

CCC FINAL SUBMISSION

INTRODUCTION, FREEDOM OF SPEECH, OUR ROLES

FREEDOM of speech has been described as "a fragile flower that must be protected vigorously by each new generation" (Australian Human Rights Commission president Gilliam Triggs, *The Australian*, February 25, 2013). Triggs' comment, made in an article weighing up people's right to freedom of speech versus their right not to be racially abused in public, reflects in the instance before us now the cyclical nature of attempts to suppress information about allegations of corrupt conduct.

The Gold Coast Bulletin argues that people have a right to know, particularly in matters involving the democratic process and the need for transparency. It is an issue the newspaper pursued in the wake of the 2004 Gold Coast City Council election, raised in the Crime and Corruption Commission's background information in its discussion paper, and is topical now as an investigation ordered by the Queensland Government looks into allegations surrounding political donations and the campaigns of some candidates who ran as independents at the 2016 Gold Coast City Council election.

The Crime and Corruption Commission has called for public submissions on whether it is in the public interest to make allegations of corrupt conduct public and if not, the legislative and other options available to prevent it.

Background information provided in the CCC's discussion paper demonstrates how this matter has been scrutinised closely a number of times in the past.

As the discussion paper recalls, in 2006 the Parliamentary Crime and Misconduct Committee acknowledged concerns about inappropriate disclosure of allegations and public expectations of transparency and openness. The matter followed extensive public attention on the then-Crime and Misconduct Commission's inquiry into the 2004 Gold Coast City Council election. As the discussion paper notes, in that instance the PCMC considered that "on balance, and having regard for the need for transparency, no legislative amendment was required to impose an obligation on persons to keep the existence and nature of complaints against public officials confidential before finalisation".

Then in 2009, in its Three Yearly Review of the Crime and Misconduct Commission report to the Legislative Assembly of Queensland, the PCMC again noted the confidentiality of complaints as an ongoing issue but did not support any legislative amendments.

As noted in the discussion paper, there was considerable public interest in allegations involving candidates in the 2012 state election and again, the PCMC decided the ongoing requirement for openness and transparency in the CMC outweighed the need for any legislative amendments.

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The CCC website explains the commission's role in investigating corruption is to:

- Determine whether there is evidence of criminal conduct (matter is then referred to the Director of Public Prosecutions to consider prosecution) or conduct warranting a disciplinary sanction (matter is then referred to CEO of an agency/unit of public administration to consider disciplinary action; in certain circumstances the CCC may initiate action in the Queensland Civil and Administrative Tribunal (QCAT) for corrupt conduct.)
- Clear a person's name of the allegations made against them.
- Find systemic or procedural weaknesses in an agency and recommend solutions to address them.

Some will argue that on the one hand there is a case for suppressing information about the investigation of allegations in order to protect reputations. But a stronger argument can be put for publicising investigations and allegations, since it is in the public interest for matters to be aired. People have a right to know. It is part of the democratic process that voters – ordinary people – are kept informed.

And it has been well documented in Queensland that reporting allegations will bring others forward to report their concerns.

Police officer Colin Dillon's decision to talk to investigators and appear at the Fitzgerald Inquiry was a watershed moment in exposing corruption in Queensland.

A developer's decision to talk to the Gold Coast Bulletin about how and why "like-minded" candidates, who claimed to be independent, were funded for the 2004 Gold Coast City Council election prompted others to reveal what they knew.

Even when an official is cleared (which must be reported), adequate laws exist to protect that person from defamation. Importantly, problems within the system that might have allowed a grey area to exist are able to be corrected.

This was very much the case in the wake of the 2004 Gold Coast City Council election.

Some will also argue against the role of the Fourth Estate, but Australian media organisations have to observe the laws of the land.

Inbuilt safeguards also exist. The Media, Entertainment and Arts Alliance strictly observes the AJA Code of Ethics which states:

Respect for truth and the public's right to information are fundamental principles of journalism. Journalists describe society to itself. They convey information, ideas and opinions, a privileged role. They search, disclose, record, question, entertain, suggest and remember. They inform citizens and

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animate democracy. They give a practical form to freedom of expression. Many journalists work in private enterprise, but all have these public responsibilities. They scrutinise power, but also exercise it, and should be accountable. Accountability engenders trust. Without trust, journalists do not fulfil their public responsibilities. MEAA members engaged in journalism commit themselves to:

- **Honesty**
- **Fairness**
- **Independence**
- **Respect for the rights of others**

OPEN, TRANSPARENT AND ACCOUNTABLE: The Crime and Misconduct Commission inquiry of 2006 conducted into the 2004 Gold Coast City Council election

IN his report of the Royal Commission on Tribunals of Inquiry 1966 (Great Britain), chairman Lord Justice Salmon wrote:

“As we have already indicated it is, in our view, of the greatest importance that hearings before a Tribunal of Inquiry should be held in public. It is only when the public is present that the public will have complete confidence that everything possible had been done for the purpose of arriving at the truth. Where there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind closed doors.”

