



June 2016

Making allegations of corrupt conduct public

Is it in the public interest?

Submission form

Lodging a submission

Send your submission to us by **5pm Thursday 30 June 2016** by any of the following methods:

Online: <www.ccc.qld.gov.au/publicisingallegations/>

Post: Publicising allegations
Crime and Corruption Commission
Policy and Research
GPO Box 3123 Brisbane Qld 4001

Email: publicisingallegations@ccc.qld.gov.au

Fax: 07 3360 6333

We may not consider late submissions.

Do you wish to maintain partial or complete confidentiality?

We will generally publish submissions on our website — including the name of the submitter but no contact details. If you would prefer to maintain partial or complete confidentiality, please indicate your preference by selecting one of the following:

- NAME WITHHELD — PARTIAL CONFIDENTIALITY**
I consent to my submission being published on the CCC website, without my name being disclosed.
- CONFIDENTIAL — COMPLETE CONFIDENTIALITY**
I do not consent to my submission being published on the CCC website.

If there is no clear selection of one of these alternatives, we will regard any submission (including an anonymous submission) as a public document, and will publish it on our website.

The CCC may quote from your submission or refer to it, either generally or individually, in publications.

Privacy statement

No submission marked as confidential will be published on our website. However, any submission may be subject to disclosure under the *Right to Information Act 2009* and the *Information Privacy Act 2009*, and applications to access submissions will be determined in accordance with those Acts.

If you provide your details, we may contact you to ask whether you consent to further consultation for the purposes of this project.

Your details

Provide as much or as little information as you wish.

Name(s):	<input type="text"/>		
Organisation:	<input type="text"/>		
Address:	<input type="text"/>		
Phone:	<input type="text"/>	Mobile:	<input type="text"/>
		Fax:	<input type="text"/>
Email:	<input type="text"/>		

Your submission

You may wish to address the following considerations in your submission.

Open, transparent and accountable government

The 2013 Callinan and Aroney report commented on this issue only because of election campaigns and concern of perceived detriment to alleged perpetrators during an election period. That is a very shallow reason to revisit this issue given the well documented history of the matter. There is absolutely no electoral evidence of any detriment to alleged perpetrators. The CCC has diminished its standing in the public eyes by entertaining this proposal and potential criminalisation of complainants especially at this time. That is a dispicable act which the CCC ought to have had the maturity to handle better. The handling of this concept and the process has diminished the standing of the CCC because it looks like the CCC is part of the cover up and not for the people. The background section of the discussion paper is grounded in speculation and bears no weight at all. If the CCC was applying good judgement rather than again cowering to political influence, it would not have entertained any change from the status quo from the outset. I believe that this is a politically motivated discussion paper which further undermines the public confidence in the CCC. This discussion paper and suggestions of prohibiting the reporting or disclosure of allegations is a disproportionate response. Election campaigns are dirty and that is a fact of life. Social media is a fact of life. The combination of dirty campaigns and social media is a fact of life. If anything, the focus should be only on the net on defamation and frivolous and vexatious or malicious complaints and not in the direction of punishing complainants.

Open, transparent and accountable government would not try to gag complainants. It is clearly articulated and understood that this discussion paper has come about because of a perception of dirty campaign tactics during both state and local govt elections that have attached the CCC to their messages. The fact of life is that election campaigns are dirty. The CCC statement during the 2016 Local govt elections was more than enough warning to candidates to play clean. Aligning the delivery of that message with LGAQ is a flaw in judgement and was most unpaletable. The CCC must not be seen to attach itself to a peak body that has absolutely no role in open, transparent and accountable government.

I believe that especially during election campaigns a story about a complaint being made to the CCC effectively silences a lot of scuttlebut about the issues because there is clearly a process that has to be followed which takes time. The public are not stupid - it does not add weight to the mud by disclosing a complaint has been made to the relevant authority including but not limited to the CCC. It is just another story the same as all the other mud that gets slung. The CCC must not try to speed up certain complaints to try and resolve them prior to an election. Candidates and campaigns are going to throw mud irrespective of the CCC position on the matter. If publishing or disclosing a complaint to the CCC is prohibited then campaigns will just throw the mud and make formal complaints after the election period. The mud is already there and it will be thrown. The only responsibility the

CCC has is in chosing how they respond. This repsonse should be the same everyday of the year if a complaint with published or disclosed. CCC standard operating procedures are a critical success factor and it is currently lacking. This issue is the CCC's to fix and not by restricting the public, whistleblowers & complainants. The risk to the CCC reputation must be considered internally but not by restricting the public, whistleblowers and complainants.

