



**Crime and Corruption
Commission**

QUEENSLAND

CRIME AND CORRUPTION COMMISSION

MAKING ALLEGATIONS OF CORRUPT CONDUCT PUBLIC: IS IT IN THE PUBLIC INTEREST?

TRANSCRIPT OF PUBLIC FORUM

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Panel Members:

Mr Alan MacSporran QC
Mr Marshall Irwin
Mr Richard Bingham
Dr Rebecca Denning

CCC Chairperson and Panel Chair
CCC Ordinary Commissioner
Queensland Integrity Commissioner
CCC Director, Policy and Research

Speaker:

Mr Ian Leavers

General President
Queensland Police Union

Mr MacSporran QC I think, Mr LEAVERS, you're next. Did you want Troy up here too?

Mr Leavers No.

Mr MacSporran QC You sure? Yeah.

Mr Leavers Thank you.

Mr MacSporran QC Thank you, Mr LEAVERS. And thank you for your submission. Can you just, for the record, give us your full name and where you're from?

Mr Leavers Yes, sir. Ian John LEAVERS. I'm from the Queensland Police Union. I'm the General President representing just under 12,000 police across the State of Queensland.

Mr MacSporran QC Thank you. And would you like to have the opportunity to make an opening statement?

Mr Leavers Yes, I would. And thank you, Chair. And some of the comments you made in your opening address, I've got to say, I completely agree with. Whether or not they were the reason for what you said, but I agree with a lot of the comments made and also the comments by Mr COPE. You'll probably find that our submissions and our views are probably in alignment in many ways.

The Queensland Police Union – a prohibition on the making of a corruption complaint we believe is necessary and for many reasons. Complaints can be very serious in nature and can cause irreparable damage to a person's character, career and family. This is especially so far as police complaints are, often take around 12 months to be investigated and finalised. And in some of the comments today the investigation process it would be very good if they could be dealt with in two to three weeks, but we simply know that is never possible. During that period the officer's integrity is questioned. And as an officer they are prohibited by the QPS from making any public reply or rebuttal to defend themselves in any way, shape or form.

Often the publicity surrounding the making of the complaint is very substantial, particularly where it involves a public figure or allegations of serious misconduct, yet there is little or no publicity of a final

decision clearing a person. The publication of complaints prior to them being investigated and substantiated is contrary to the presumption of innocence and has the potential to adversely affect a person's criminal trial by contaminating the jury pool.

It's the Queensland Police Union position that the making of any complaint of corruption should remain confidential, and the publication of the making of such a complaint, or of an ongoing investigation, we believe it should be an offence. Once a matter has been investigated then there may be grounds for releasing a balanced report in relation to the complaint and its outcomes. Although, where the outcome is to be unsubstantiated, the complaint, such as a report, should only be publicised with the consent of the subject person. Where criminal charges follow the making of a complaint, there should be no publication of the complaint or investigation until after the criminal process or any appeals has been completed. This is necessary to ensure a fair trial.

Police are often the subject of frivolous complaints. The making of complaints can impact significantly on an officer's career and on his or her health. And sadly, I know at times, it can destroy their family, which affects not only their wife or their husband, but their children and their parents and extended family as well. Publication of them only makes matters worse for the officers who are forbidden to publicly respond. An ability to publicise the making of a complaint can also allow the functions of the CCC to be undermined, as it has the ability to interfere with an investigation, including for example, alerting of suspect persons to the existence of an investigation and the nature of the complaint, and can effect evidence, whether or not that is destroyed or otherwise, or contaminated.

Furthermore, it allows people with an agenda, whether political or otherwise, to misuse the CCC systems to score an advantage. Examples have included re-election of a former premier. And at the time, I know, in an election campaign – not that I support one side of politics over another – but within a three week election campaign an allegation can be made, the mud will stick and it will never be finalised within the duration of that election campaign, and the consequences can be everlasting.

The QPU believes that a process similar to that used in the private prosecutions and the non-publication provisions that apply under the Justices Act would be beneficial here. Those provisions prevent the publication of the laying of a private prosecution until such time as the court determines there is a prima facie case to answer and commits the defendant. Similarly here, there should be no publication until a complaint is substantiated.

