

Kevin Lindeberg

CRIME AND CORRUPTION COMMISSION

A PUBLIC SUBMISSION - 30 June 2016

Making allegations of corrupt conduct public - Is it in the public interest?

1. There are three long-standing sayings - if not now truisms - which ought to be borne in mind when Queensland considers this critically important public policy issue due to their relevancy. They are:

"Who shall guard the guards themselves?" (Roman poet/satirist Juvenal 1st/2nd century AD)

and

"...The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter." Thomas Jefferson - Freedom of Speech - 1789

and

"...The whole art of government consists in the art of being honest." Thomas Jefferson - "Draft of Instructions to the Virginia Delegates in the Continental Congress" - August 1774

A key precondition

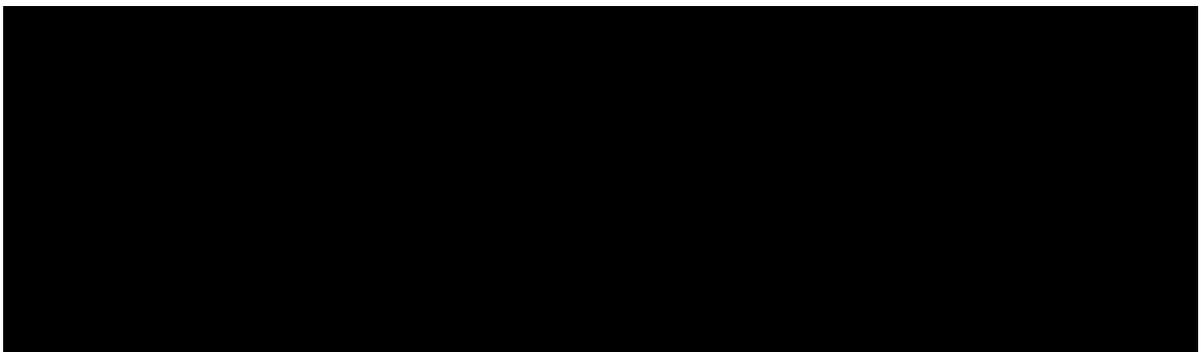
2. Notwithstanding two obvious competing law-enforcement processes of public verses confidential-cum-secret at issue here, it is nevertheless suggested that the associated key precondition to this public policy issue and its interface with the aforesaid three sayings/truisms which simply cannot be overlooked in the overall context of rights, privileges and effectiveness *et al* is that public officials and their watchdog guards will always act honestly, impartially and in the public interest in all their activities because this key component links everything together for good or, most worryingly, ill.
3. Therefore, if this precondition cannot be always confidently relied on, what safeguard should remain? In my submission, that's the real public interest question we have to settle.
4. As a starting point, I submit that it is the general public's unequivocal moral, ethical and legal right and/or expectation of, from and by instrumentalities across whole of government and all

those who hold elected and appointed public office in trust in whichever arm of government that they **will always** act honestly, impartially and in the public interest in all their activities irrespective of whatever difficult political, administrative and constitutional consequences arise which, more likely than not, can happen quite unexpectedly. Queensland's so-called independent statutory watchdog, the Crime and Corruption Commission ("CCC"), is captured in this mix.

