

QUEENSLAND LOCAL GOVERNMENT REFORM ALLIANCE INC



PO Box 102.
SCARBOROUGH, QLD. 4020;

19 October 2016

Crime and Corruption Commission
PO Box 3123
Brisbane QLD 4001



Re: Inquiry: Making Allegations of Corrupt Conduct Public? Is it in the public interest? Submission from the Queensland Local Government Reform Alliance Inc.

Dear Chair and Commissioners,

Thank you for extending the period in which you have permitted further submissions to your consultation into making public the complaints received by the CCC into crime and/or corruption of parliamentarians, councils (or councillors) and public figures.

I write on behalf of the Queensland Local Government Reform Alliance Inc. Our state-wide organisation of citizens and groups is concerned about the state of local governance in Qld.

QLGRA's Position

The distinct impression projected by the CCC panel, during the two days of the public forum of 6-7 October 2016 is that the CCC potentially views all complaints as vexatious, malicious, fictitious or frivolous. This is of major concern to the people of Queensland and the Queensland Local Government Reform Alliance.

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It is our firm opinion that the intention to criminalise complainants as appears to be the direction of the CCC is a regressive step. By persecuting or prosecuting whistle blowers or complainants if they make public their complaints, erodes the credibility of the CCC and its perceived impartial function.

Feedback to the QLGRA from many communities and citizens from across Qld indicates that the public's trust in the CCC is diminishing. The public no longer have faith the CCC is inclined or is able to be an independent investigative authority.

This seems to be part of a worldwide trend where whistle blowers are more likely to be treated as the criminals while the persons against whom they have lodged a complaint are protected. The application of this trend to Queensland would not instil confidence of the public the integrity of government and would create a concern justice is not being actively pursued or seen to be pursued.

Supporting Arguments

We agree with Assistant Police Commissioner, Ethical Standards, Mr Clem O'Regan, who stated that the CCC needs to learn how to effectively operate in "the real world" of social media and mainstream media revelations. This should be of paramount importance to the CCC rather than seeking to discourage people with the threat of prosecution from coming forward to reveal to the public what they believe is corrupt or criminal conduct of elected representatives.

Queensland has a single tier government without a house of review and as a result its power is comparatively unchecked. After serious corruption became endemic, the CCC was created to correct this imbalance. Its initial role was to monitor and, if required, prosecute those in positions of power to ensure adherence to the public interest. It was so critical to this task that it was enshrined to conduct itself with transparency and impartiality to maintain the integrity of government and the trust of the people they are charged to protect.

Public trust in the CCC is the cornerstone of its operation. For the current direction of the CCC to actively pursue steps to negate public confidence in its integrity and this trust is a dangerous course. It is even more concerning that the CCC is pursuing a proposed legislative change, which will only protect those it is supposed to watch over.

It is never safe to presume that calls for openness and transparency are no longer required. A movement to a "secret society" attitude in your investigations can only reduce the trust of the public and open the door to the very activities that the CCC is supposed to prevent. It will also discourage justifiable complaints creating a gradual decline in the achievement of the watchdog.

It is a standard of our judicial system that innocence is a presumption but that allegations are subject to public discourse relying on the impartiality of the court process to determine guilt or innocence. This process assists the complainant if the allegation is based on facts in that they can pursue matter of public interest. It also assists the respondent as they have the ability to demonstrate innocence in the public eyes. Transparency is the key to the success of the process. There is no alternative that does not distort the system as a whole. It is not safe to close down the process by putting it behind closed doors because of political pressure. This provides an open door to more pressure to undermine impartiality.

Other investigative agencies, including the police, demonstrate an ability to operate successfully with their actions and investigations revealed in the public domain. No supportable case has been established to distinguish the CCC from this same openness. In fact because of the players (that is, government officers and elected representatives) it is arguable the need for transparency is greater. To support a process that allows prosecution of a justifiable complainant is the next step to undermine the very fibre of the Commission.