The QPU also believes strongly that legislative provisions are required to ensure that non-publication, as the mass media will abide by such provisions. We know they will abide by legislation necessarily, not by policy. The public's right to know about allegations of corruption in public office can be appropriately addressed by punishing the outcomes of the investigations where corruption has been established. Although this may not be in timely terms to the complaint itself, it is for the CCC to determine the priority of that and the resources to be assigned to any investigation. The CCC can conduct an urgent investigation in appropriate circumstances, and in determining whether such urgency is required, the need for the public to know about the allegation of corruption could be a consideration.

There are competing public rights to ensure institutions are not misused, and that the persons subject to criminal charges receive fair trials. The CCC exists to investigate serious corruption and we all must have faith. And the public is aware of that. The fact that a complaint has been made or an investigation is ongoing is not something which needs to be published until the time that it has been concluded. Despite this, the QPU accepts there may be circumstances where there will be a need for publication and the making of a complaint to take place. For example, to identify witnesses, or maintain public confidence in the systems of government. In such circumstances the CCC Chair should have the power to determine whether a balanced publication of the existence of a complaint is necessary and appropriate.

We do believe that those who knowingly make false complaints, and there is evidence to support, that action should be taken against those persons as well. We believe it would have a strong deterrent on those who deliberately make false complaints. And I'm not saying where people make a complaint where they are misguided or they are under a different belief, but where

there is substantial evidence to prove it is a knowingly false complaint, action should be taken. Thank you, Chair.

Mr MacSporran QC

Thank you, Mr LEAVERS. Just taking up, as I did with one of the previous submitters, another submission we've received that points out, I think correctly, that it is quite routine for the QPS, ASIC, ACCC and Fair Trading departments to publicise the fact that they are investigating an individual or entity, or allegations of criminal behaviour and so forth. Do you see a distinction between that approach and the approach that you are submitting for here?

Mr Leavers

There are times and there are a place. And I think people that, as such in your position and the Chair of the CCC and other bodies, have to make a judgment call at a particular time on what is actually in the public interest. And at the end of the day we have to have faith in people appointed to those positions. And certainly if there happened to be an issue, if people questioned yourself, not that I am, but you know, we have the Parliamentary CCC as an oversight body as well. So we do have to have some faith in the systems available and I'm not naïve enough to suggest that at all times everything should be hidden, but I think as a general rule that should absolutely be the case.

Mr MacSporran QC

So if I've understood correctly, your submission is that there should be no publication of the allegation until there is in fact a prima facie case established?

Mr Leavers

Absolutely because I believe no matter where it sits it can damage a person and an organisation and the damage can be irreparable. And although that may only be someone's professional career it can damage their personal lives and their families as well, and sometimes the damage is irreparable.

Mr MacSporran QC

Can I ask you what you mean by prima facie case? Do you mean a prima facie case that's accepted by a court or a prima facie case that's accepted by the Commission? At what stage are you speaking about?

Mr Leavers

Where there'd be sufficient evidence the matter would be before the courts. And then we're all banned where matters are before the courts what we can and we cannot

say, but at that point in time. But prior to that I think it is very dangerous and it is dangerous territory.

Mr MacSporran QC

All right. Well just to take that further, you probably know that Callinan and Aroney in their recommendation suggested that there could be disclosure once a person had been charged with a criminal offence or disciplinary proceedings had commenced. Would you agree with that position?

Mr Leavers

I do to a point, but there is always a case by case scenario. I do believe there are times there is information that the public is required to know. But I think it has to be a very careful balancing act and we have to trust people in these positions to make judgment calls at that point in time. I don't think we can have a one line fits all.

Mr MacSporran QC

All right. I'll leave it there for the moment.

Dr Denning

Mr LEAVERS, one of the things I'm thinking about and it's slightly different in the area of police, I think, in comparison to the rest of the public sector. Police are in the eye of the public constantly and I'm wondering how any kind of provision about stopping the public discussion of complaints would actually come into effect in the context of policing. So I give the example, you know, we see it all the time, footage on the TV at night or on, you know, social media about what could be very easily viewed by the public as corrupt conduct. So, you know, a use of force incident or something like that. People would very, very easily make a connection between that kind of footage and then the CCC obviously taking some action or being involved to some extent in responding to that incident. So I'm just trying to work out how it would operate in practice if there was an offence or a non-reporting obligation prior to a prima facie case. Would it have any impact at all, really?