In late 2005-2006 the Crime and Misconduct Commission conducted an inquiry into the 2004 Gold Coast City Council election.

Counsel assisting the inquiry, Robert Mulholland, QC, told the inquiry a “substantial corruption” of the electoral process had occurred and voters were treated with contempt when some councillors and candidates formed a secret group and were funded in their campaigns through developer donations.

Mr Mulholland argued those involved in the secret alliance – which had become known as The Bloc – made “false and misleading” statements promoting their independence for the March 2004 poll.

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"They consistently denied the existence of a group or fund, resorting to humbug in their public statements and thereby treating electors with contempt," he said.

Later, in a foreword to the report *Independence, Influence and Integrity in Local Government*, which detailed the CMC inquiry into the 2004 Gold Coast election, the findings and recommendations, then-CMC chairman Robert Needham wrote how on the third day of the CMC's public hearing, a Gold Coast solicitor had appeared for Cr David Power and suggested to a witness that "some people in Brisbane" did not understand that, on the Gold Coast, big business meant development.

Comments by other witnesses were similar.

"In their view, to paraphrase L.P. Hartley's famous opening line to *The Go-between*, 'The Gold Coast is a foreign country: they do things differently there'," Mr Needham wrote.

It had been suggested in several final submissions to the inquiry that counsel assisting did not understand the political arena.

"They were accused of 'political naivety' for criticising candidates who made false or misleading statements during the election, and called pious and hypocritical for suggesting that councillors should be concerned about the likely public perception of their actions. The latter comments appeared in submissions made on behalf of partners in an advertising agency, and presumably reflect their views about acceptable political behaviour," Mr Needham wrote.

"More surprisingly, the accusation of political naivety was contained in submissions made on behalf of the Local Government Association of Queensland (LGAQ), a body whose mission is, according to its website: 'To strengthen the ability and performance of local government to better serve the community'. This is a commendable goal; yet the LGAQ submission to the inquiry suggested that the CMC should take a 'real world' view and accept that political candidates are entitled to do anything that does not contravene the law to advance the political causes they support. This may be true in a strict legal sense, but it is hard to see how encouraging local government members to this view equips them to better serve the community."

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The LGAQ had categorised the actions undertaken in the matter at the instigation of Crs Power and Sue Robbins as a 'perfectly ordinary political process'.

"In the Commission's view, what happened in this matter could not legitimately be categorised as an ordinary political process unless the Gold Coast is to be treated as another country, where the ordinary responsibilities of public life and obligations to the law that bind the rest of Queensland do not apply," Mr Needham wrote.

His report said changes to the public perception of the Gold Coast were going to require a realistic assessment of what the problem areas were.

An indication of how much needed to be done before there could be real change was "perhaps best obtained" by examining a report produced in 1991 when the Commission had examined similar issues about Gold Coast developers making donations to candidates for election.

Despite the 15 years between the 1991 report and the 2006 inquiry report, the conduct reported was "uncannily similar, even to the extent that some of the same parties are involved".

The 1991 report had examined, among other things:

- Whether there had been any attempt to keep confidential donations made by developers to candidates.
- The taxation ramifications of some of the donations being recorded as business expenses.
- Whether benefits were sought or received by any land developers for the payment of funds.
- Whether any alderman or candidate was compromised or potentially compromised by any payment.

"The report concluded that there had been an attempt to keep some payments to candidates confidential because of the belief that the public would react adversely to the knowledge that developers helped the election campaigns," Mr Needham wrote.

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"Those who have followed the evidence in this inquiry would find it hard to identify which decade some of these comments relate to. In particular, the idea of a concerted effort to keep developer donations confidential for fear of voter backlash and the search for 'courteous' candidates to support will ring a bell with anyone who has shown even a passing interest in the inquiry."

The 1991 report had recommended legislative amendments, including the introduction of a requirement that candidates disclose election gifts (which was not a legal requirement at that time). Most of the recommendations were eventually followed.

"The fact that the CMC is still examining almost identical problems, despite those amendments, is perhaps some indication of how difficult it is to prevent corruption of the electoral process through legislative change, unless that change is accompanied by a grassroots change in attitudes towards accountability," he wrote.