From the CCC perspective, I do not believe there is any competing interest. The CCC's only interest must be in the public trust and integrity of public office. The officer, the person is not the concern of the CCC however I believe there are certain things the CCC can do in it's own communication to make sure the CCC is proactive in adding commentary (about process) to the fact that a complaint has been received and will be assessed and processed according to normal proceeedures. The CCC communication needs to be standardised and contain suitable commentary about process, not about the allegation, not about the alleged pertetrator nor the complainant. I am happy to be used as a guinea-pig to assist in the drafting of these standardised communication tools. Just as the police cannot stop a witness talking about their experiences, so to the CCC would be grossely overreaching to even attempt to prohibit a complainant from disclosing the matter.

Who is going to support a whistleblower if they are prohibited from disclosing the mere fact that they have made a complaint? Some times the only protection a whistleblower has is to go public so that any changed behaviours and attitudes, retribution & retaliation towards them can be noted by others. In this way the complainant has protection because being annonymous is no protection in a organisation where it is easy to identify a complainant directly and indirectly.

Freedom of speech

People have freedom of speech rights that must not be diminished because of election mudslinging. That mud exists and will be slung anyway. If a whistleblower chooses to disclose the fact that they have made a complaint, that is their business and they will have weighed up the pro's and cons of their own actions. I know of cases where this has been done to provide them protection from reprisals and retribution that would have otherwise been swift and deliberate especially in organisations like local government where there is no confidentiality of complaints due to the fact that complaints must be referred back to the council and the CEO for initial assessment. Under the current complaints frameworks it would be a terrible abuse of power if the CCC or any other authority were to prohibit the publication or disclosure of complaints.

In so far as evidence is concerned, it is my experience that complaiants have so little trust in the institutions that they procure a copy of all relevant available evidence off-site prior to making a complaint because the sanitation of files, especially electronic files is often already occurring frequently within organisations. When a complaint is referred back to the CEO a Mayor can instruct /direct the CEO without having to put that instruction in writing so there is no accountability within the local govt complaints assessments from the outset. However, complainants are identified from the outset or readily identified by process of elimination. The retribution and retaliation commences swiftly contributing to significant emotional stress which has lead directly to suicide, both successful and attempted. Yet the

CCC and other organisations [REDACTED] are only concerned with potential reputational damage of the alleged perpetrator. The focus is in the wrong place and is not justified in all the circumstances.

Reputation of alleged subject officers

The only concern of the CCC must be the reputation of the office not the office holder. If people don't want to be spoken ill of, then they must behave better. In the absence of any credible information to the contrary, the public are entitled to assume the worst. In fact we must assume the worst especially when there is a strong rehearsed culture of cover-ups, lies and deceit from local government officers and mayors that are involved in questionable conduct. Their reputations are already in question in the community even if local media cannot or will not provide balanced reporting in the public interest. Brisbane & Gold Coast councils, for example, face a lot more scrutiny by the sheer weight of numbers both of private individuals and multiple media agencies. In regional areas where there is only one local paper the councils often control editorial content far more than they should. This is an evidence based comment based on supporting journalists from local papers that have been viciously bullied by mayor or CEO.

Fair trial

The time frames of the sub judice' rule should be the only limitation on publication and disclosure. The CCC needs to work on its relationship with complainants to make them feel valued and respected so they might feel less frustrated and tempted to turn to the media if they have not already done so. A fair trial is not compromised in DPP cases where there has been prior media coverage of allegations or persons of interest. The CCC must take control of the messages it puts out and develop standard operating procedures so that releases are available at various stages of assessment / investigation / charges etc. A CCC media release should be made when allegations are made public so that the status is made clear. Good communication does not impact on a fair trial.

Effectiveness of the CCC

In my personal experience, and that of other files i have reviewed, the CCC is completely ineffective and has no appetite to adequately assess white collar crime especially in local government outside Brisbane and the Gold Coast. The focus on VLAD type cases has, i believe, directed far too many resources away from common crimes of corruption and organised crime in the public sector.