Mr Leavers

It's a very hard one because when it comes to use of force and corrupt conduct compared to actual, what I would say is corruption. And all I say on corruption is probably you look at, for example, the Fitzgerald Inquiry, that was corruption. I think we can all accept that's what that inquiry is there for. But when it comes to excessive use of force, look, we're damned if we do, we're damned if we don't, because often we'll see a snippet of footage which in two seconds of footage will not actually display what has occurred over the entire five minutes, if it

happened to be five minutes. And it is an interesting one because everyone knows I'm an advocate for police. Where I have other information that comes to hand I think it is important at times that that may need to be released because it could vindicate the police. And I say this, it's not only for the police officers involved and their work unit, but it's for the entire community confidence in having confidence in the police. Because when they only see one snippet of that information that can damage the Police Service across the State and the confidence in the police with the community. Now, I really worry about that and sometimes there have been occasions where politicians have been able to release footage where probably the Police Service or the CCC hasn't been able to, but information has become available. So it is a very careful balancing act, and to maintain community confidence there has to be those examples and circumstances where it should occur.

Mr MacSporran QC

Richard?

Mr Bingham

Yes. Thanks, Mr LEAVERS, again, for your submission. I noticed that you suggested there are some circumstances in which the Chair ought to have a discretion. You then articulated a couple of examples where that might be where proceedings have already commenced or where a prima facie case has been established. Are there any circumstances short of that in which it would be appropriate for a statement to be made by the Chair of the Commission? I'm thinking about the scenario that's been put previously about the run up to an election and so on. It may well be that it's not possible for the CCC to reach a concluded view about some allegations that have been made. Would it be defensible in that situation for the Chair to take the view that the public interest requires that a statement should be made as to whether or not a complaint's been made and whether the CCC is seriously investigating it? Have you turned your mind to those sorts of additional examples, if you like?

Mr Leavers

Yes. And I think we've got to be very careful on that because any person can make a complaint, but in my experience once they say a complaint has been made there are a lot of people in the community believe that once a complaint is made that means it's a forgone conclusion that that has actually occurred. Now, it would be very difficult, I would suggest, for a Chair to, no

Mr MacSporran QC And you've had many years of experience in investigating crime?

Mr Leavers Yes, certain forms of crime, yes.

Mr MacSporran QC Yes. Can you just give us some indication of your view as to premature publication of allegations, what effect that might have on a sensitive and difficult investigation?

Mr Leavers Absolutely. And probably the better crimes that I've investigated – not better crimes, but the term to use is child abuse and very severe child abuse, there are times when information may need to be disclosed or trying to find a child's whereabouts, but it is really a – “tactical” would be a word I would use - what information is released or drip-fed to the media at that point in time, because one thing we cannot do is compromise an investigation or our methodologies, but we always have to have the victims and the community's rights protected on each and every occasion. So in my career in the investigation of child abuse and other matters in relation to children, it is a very careful consideration as to whether or not you release information or you do otherwise, because, one, it can hamper the investigation, but there may be times where, to release some sort of information will enable other people to come forward which could be advantageous to the investigation. And I think if you're to work along those lines I do have faith in people at the CCC and other organisations and the Police Service to be able to manage that effectively as it is required. But as I said, it's not always a 'one size fits all'. It's very dangerous to do that.

Mr MacSporran QC I suppose taking up your example of child abuse and the example within that category of someone, for instance, downloading child abuse material onto their computer, that's a very prevalent offence these days, as we all know. If the offender had advance warning of the police approaching with a search warrant, would there be a risk, for instance, they might wipe their computer to destroy evidence?

Mr Leavers Absolutely, and they could alert others to do the same. And as we know with encryption and other methods available, we do not want to alert offenders that investigators may be on the way to see them. Absolutely. That is a very real present and clear danger, and I think we've got to be mindful of it.

Mr MacSporran QC

All right. So far as police are concerned, I suppose the competing interest of these, as Dr Denning alluded to, that if we were to say, for instance, that there should not be any publication of allegations against those suspected of misconduct, including police, until there was a prima facie case of some sort established, that would prevent, for instance, the news media or anyone else using their iPhone or iPad collecting and publicising to anyone CCTV and mobile device footage of events, as we've seen routinely in the media in recent years. Do you think that would be a good thing to prevent publication of those details?

Mr Leavers

Look, it's very hard. It depends on whether we're dealing – corruption at the high end I see is a lot different to other matters, and I think it has to be a case-by-case. And I don't think we could ever stop anyone disclosing some footage from a – I was going to say an iPhone, but any other portable device and CCTV. I think the horse has bolted. We will never stop that. But I think at times it can be very prejudicial to certainly anyone who's alleged to have been the offender, and at times people don't recover from that and I think we've got to be very careful. And look, a lot of journalists are very responsible people and report accordingly, but when you only have a snippet of the information the mud sticks and I think it is very dangerous.

