for open and accountable government”*. In the first sentence the word ‘may’ is used and in the absence of any evidence to the contrary it is purely a matter of supposition by the CCC that their ability to performs its corruption function, compromise a fair trial and damage the reputation of a person alleged to engaged in corrupt conduct. This is further re-enforced by the *statement “We are particularly keen to hear from people who have been affected by the publicising of allegations of corrupt conduct”*.
4. The four references to transparency and disclosure are all of a political nature and involve high profile personalities. The question has to be

- asked why has the CCC not provided any references to events and persons who do not have such high profiles and politics is not involved?
5. The paragraph under the heading “Background” is tantamount to being nothing more than an unsubstantiated matter of opinion. The information provided to formulate submissions raises more questions than answers. Whilst the CCC has quite conveniently tried to put important considerations under four defined headings, that is an over simplification of the issues. It is not just a matter of what is said and written but also what is not said and written.
 6. There has been no quantitative or qualitative information provided which supports the propositions made under the headings Reputation of alleged subject officers and Fair trial
 7. In our society we have people who have different positions, occupations, professions and callings. Truth, honesty and compliance of the law is not the sole possession of any one group of people. There is honesty and dishonesty in all people, regardless of occupation and station in life. The legal profession and the administrators of the law is not immune from dishonesty, untruthfulness, corruption and the manipulation of the law to their own advantage or benefit.
 8. There are also people who will hide behind the law and manipulate it to their own benefit. That raises the issues between legality and morality. A closer scrutiny to existing legislation which involves people in public office including public servants of all ranks, local government, including mayors councillors and CEO’s would be more appropriate. Despite the words ‘transparency’, ‘impartiality’, ‘integrity,’ ‘responsibility’, ‘ethical and legal behaviour’ being used in legislation frequently it is neither applied or complied with.
 9. People aspire to public office or are placed in a position of public and high office. With position comes greater public scrutiny of their conduct and they become more widely known publically and their commentary is published through all types of media. The Premier of the state is far more likely to receive more media coverage than a first term opposition member of parliament. The Chief Justice is far more likely to receive more media attention than a barrister in his first year of practice. Unfortunately, events which are of an unlawful, grievous, unpalatable or of a destructive nature gets more media coverage than ‘good news’ and pleasant stories. People in public office also court the media to publish

their commentaries and to promote themselves favourably. The media has the unfettered choice to report or not report such matters. Such people also become a topic of conversation in the community. The community also has the opportunity to make commentary on such matters and form their own opinions.

10. Any person, whether they are in public office or not knows the difference between right and wrong and their legislated responsibilities and obligations. If they transgress they have to accept the consequences of their transgressions and that includes publicity. If a person has done no wrong, then they have nothing to fear. There are checks and balances in our system of democracy to ameliorate wrongful allegations of corrupt conduct and unlawful activity.
11. The question which should be addressed is why is it in the public interest to publish favourable commentary about people and not in the public interest to publish unfavourable commentary about people?
12. What is being advocated by not making allegations of corrupt conduct public is nothing more than censorship. Censorship by the media, but censorship on speech by any person. This is nothing more than censorship with a penalty on free speech.
13. It is relevant that reference should be made to our system of democracy and the type of society that we live in.
14. We live in a democracy where there is separation of powers between the parliament which is elected by the people, the parliament makes the laws (and amends and repeals), the executive which gives effect to the laws and the judiciary which makes judgements about the laws and also adjudicates, penalises and enforces the law. The operation of the judiciary, the court system is open and transparent, excepting for a few instances which are not relevant in the operation of the Crime and Corruption Act 2001, excepting for Section 332 of that act. A court is the place where the guilt of innocence of an arraigned person, can be witnessed and freely reported on by the media.
15. Throughout our history one of the basic tenants of our system of law is that a person is entitled to the presumption of innocence until proven guilty. It has been validated time and time again by the judiciary that our system of law must also be open and transparent. It is worthy to quote Lord Shaw of Dunfermline in the matter of *Scott v Scott 1913* which has stood the test of time *'There is no greater danger of usurpation than*

that which proceeds little by little, under cover of rules of procedure and at the instance of judges themselves.’ ‘In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice’. ‘Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial’. ‘The security of securities is publicity’. ‘Civil liberty in this kingdom has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain redress of, public grievances. Of these, the first is by far the most indispensable; nor can the subjects of any State be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise.’