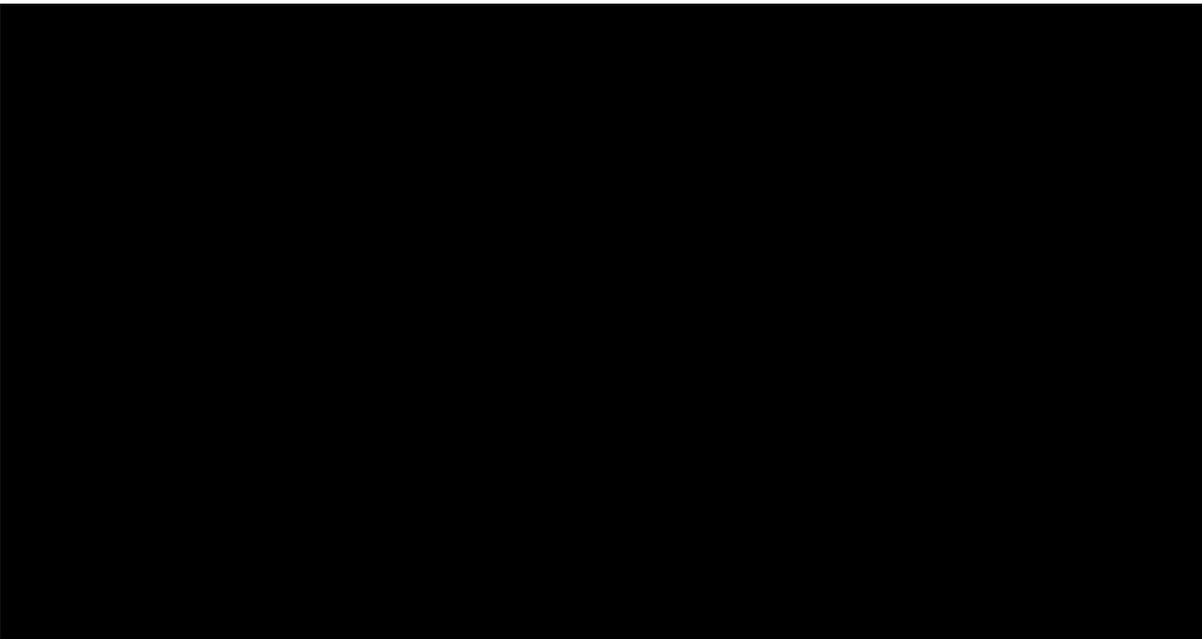
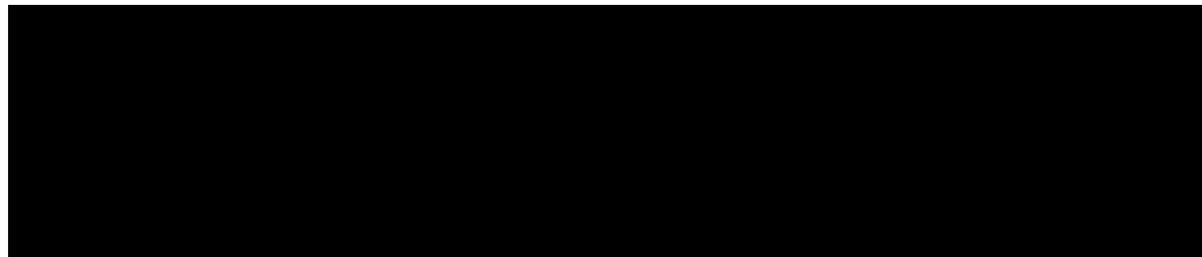
5. Accordingly, it is strongly suggested that unless or until the CCC can be completely trusted to carry out its statutory duties then Queenslanders, particularly its whistleblowers, should not disarm themselves by gagging themselves. Queenslanders must be absolutely certain that what the CCC promises to do in writing under the signature of its Chair with the approval of the CCC Board, it will do. Otherwise, by adopting a public policy which makes it an offence for the whistleblower to disclose publicly what is occurring and/or did happen to his/her public interest disclosure inside the CCC, the public interest will not be served. Rather, as a bare minimum, it may more likely serve the CCC's own interests by keeping its operational failures or worse forever hidden from public scrutiny due to any such undemocratic suppression of free speech.

A concern over the CCC acting contrary to the public interest

6. Firstly, because the information set out below highlights that the CCC's own conduct is indeed a highly relevant consideration here, I submit that it is important for the public to be informed **before** any free speech censorship on pain of punishment is adopted and enforced on them (as potential would-be whistleblowers) and, for that matter, **before** the CCC itself may argue for such suppression on the pretext that it can be completely trusted to always do the right thing.
7. Furthermore, given the seriousness of the CCC's own conduct concerning an alleged serious violation of public trust in its handling of my public interest disclosure, it is strongly open to suggest that it would not be in the public interest for the CCC to redact any part of my submission or to not publish it *in toto*, even though I am aware that the CCC has forewarned submitters in its Issues Paper that such a course of action might be adopted at its sole discretion.



¹ *Livesey v New South Wales Bar Association* [1983] HCA 17; (1983) 151 CLR 288; *Re JRL; Ex parte CJL* [1986] HCA 39; (1986) 161 CLR 342; *Vakautu v Kelly* [1989] HCA 44; (1989) 167 CLR 568; *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; 205 CLR 337; 176 ALR 644; 75 ALJR 277 (7 December 2000)

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11. Accordingly, against the aforesaid background, I think it is reasonable to suggest that if the CCC were to redact and/or not publish these important relevant facts, it might tend to give rise to a reasonable suspicion that it was inappropriately acting in its own interests and not properly in the public's.