Why then does the CCC not have this same capability and instead wishes to prosecute informants rather than pursue justified complaints? For a complaint to be legitimate it must contain fact, it must give specific detail of the crime/corruption being alleged. A simple contact declaring the complainant thinks a certain party is acting in a criminal/corrupt manner without substantiating evidence is not a complaint and would rightly be dismissed without further consideration. In the majority of cases concerned people do not lodge complaints without careful consideration of their actions. Making a complaint has consequences (potentially negative) for the complainant as well as the respondent.

There is always the potential for a small number of vexatious or malicious complaints, but the revelation at the Public Forum that the CCC does not have a clear record of what percentage of complaints received fall into this category is of major concern. Without evidence of this nature, how can the CCC approach government to instigate legislation for whistle blowers and complainants to be prosecuted (and/or gaoled) for making public their complaints?

A question asked in Parliament by Hon Rob Pyne (MP for Cairns) to the Deputy Premier and Minister for Infrastructure, Local Government and Planning (Hon J Trad) on 30 August 2016 on this matter found that:

From the 13% of complaints (received) considered frivolous, vexatious or malicious NO complaints were considered vexatious, 6% were considered frivolous with 94% lacking in substance under the Local Government Act 2009 or lacking substance under the Crime and Corruption Act 2001.

These statistics contradict the CCC's current emphasis on too many claims falling into this category with NO complaints deemed vexatious or malicious.

Statements by Prof Fernandez, the media panel, Nigel Powell, Sam Watson, Greg and Joan Darlington and Charles Steff all clearly explained why the CCC must not go down the path of secrecy and persecution of complainants. Indeed as was written in the Courier Mail (Sunday 16/10/16) without the media first revealing crime and corruption within government departments the CCC would probably not exist today. The Fitzgerald Inquiry would not have happened.

Assistant Police Commissioner, O'Regan clearly demonstrated how public exposure of investigations can be used positively to gather further materials and assist in the success of investigations, if used prudently at the time.

It is of particular interest that the majority of submissions (so far) favouring the prosecution of complainants who make public their complaints, come from the very people who are most likely to be the subject of complaint and possibly have something to hide. Politics is naturally a robust affair. It can be very difficult for those involved. But it is also a public affair and it is in the public interest that it is conducted in full view.

Legislation currently exists for the pursuit of complainants who deliberately make false, vexatious or malicious complaints. QLGRA Inc is sympathetic to concerns about vexatious

Conclusions

Our representative attended the Public Forum of 6-7 October 2016. He was aghast at the revelations by Greg McMahon, Queensland Whistle-blowers Action Group and Kevin Lindeberg, Ex PSU delegate on the issue of "Shreddergate" (as termed by social media).

If the CCC is incapable of conducting successful investigations (as the QPS are able to do) because the complaint is in the public arena, this indicates a substantial flaw in its investigative operations and capabilities.

If the CCC are to be more focused on prosecuting complainants rather than pursuing a complaint, there is a serious imbalance within the CCC to be a trusted investigative body. Without the trust of the public the CCC is perceived to be part of the problem and not a viable solution to crime and corruption. It is serious concern that participants in levels of government seek to support a trend to secrecy rather than openness. The QLGRA experience is that the trend to secrecy is one of the factors leading to a growing dissatisfaction and disillusionment in the political process.

All levels of government now operate in too much secrecy whereby openness and transparency is now a commodity in short supply.

QLGRA strongly opposes any action that will discourage, or prosecute decent citizens who show the fortitude to lodge legitimate complaints to the CCC.

It is the strong view of the QLGRA that the source of complaints could be better mitigated by legislation to address concerns about political donations and their influence. This would not only reduce the public perception of distorted political influence that leads to complaints but resolve a significant concern of the community

We recommend the opposite of the current CCC intentions and suggest a more open and transparent body who are seen to be in the pursuit of justice and true protectors of society.

Yours faithfully



Colin Hewett
Chair

Queensland Local Government Reform Alliance Inc.