"It perhaps should not need to be said, but the Gold Coast is not a foreign land, and it is not Wonderland.

"It is a part of Queensland, and its citizens are entitled to hold their elected officials to the same standards of conduct that apply in other parts of the state.

"Legislative amendment is one way to help this occur, and this report makes recommendations for changes that might assist the process.

"But unless elected officials and public officers are willing to take a healthy attitude towards compliance obligations, rather than looking for loopholes to avoid them, legislation will do little to change the present public perception that private interests are being placed above public duty on a regular basis on the Gold Coast."

Mr Needham's comments are important to recall, because they set the scene for a section pertinent to the Gold Coast Bulletin's submission to the CCC.

In the section titled Summary, Findings and Recommendations – Events That Led to the Inquiry, the report highlights the media's role in shining a light on practices and concerns.

It recalls how on July 22, 2005, the CMC received a 230-page dossier from the then-Local Government Minister, Desley Boyle, about the conduct of

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candidates and others at the Gold Coast election of 2004, and allegations concerning the relationship between developers and some candidates.

"A number of media articles, in particular in the Gold Coast Bulletin, the Gold Coast Sun and the Courier-Mail, had raised concerns about the conduct of councillors and others before, during and after the March 2004 election," the report said.

"In their opening statement, counsel assisting the inquiry said: 'Most people would agree that the legitimacy of an elected council depends upon the integrity of the electoral process and that this is obtained through free and fair elections following open debate'.

"The Commission agrees with this statement.

"It must be seriously questioned whether the integrity of any electoral process could withstand the barrage of secrecy, deceit and misinformation that this inquiry has found occurred during the Gold Coast City Council election of 2004.

"In that election, through false statements made to the media, a positive case contrary to the facts was presented to the public concerning some candidates.

"These candidates were presented as totally independent candidates, funding their own campaigns.

"In fact, they had received funding through the initiative of two sitting councillors (David Power and Sue Robbins), and the funding came exclusively from parties with development interests.

"If elected, the candidates would be, consciously or unconsciously, beholden to Power and Robbins for that funding during their four-year terms.

"If they harboured ambitions of running for a further term, they would be aware that their chances of receiving funding through Power and Robbins at the next election would depend on their being still viewed by Power and Robbins as 'like-minded' candidates.

"The inquiry found that considerable efforts were put into hiding these circumstances from the public.

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"In the Commission's view, the hiding of this situation from the public through the deceit and misinformation outlined in this report must have adversely affected the integrity of the electoral process."

The Bulletin argues therefore that publishing concerns and allegations was very much in the public interest. There is general acceptance that the test of what is in the public interest (as opposed to what interests the public) lies in whether the integrity of a society and democracy is defended through the release of information; and/or whether that integrity is improved with the release of the information.

Tellingly, the inquiry report continued:

"The evidence presented to the Commission shows a concerted effort to conceal both the existence of the fund for selected candidates, and the involvement of Power and Robbins. The evidence supports a conclusion that the operation of the fund created to support selected candidates, and the involvement of Power and Robbins in that fund, was intended to be kept secret, and would not have become public if not for media interest and this inquiry."

The report said some articles published before the election had reported in general terms the existence of a developer-backed fund to support certain candidates, while two articles by Alice Jones, published on March 25 and 26, 2004, in the Gold Coast Bulletin, were more detailed and pointed.

The Jones reports ('Ray Powers the bloc' and 'How a plot took shape') were largely based on information provided by Rob Molhoek (then a council candidate), Cr Sue Robbins and a developer who had contributed to the fund, the late Brian Ray.

"While these three individuals were, on the evidence now available, fairly forthright in their dealings with the media, there was a complete lack of frankness in public statements made by many others involved in the fund," the CMC inquiry report said.

"This meant that, despite the best efforts of the media, the full truth about some issues did not emerge publicly until evidence was given about them during this inquiry.

"Despite attracting criticism during the inquiry, the media reports on this issue were found to be generally accurate and, in the Commission's view, they

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concerned matters about which the public had a legitimate interest in knowing the truth.”

Previous commission reviews have supported the need for transparency and concluded there has been no reason to impose suppression of names, complaints and allegations before finalisation.

Based on the Gold Coast inquiry and the comments made in the resulting report, and based on the ramifications of the Fitzgerald Inquiry and the spotlight that exposed in that instance the corruption that had existed in the political process and in the police force, the Bulletin submits that it remains in the public interest to make allegations of corrupt conduct public.

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Gold Coast Bulletin