16. All of the offences described and contained in Section 15 of the Crime and Corruption Act 2001, are also contained in the Criminal Code Act 1899. The CCC has greater powers to investigate the same offences than the Queensland Police Service has. The power of the CCC can be best be described as ‘Star Chamber’ powers. This raises the question how can the CCC justify further powers of secrecy? If the Queensland Police Service can successfully investigate criminal activities and secure convictions in the courts without out powers of secrecy why cannot the CCC do like-wise?
17. With openness and transparency the investigator has the benefit of not only gathering evidence to convict, but evidence to exonerate. This is regularly demonstrated in the media with police investigations. Also, secret and confidential information can also be contained and maintained as deemed appropriate by the investigator during an investigation. All secrecy and confidentiality will become apparent during an open and fair trial.
18. Organisations, self interest groups and trade unions, such as the Law Society, Australian Medical Association, Electrical Trade Union, Local Government Association, Queensland Master Builders and political parties are all part of our society and everyday lives. However concerns arise when their numbers, power and influence is used to undemocratically influence outcomes which are not in the best interests

of the community and give greater voice to influence the decision makers than the voice or wishes of the individual. The term bullying is the word currently being used to describe the conduct of such groups. That also raises the question, is the CCC being bullied or coerced into making all allegations of corrupt conduct secret and to make it a criminal offence which has been proposed, for anyone to divulge anything surrounding an allegation of corrupt conduct.

19. Any power which restricts the freedom of speech and expression within the bounds of defamation and the freedom to make allegations of corrupt conduct public is not only an affront to our democratic society it is also counter-productive in allegations of corrupt conduct being made to the CCC. The knowledge that people are fearful of making allegations of corrupt conduct gives strength to those that will engage in corrupt conduct. The fear of exposure, and being caught and penalty for committing an offence is one of the greatest weapons in the armoury of law, order and compliance.
20. The CCC 2015 – 2016 Annual report on page 50-52 makes specific reference to local government. Any reference to local government and confidence in local government is incomplete without reference to the Local Government Act 2009, Local Government Regulations 2012, Public Service Act 2008 and the Public Sector Act 1994 and that legislation operates in practice.
21. From personal experience and knowledge, which is documented, I do not have confidence in local government. The defects in the legislation allows for not only non-compliance but corrupt conduct as defined in Section 15 Crime and Corruption Act. Section 4 LGA defines the 5 principles which underpins the act. Section 12 defines the responsibilities of councillors and Section 13 defines the responsibilities of the local government employees, all of which are frequently breached. Neither the Mayor, a councillor nor the CEO has to respond to any communication with a member of the community and frequently don't. Decisions are made and voted on in secret and no minutes are taken and recorded. The Local Government Act does not provide for penalty or rectification for non-compliance of the act. Chapter 5 provides for monitoring and enforcement of the acts but those powers are discretionary by the Director General and the Minister. Any discretionary powers lead to abuse and misuse. There is no provision to

take action against a Chief Executive Officer of local government. The complaint process both within local government and with the Department of Infrastructure Local Government and Planning is ill defined. DILGP fail to file formal complaints in their registry and 'lose' complaints and do not respond. The culture both within local government and DILGP is one of self-interest and self-preservation, ignore complaint, stick together and a complete lack of transparency. The other stock response is, make a complaint to the Ombudsman. That is done in the full knowledge that the Ombudsman has no power to rectify, compel or penalise or take action against anyone. He only has the power to make an adverse finding.

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23. In any court of law the adjudication is based on the evidence presented and the advocacy and due diligence by members of the legal profession. If evidence is not presented and the legal practitioner fails to exercise due diligence there is no opportunity to rectify the situation at another time. [REDACTED]

[REDACTED]

[REDACTED] Again it is a matter of a lack of transparency and the lack of public knowledge.

24. Finally, three very relevant quotes from the summary of the report on the Commission of Inquiry dated 3 July 1989 by G.E.Fitzgerald.

“Privacy can in some cases become secrecy, which can allow corruption to flourish. One aspect of such secrecy is self regulation, which is sought by many institutions, but which is the antithesis of accountability.”

“It must be remembered that in a democratic society, the process does not only include politicians and their parties and other pressure groups, but ordinary people, provided they are willing to become involved and insist that their voices be heard.”

“Public opinion can be an important check on the powerful. It is a fundamental tenant of a democratic system that public opinion is given effect in regular and free elections. But public opinion must be informed to be effective. Parliament and the media are two of the most important means by which information of government reaches the public.”

I wish to maintain ‘partial confidential’. In other words I have no objection to my name being made public and published along with my submission.

Dave Barrowcliffe

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