Other

I believe there are serious unintended consequences if the reporting or disclosing of complaints to the CCC was to be restricted in any way. Any perceived damage to alleged perpetrators can be better managed by them and others however seeking to protect alleged perpetrators by restricting complainants freedom of speech is not in the public interest.

If perpetrators can leave the jurisdiction to avoid prosecution then that loop hole needs to be closed. That is as silly as saying a paedophile is not worth following up because they changed from being a priest to a boy scout leader.

The public are not stupid and can understand the very clear difference between being corrupt and being alleged to be corrupt. To infer otherwise is a clear demonstration of the superiority and snobbery of the CCC. The CCC needs standardised communication tools that puts complaints, allegations, assessment, investigation, charges etc in context just the same way the QPS does in announcing they have detained someone for questioning or that someone is assisting with their enquiries etc. These things are not difficult to keep in context if the relevant authority chose to act responsibly and communicate in a timely way. The CCC should provide some guidance around the publication and disclosure of complaints however that must not go so far as prohibiting or criminalising the publication or disclosure of complaints/allegations. Even during election campaigns, it is in the public interest for the CCC to confirm receipt of complaints and say that they will have to be assessed in the normal way. During election times is when the public are 'buying' the product so to prohibit commentary around candidates (the product) would be to deny the public relevant and contextualised information. For example, car reviews are not banned while that model is still on the market. That is the time that the public need the lights on the brightest. Buyer be ware but always in context through the CCC making relevant non judgemental comment. If people don't want us to think badly of them then they should not behave badly.

It should be an educational role of the CCC to communicate consistently about process. The general public is educated to understand the presumption of innocence so publishing allegations is not an issue at all. The public can and do process that information appropriately. During the public forum there were comments made by panel members and 'learned' presenters that the public cannot know the difference. Well that is just offensive and shows how out of touch those persons really are with society. If the CCC does not think the public can understand the difference between a complaint and a conviction then educate us. Don't punish us with prohibition.

The CCC has to prioritise the rights of whistleblowers and witnesses before politicians and election cycles. If a complainant chooses to make their complaint public or disclose it to their support network, then they will have good reason for doing so. This right to choose must not be diminished and the status quo is adequate.

Based on my interaction with the CCC, I agree with the oral evidence of Mr Greg McMahan in that it certainly appears that inappropriate appointments are made, the scope of investigations is skewed so that different allegations are responded to which avoids the actual issue the complaint was about and the CCC does use 'tricks' to discourage complainants.

The publication or disclosure of complaints does encourage other victims and whistleblowers to come forward which can add the weight of evidence required to substantiate an allegation and support charges being laid. To refuse to confirm or deny that a complaint has been made is certainly a false premise and media should not be expected to publish on a false premise. That is a ridiculous situation and it should be left to the current checks and balances in responsible reporting.

It is well understood that agencies, like political parties and perpetrators position themselves to take advantage of limitations and prohibitions. Just as the church has hidden behind canon law and the confidentiality of the confessional to hide offences against children, so to other perpetrators and organisation hide behind prohibitions, secrecy and confidentiality. The best person to make the decision to disclose or not, and what and when to disclose is a complainant.

Social media is a very important tool. It is a reality and is useful at times. Brisbane and the Gold coast, for example, have a lot more public and media scrutiny by the sheer volume of numbers. In regional areas there is normally only one local media outlet often with only a weekly publication. There is also a lot of influence over papers by political and local govt organisations. Social media is a very important tool especially when the media are unwilling or unable to touch issues due to threats or fear of retribution. If an individual chooses to take the personal risk to post information on face book and other social media then that is their choice and at their own risk. It is often a scream for help to stop the harm. Yet here we have the CCC pandering to the whim of political and other influences seeking to restrict the public to protect reputations of alleged perpetrators. That is not the role of the CCC and it is an error of judgement to have entertained this issue.

