



Making allegations of corrupt conduct public

Is it in the public interest?

Discussion paper and invitation for
public submissions

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Introduction

Background

Publicising allegations of corrupt conduct¹ 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 constraints and the need for open and accountable government.

The tension between these competing interests is longstanding and complex.

- In 1992, the Parliamentary Criminal Justice Committee (PCJC) noted that the “confidentiality of complaints” was problematic.² The Criminal Justice Commission (CJC) had sought a legislative amendment that would make it an offence for a person who had made a complaint, or given information to the CJC, to disclose that fact or any details of the complaint. The CJC considered the amendment necessary to protect privacy and deter complaints that were politically motivated or designed to damage a person’s reputation.
- In 2006, the Parliamentary Crime and Misconduct Committee (PCMC) acknowledged concerns about inappropriate disclosure of allegations and public expectations of transparency and openness.³ This matter was raised following the extensive public attention received from the Crime and Misconduct Commission’s (CMC) Inquiry into the 2004 Gold Coast City Council election.⁴ The PCMC considered that on balance, and having regard to 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.
- In 2009, the PCMC again noted the confidentiality of complaints as an ongoing issue but did not support any legislative amendments.⁵
- In 2012, the PCMC examined the issue following the 2012 state election. During this election campaign, there was considerable public interest in the allegations referred to the CMC relating to candidates — in particular, the then candidate for Ashgrove,

1 A definition of corrupt conduct can be seen at <<http://www.ccc.qld.gov.au/what-is-corrupt-conduct>>.

2 Parliamentary Criminal Justice Committee, *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission* (Part C), report no. 18, Legislative Assembly of Queensland, August 1992, <<http://www.parliament.qld.gov.au/documents/committees/PCCC/1992/rpt-18-131192.pdf>>.

3 Parliamentary Crime and Misconduct Committee, *Three year review of the Crime and Misconduct Commission*, report no. 71, Legislative Assembly of Queensland, October 2006, <<https://www.parliament.qld.gov.au/documents/committees/PCCC/2006/three-year-review-06/Report71-3yrReview.pdf>>.

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, <<http://www.ccc.qld.gov.au/research-and-publications/publications/misconduct/independence-influence-and-integrity-in-local-government-a-cmc-inquiry-into-the-2004-gold-coast-city-council-election.pdf>>.

5 Parliamentary Crime and Misconduct Committee, *Three yearly review of the Crime and Misconduct Commission*, report no. 79, Legislative Assembly of Queensland, April 2009, <<https://www.parliament.qld.gov.au/documents/committees/PCCC/2009/three-year-review-09/Report79-3yrReview.pdf>>.

Mr Campbell Newman. The PCMC considered the ongoing requirement for openness and transparency in the CMC outweighed the need for any legislative amendments.⁶

- In 2013, Callinan and Aroney addressed the issue and recommended that it be an offence to disclose the fact of, or the identity of a person who is the subject of, a complaint to the CCC.⁷

Notwithstanding this prior consideration, an effective solution has not been implemented. Moreover, despite efforts by the CCC to educate the community about the adverse effects of the practice, allegations of corrupt conduct continue to be made public, particularly in the lead-up to elections.⁸

Consequently, the CCC is examining whether, on balance, it is in the public interest to publicise allegations of corrupt conduct and, if it is not, what legislative or other options are available to prevent this.

Invitation for public submissions

To support its examination of the issue, the CCC is calling for public submissions and will convene a public forum to canvass the arguments raised in the submissions. The CCC is of the view that publicly discussing the issue may help to identify a workable solution which addresses reputational damage as well as the protection of free speech, a fair trial, and the effectiveness of the CCC.

We would like to hear your views. While this paper identifies a number of considerations that are integral to any examination of the issue, we welcome all relevant information. We are particularly keen to hear from people who have been affected by the publicising of allegations of corrupt conduct.

Submissions are due by **5pm Thursday 30 June 2016**. Instructions on how to make a submission are included at the end of this document.

6 Parliamentary Crime and Misconduct Committee, *Three yearly review of the Crime and Misconduct Commission*, report no. 86, Legislative Assembly of Queensland, May 2012, <<https://www.parliament.qld.gov.au/documents/committees/PCCC/2011/three-year-review-11/rpt86-3YrReview.pdf>>.

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. <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2447.pdf>

8 See media releases: "CMC and LGAQ call for 'clean' local election campaigns" (December 2007); "CMC and LGAQ lay down integrity gauntlet in call for 'clean' election campaigns" (December 2011); "Local government candidates urged to conduct honest campaigns" (February 2016).