The Foundation Stone

12. Preventing and eradicating corruption in public administration in a democracy founded on the rule of law relies on this foundation stone: **public trust in public office**.
13. This inter-related contract of public trust is supposed to be secured by Queensland laws like the *Crime and Corruption Act 2001*, *Constitution of Queensland 2001*, *Public Sector Ethics Act 1994*, *Criminal Code 1899 (Qld)*, *Public Interest Disclosure Act 2010*, *Public Records Act 2002*, *Auditor-General Act 2009*, *Right to Information Act 2009* and *Public Service Act 2008*, *et al*.
14. These laws have been carefully crafted and enacted by Parliament over many years to work in harmony and not in conflict with each other. Their overall purpose is to ensure accountability and government by the rule of law. Their purpose is to outlaw acts of arbitrariness whenever the situation suits those in positions of public trust who might wish to act for their own or another's improper benefit instead of the public interest.
15. Public trust in public office is an unqualified, serious, guaranteed precondition-cum-expectation between State/Crown and citizen, and especially so between whistleblower and the CCC in all

their dealings. This is especially true if and when a public interest disclosure involves high level alleged corrupt conduct because if it were otherwise the whole edifice of government by the rule of law would collapse into a farce. Then, as Thomas Jefferson said over 200 years ago, the only relief open is for the facts to be published in a free press so that the people may be informed and to take appropriate remedial action instead of being kept in the dark.

16. Of course, this relies on the presence of a free press in the particular community. And even then, for the truth and/or corruption in public office to be exposed, it relies on a courageous and persistent, interested journalist and editor-in-chief being found, save that in the 21st century the people themselves now have another avenue to expose the truth and/or corruption in public office, namely via social media through the internet.

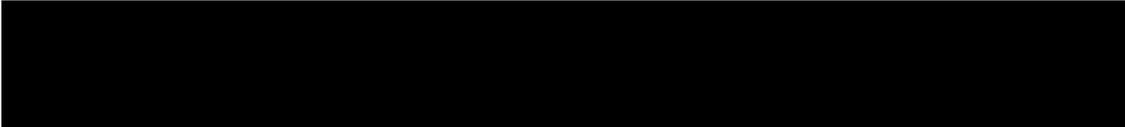
No one is above the law

17. The Queensland Parliament, in its infinite wisdom, framed laws on the democratic principle that no one is above the law. It plainly did this by being aware of and alert to the historic fact that **all** humans have the capacity to abuse power either out of personal hubris, misguided loyalty or sheer opportunism, including public officials in statutory law-enforcement authorities, and, on very rare occasions, even judges.
18. In other words, while one hopes and looks for the best in people and desires to respect privacy and reputation, particularly those in high public office, sometimes the very worst can happen when one least expects it. This turns everything on its head, but Parliament has enacted laws to deal with this type of unexpected conduct, and expects them to be obeyed and enforced lest they become meaningless and just mere window dressing. For example, laws in the area of public and judicial administration recognise offences of "official misconduct", "corrupt conduct", "official corruption", "abuse of office", "judicial misbehaviour/misconduct" etc.
19. It is even in this very epicentre-of-power setting if and when abuse of power occurs that whistleblowers still emerge. Whistleblowers must be protected. Overwhelmingly, their values motivate them to restore integrity to the public office in order that the rule of law prevails and public confidence in government institutions and their officials is maintained or restored. However, as an equal reaction to the ramifications of exposure over wrongdoing, attempts at cover-ups can and do happen in high office, even in "post-Fitzgerald Queensland", let alone whistleblowers themselves in trying to do the right thing being ridiculed and reprised, as well as being monstrously deceived by the very authority Parliament created to protect them, the CCC.

The Right to Know

20. This submission, written out of duty and motivated out of a commitment to the public's right to know, highlights a 'real life' **relevant** example to this important public policy paper. It goes to the very heart of the need for "the guard (i.e. the CCC) to be **absolutely** trustworthy" in the worst of scenarios involving suspected wrongdoing in high public office when the CCC's trustworthiness

(and fearlessness in applying the law equally) must not be doubted for a moment. ■■■