Mr MacSporran QC

Yes. I think, and we're not being critical of the journalists here, because often they publish what they are given, which might only be, as you say, a very small representation of the entire events. And often with the matters we're talking about, so-called excessive use of force, there's a very real contextual aspect to it that needs to be kept in mind because it might not be truly representative of the events to see one clip of the end of the event, for instance. You might need to see the lead-up, the language, the body posturing and the physical activity. But as you say, the horse has probably bolted in terms of being able to be effective in any meaningful way to control that sort of publication.

Mr Leavers

Absolutely. And like I say, a lot of journalists act with pure integrity, as does everyone else, we can all have different opinions from time-to-time. I work with journalists, I work with bodies such as yourself and many other organisations, but an allegation can be an

allegation, but until it is properly investigated you will never ever know the truth and that is the problem. And depending upon the information and the initial allegation, it can be very detrimental, and an investigation as it unfolds, with all the information, then you can make a balanced view. But right at the initial point, if all the information is not there and it cannot be there unless it is properly investigated, can be very detrimental to many people across the board. And that's why we have to trust the authorities, whether it's the Police Service, the Australian Crime Commission or the CCC, we do have to have some form of trust for that to be able to occur and allow bodies to do it. And the hard part is, as I see, is there is not an infinite amount of resources to investigate each and every allegation that comes in. We would all like to have every matter done within 14 days. As we know it can take two to three to four years. If we could do it quickly it would be good, but we know that is not a fact of life and I don't think that will change in the very near future. Not without unlimited resources, which we'd all like.

Mr MacSporran QC

Yes. Marshall?

Mr Irwin

Could I just finish off, Mr LEAVERS, by asking you about what I understand is the essence of your submission, and that is that there should be some legislative prohibition on the disclosure of corrupt conduct, at least to the point of time that a prima facie case has been established and subject, perhaps, to some exception that the Chairman may make a judgment in particular circumstances to release the information. I was wondering if you'd given any consideration to the form that that legislation might take. For example, in your submission you speak about a provision along the lines of section 102F(1) of the Justices Act and during the course of discussions today, and this has arisen in various submissions that have been made to us, there's reference to the recommendation that was made as recommendation 8 of the Callinan and Aroney report, and there is also a current provision in South Australia, section 56 of the ICAC Act there, and a related provision, section 25, that allows the Chair of that Commission or the Commissioner to release information subject to some legislative criteria. I just wondered against that background whether you had any particular preference for any particular form of legislation that's either been suggested or is currently in existence.

- Mr Leavers Judge, can I say in relation to that and the South Australian matters, I'll be honest, I'm not across that. Is it possible I can take that on notice and get back to you in writing or reappear if you wish, because I'd rather – that would probably be better for me to do that if you wouldn't mind?
- Mr Irwin I think consistently with what we said to Mr COPE that is something on which we'd invite you, if you saw fit, to make a supplementary submission to us. Because I think we've only got the two days set aside for the public hearings, but if you'd like to make a follow-up submission, which of course would be made public, to enlarge on that issue, to take that question on notice, in effect, we'd be happy for that.
- Mr Leavers Certainly, Judge, I'll attend to that. Thank you.
- Mr Irwin Thank you.
- Mr MacSporran QC Thank you, Mr LEAVERS. That's all we have, I think. No one else?
- Mr Bingham Yes. Nothing else from me. Thank you.
- Mr MacSporran QC So nothing else you want to say?
- Mr Leavers No. Thank you, Chair, and thank you for the opportunity. Much appreciated to you and your committee.
- Mr MacSporran QC Thank you.
- Mr Leavers Thank you.
- Mr MacSporran QC Could I just say to everyone, just taking up that last point, that anyone who made a submission, in fact anyone who's here who hasn't made a submission that wants to say something in writing, in light of what they've heard here today and tomorrow, we're more than happy to receive those submissions. So bear that in mind, if something occurs to you after you leave here or overnight and you've finished speaking or you haven't been invited to speak, feel free, by all means to lodge a submission and we'll take that on board as well.
- So, look, it's just slightly early for morning tea, but I think that's a bit of a bonus for us really. I think we'll

adjourn and come back at 11:30 if that suits everyone.
Thank you.

SESSION ADJOURNED