Important considerations

The following considerations are central to an examination of whether, on balance, it is in the public interest to make allegations of corrupt conduct public and, if it is not, what legislative or other options are available to prevent this.

Open, transparent and accountable government

Public discussion and debate are important elements of open, transparent and accountable government. Open discourse informs the development of opinions, allowing people to participate more fully in their government and hold elected and other public officials to account.

Freedom of speech

While freedom of speech is not explicit in the Australian Constitution, the freedom is implied because Australia is a representative democracy where elected representatives are directly chosen by the people. The more explicit right to freedom of opinion and expression is contained in the International Covenant on Civil and Political Rights. This means that people have the right to hold opinions without interference. People are also free to express themselves through any medium including written and oral communication, the media, public protest, broadcasting, artistic works and commercial advertising, where that expression does not treat people unfairly or in a discriminatory manner. Laws, such as defamation, privacy and anti-discrimination law, seek to strike a balance between preserving these freedoms and protecting people from harm.

Reputation of alleged subject officers

Notwithstanding these freedoms and protections, the publicising of allegations of corrupt conduct continues to occur and can significantly damage the reputation of the person who allegedly engaged in the conduct. Contemporary mass communication methods mean that these allegations are instantaneously and widely transmitted, and stay on the public record in perpetuity.

Fair trial

Public commentary about an untested allegation of corrupt conduct may undermine the ability of a person to receive a fair trial. A fair trial is a fundamental legal principle and any law or practice that limits or encroaches on the right to a fair trial must be justified.

Effectiveness of the CCC

The CCC has the function to ensure that a complaint about, or information or matter involving, corruption is dealt with in an appropriate way. An important part of that function involves assessing complaints about corruption and appropriately dealing with them, either by referring the matter to the appropriate agency for further action or investigating the matter.

The publicising of allegations of corrupt conduct may adversely affect the CCC's ability to perform this function. Making the allegation public gives individuals involved in the matter the opportunity to destroy information that might support the allegation, fabricate a false explanation or justification, or interfere with witnesses. In some instances, it can be argued that the publicising of allegations of corrupt conduct seeks to leverage the involvement of the CCC to artificially raise the credibility of the complaint or the person making the allegation and, in doing so, undermines the efficacy of the complaints process.

Making a submission to the CCC

How to make a written submission

If you would like to make a written submission, please complete the submission form available for download from the CCC website at <www.ccc.qld.gov.au/publicisingallegations>. Send your completed submission form to us by no later than **5 pm Thursday 30 June 2016** by any of the following methods:

Online: Upload your completed submission form on the CCC website at
<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.

How to make an oral submission

If you cannot provide a written submission, you are welcome to make an oral submission. Oral submissions will be taken over the phone by a CCC officer. To arrange a suitable time to provide an oral submission, please call us on 07 3360 6060, or toll-free on 1800 061 611 (in Queensland outside Brisbane) during business hours. Oral submissions must be made by no later than **5 pm Thursday 30 June 2016**.

How the CCC handles submissions

We will read and consider all submissions. As a matter of routine, we may:

- quote from submissions or refer to them, either generally or individually, in publications
- make submissions public by uploading them to the CCC website; this would include the name of the submitter but no contact details
- contact you to ask whether you consent to further consultation for the purposes of the project, including participating in a public forum to discuss your submission.

We will not make public any submission or, where practicable, any part of a submission that:

- contains allegations of corrupt conduct
- contains identifying information about a third party (the names of people, businesses or organisations), offensive material (including abusive or threatening behaviour), defamatory material, or links to other websites
- does not address issues relevant to the project
- infringes the intellectual property rights of others

- promotes commercial interests.

Written and oral submissions will be treated in the same way.

Do you wish to maintain partial or complete confidentiality?

If you would prefer your submission to be published on the CCC website without your name being disclosed, clearly mark the submission as “NAME WITHHELD”.

If you do not want your submission published on the CCC website, clearly mark the submission as “CONFIDENTIAL”.

In either case, your identifying details will not be published.

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.

Does your submission contain allegations of corrupt conduct?

The submission process is not the correct avenue for making a complaint about corrupt conduct or suspected corrupt conduct to the CCC. Should you wish to do so, please see our website at <www.ccc.qld.gov.au> for further information. You may also call 07 3360 6060, or toll-free on 1800 061 611 (in Queensland outside Brisbane).

We will forward any submissions containing allegations of corrupt conduct to our complaints area for assessment.

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.



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