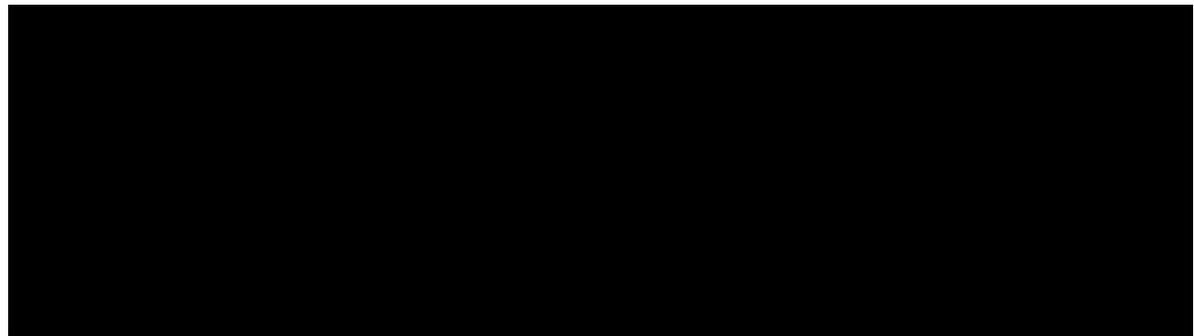


21. Openness breeds trust and engagement; secrecy breeds doubt, suspicion and withdrawal. It is therefore submitted that while recognising reputations of public officials may be adversely impacted in the short term if and when it becomes necessary for allegations of suspected misconduct under investigation to be made public, the public policy goal which must never be lost sight of is that **it is the integrity of the public office itself being preserved and protected from corruption as the overriding priority**, not the particular public office-holder him/herself. The reality is that corruption in public office spoils everything. Leaving it unattended or covered up for fear of embarrassing, just for that short term, the public official concerned because of his/her high status also has the same potential to destroy everything of value, like public trust, even if it's just a perception, let alone a reality.
22. It is a great honour and a privilege to be an elected or appointed public official from low-ranking public servant to Premier, Minister of the Crown, MP, governor, judge and CCC Chair, but being employed as a public official brings with it very significant and binding responsibilities and obligations. Their conduct must always be ethical, impartial and honest in the performance of their particular public office. Any deliberate violation of such public trust cannot reasonably be treated as an act of no consequence² because it (i.e. public trust in public office) is the irreplaceable glue which holds everything together in civil society governed by the rule of law. Consequently, I submit that any such violation is reasonably open to be viewed as a fundamental attack on the whole of government and the society at large which daily relies on such trustworthiness to function peaceably and to enjoy public confidence in decision outcomes.
23. Against this background, it is not inappropriate or too far-fetched to suggest that the Heiner affair has become the public litmus test of just how much or how little we, as a community, truly value this obligation of public trust in public office to sustain sound governance in unicameral Queensland. It therefore follows that if public trust in public office is to be maintained in Queensland to instil public confidence in its institutions and respective public office holders (in all three arms of government) then scrutiny of this type of alleged offending conduct is best done in a public way with relevant rights respected and not in secrecy by a body whose own integrity remains in doubt as my documented experience demonstrates.
24. Clearly, the CCC itself ought not to be treated by a different standard to the one it sets and imposes on others. In fact, the CCC should be, just as Caesar's wife, an exemplar in all that it says

² See Gaudron J in *John Anthony Ridgeway v The Queen F.C.* No. 95/016 (1995) 129 ALR 41 (1995) 69 ALJR 484 at 39.

and does. It should be prepared to answers questions fully in a proper forum, for example, [REDACTED]

25. Put bluntly [REDACTED], if the CCC can engage in this alleged egregious violation of public trust [REDACTED] with impunity or indifference by the community at large, [REDACTED] [REDACTED], then why shouldn't others in our public service, for example, the Police Commissioner, Ombudsman, Crown Law, Auditor-General, Information Commissioner and others conduct themselves in like manner?
26. Like Caesar's wife, I submit that the higher the public post and influence, the higher the need for integrity to be absolutely observed and assured. This is because without that absolute observance and assurance, public confidence in government will be thrown into unacceptable jeopardy. If and when public trust is destroyed, it may encourage some people to take the law into their own hands, and that must be avoided at all costs.



28. Regrettably, Queensland's governance has therefore now been thrown into an unacceptable grave state of jeopardy due in very large measure over a long period, but also by others at particular times, to the CCC's (and its predecessors, the CJC and CMC) [REDACTED] [REDACTED] [REDACTED].

Recommendation

29. In conclusion, therefore, until such time as public trust can be openly and confidentially restored in the CCC - Queensland's premier law-enforcement authority over public administration, I recommend that it would be an unwise, unjust and retrograde step against the public interest for the CCC or another (i.e. the police) to be given the authority to punish whistleblowers for refusing to be silent and under no relevant circumstances inform the media about their bona fide allegations of corrupt conduct lodged with the CCC.
30. I am prepared to speak to this public submission at any proper, open forum convened by the CCC or other authority.

Kevin Lindeberg - 30 June 2016