The CCC also suffers from a conflict between powers and appetite. The CCC has the powers to deal with white collar crime yet it lacks the appetite. I believe that this appetite is limited due in no small part to political and other interference, distraction and the focus on other areas of crime like VLAD etc. However this is at the expense of a balanced diet that includes white collar crimes. This imbalance must be corrected through adequate resourcing and discipline. The current lack of appetite for white collar crime and organised crime outside leather jackets and motorbikes has created an obese white collar generation that believes it has rights that shows total disregard for the public interest. Local Government is the new face of organised crime and they are getting away with it right under the nose of the CCC and the DILGP, and [REDACTED]

[REDACTED]. In reality, the many 'plausible' excuses I have read are nothing more than elaborate lies concocted to avoid detection and punishment. Everytime a Local government officer, mayor or councillor get away with it they become more brazen and bold and there is always someone who suffers. The detriment and benefit element of corrupt conduct is going on all the time and the CCC along with other agencies have absolutely no interest in pulling this thing up.

The CCC also disclosed during the public forum that they have not consulted with their own investigative staff. This is a wealth of knowledge and staff should be anonymously surveyed in sufficient detail to draw out any differences between sectors, eg public sector crime v's drug & terrorism type issues. I know from my discussions that they have at times encouraged disclosure because their hands are tied and they cannot do their job on white

collar files.

Silence does not protect the complainant. Silence protects perpetrators. In the local govt sector there is a critical fault in the system that complaints are sent straight to the perpetrating organisation where complainants are readily identified by the file or through elimination. If you are going to be identified then you might as well make it public so that any retaliation or retribution can be observed and monitored by others in the workplace.

The Status Quo must not be changed.

Reference to the SA ICAC s56 re the non-publication offence assumes that the CCC is in the same league as SA ICAC and that is not so. The assumed need for such an offence power in Qld has been deliberately misrepresented with intent to protect offenders and not victims or the public interest.

In the remote chance that the CCC decides a prohibition is in the public interest then it must be for a restricted period of time around elections. For example the statutory election period (6-7 weeks?) which is more than the sub-judice rule. The other limitation that needs to be considered is that pre-polling has the blackout equivalent to not less than the subjudice rule. There is however a public interest in knowing about some complaints and the status from time to time. Disclosing and publishing complaints must not be a criminal offence. Any change must not criminalise complainants. The end point of confidentiality or the black out period, must be clearly stated. I sincerely believe the status quo is adequate, fair and reasonable to all parties and the balance is in the public interest.

QPS Clem O'Regan gave the most balanced perspective that was deeply rooted in reality. He showed no bias to victims or alleged perpetrators and his views were exactly where we should be. That is, where the organisation deals with the reality and takes responsibility for their role in managing whistleblowers and alleged perpetrators in the workplace and the relevant communication strategies especially when things are already in the public arena. The option to stand down victims or whistleblowers or alleged perpetrators should be used more widely outside QPS and would be very useful risk management tool in local govt issues. I am particularly interested in the internal witness program that is under his command. This is all about transparency and confidence and that does not come from secrecy. For example, it is audit committee 101 to know that if a officer, especially CEO or CFO has accrued leave and not taken time off then they should be viewed with suspicion. If a complaint is made in relation to such a individual they should be stood down immediately to all a proper assessment. Yes, assessment, as in initial assessment.

The LGAQ presentation was [REDACTED], not the public interest. Their proposed 'independent election monitor' by LGAQ is a terrible [REDACTED]. They have absolutely no role in judging if election mud is real or fake even if they think they 'know' the alleged offender. [REDACTED]

Similarly, there is great benefit in knowing a complaint has been made. It is like knowing

that someone has called the emergency services to a crime or accident scene.

The CCC has some housekeeping that must be cleaned up. The evidence given by Kevin Lindeberg about the CCC saying that evidence or records can be destroyed if they are not already subject to court proceedings must be fixed up. This must be corrected, clarified and communicated by the CCC.

The CCC has also made a grave error of judgement by not making the livestream files available for download/viewing by others who could not view due to internet connectivity or work hours. I again impress that these files must be made available on the CCC website as a matter of urgency. I have emailed the CCC about this however there has been no response. I look forward to a response on this or any other matter one day in future. I want to have trust in the CCC however at this time that is not possible. That is the CCC's problem to fix.

The CCC is currently an enabler of white collar organised crime. The CCC is a passive criminal through inappropriate appetite and resources. The ineffectiveness of the CCC is not a lack of power and the last thing the CCC needs is the power to silence complainants.



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