



**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

Speakers:

Ms Alison Sandy
Ms Catherine Webber
Ms Danielle Cronin
Mr Mark Solomons

**FOI editor and senior journalist, Seven
Network**
Editor, Gold Coast Bulletin
Editor, Brisbane Times
Freelance investigative journalist

- Mr MacSporran QC Okay. Well, I think the next session is what we've called the journalists' panel. So I think it's Alison SANDY; Catherine WEBBER; Danielle CRONIN and Mark SOLOMONS. So if you want to come up and grab a seat at the table? Okay. So probably starting with you, Alison, I think. If we can just go along the panel and just give your full name and where you're from and who you represent, if you do.
- Ms Sandy Yes. My name is Alison SANDY and I'm from the Seven Network, I'm the FOI editor and a senior journalist.
- Mr MacSporran QC Thank you.
- Ms Webber I'm Catherine WEBBER; editor of the Gold Coast Bulletin.
- Mr MacSporran QC Thank you.
- Ms Cronin Danielle CRONIN; editor of the Brisbane Times.
- Mr Solomons Mark SOLOMONS. I'm a freelance investigative journalist.
- Mr MacSporran QC Okay. Thank you. Now, I thought even though you were here together as a panel of sorts, I thought we would give each of you an opportunity, which you don't have to take up if you don't want to, but each of you, starting with Alison, I guess, to make a brief opening statement.
- Ms Sandy Terrific. Well, thank you very much for that. I've actually wanted to make an opening statement on behalf of the media panel here. First of all I wanted to thank you for the opportunity for being able to give input to such an important matter regarding allegations of corruption in the State of Queensland. I am making these introductory remarks on behalf of everyone here. But we also wanted to reiterated apologies from Georgia-Kate SCHUBERT, who was going to be here. She is the head of Policy and Government affairs of Newscorp who couldn't – well, actually had to be – was called away on personal matters. As Georgia-Kate has communicated with the CCC, she is open to exploring other opportunities to engage on the details of the Joint Media Organisation submission, including taking questions on notice or attending the CCC at another time.

We would like to discuss some of the practical implications of this proposal and the unintended consequences of it, should it go ahead, some of which I will outline now. We submit that it would deter people from coming forward with information into these matters. One would expect that a body, being the CCC, whose job it was to investigate corruption would actually welcome potentially vital information flowing in from those spurred into action, after learning from the media of a complaint. In the same way that police will use the media to help with a criminal investigation, the media is an important tool that the CCC would benefit from with its investigations.

The public would expect this factor alone should override any concerns about damage to a politician's reputation or impact on an investigation, particularly as the CCC often tells the subject of the complaint of the probe earlier on. The fact that the CCC would entertain curtailing information gathering through censoring the media does raise questions about how high a priority it makes tackling corruption through rigorously probing complaints against other considerations. It would also make it more difficult for the media to question and publish information about the adequacy of CCC investigations which could be perceived as a self-serving outcome for the CCC in cases where it may not have applied an adequate degree of scrutiny or failed to interview key sources. So disclosure can be as much about checks and balances on the CCC itself.

Secondly, publication of a complaint referral provides an opportunity to anyone who has information to come forward and share it without fear of retribution. In regard to this case involving – sorry, in regard to the case involving former Queensland MP, Scott DRISCOLL, the knowledge that complaints had been made to the anti-corruption body gave sources added confidence about coming forward. Some of these sources had previously tried to bring attention to the information they had to certain parliamentarians and political party officials to no avail. Why further spook potential informants from coming forward by introducing punitive disclosure rules? In this, the CCC heavily relied on leads provided through media reports, which put pressure on the governing LNP party to act. This followed weeks of attacks by the LNP

on the media for revealing allegations faced by Scott DRISCOLL. Had the media been restricted from reporting the subsequent referral to the CCC, it would have only served to have made the media's role in reporting the allegations more difficult and potentially hindered the flow of information to investigating officers. Any impediment to the reporting of the then CMC/CCC referral would, in this case, only have benefited the majority LNP by making the media's job in reporting on matters of public interest more difficult.

There have been many instances of politicians referring themselves to the CMC/CCC following allegations being made and then releasing a media statement about the referral. So obviously some politicians are quite happy for this to be made public but it is a bit rich to then pick and choose occasions where this could happen; i.e. only when a politician feels like going public. Another point is: what possible justification is there for giving the CCC censorship powers in addition to the draconian ones it already possesses? Often a failed CCC complaint has been the starting point for a story of significant public interest. There are several examples of this which my colleagues will elaborate on later.

Another question is: what right does the CCC have to shut down legitimate public debate about matters that don't quite make it over the very high hurdle needed to provoke an actual CCC investigation? The CCC only actually investigates a tiny number of complaints in comparison to the number of matters that are actually referred to them. For example, in relation to police alone I understand that it's as little as two percent, according to statistics released earlier this decade.

Another point is the supposed problem in that airing complaints will advantage the corrupt by giving them a heads up but there is no direct evidence of this being furnished. Even if this argument could – would be undermined by modern criminal investigative practice, in which suspects are confronted at the beginning of an investigation rather than at the end – sorry, even this argument would be undermined by modern criminal investigative practice.

This is as much about the effectiveness of the CCC as much as anything. What could be more important to the

administration of justice in this State, given its history, than the effective functioning of its anti-corruption body? And how is the public to determine this without knowledge of complaints and what happens to them?

We'd also like to canvass some overall observations of this proposal. We believe it's treating the public like they're stupid, that they don't know the difference between an allegation and fact. They have a right to know what's going on, particularly in relation to people who represent them, make decisions on their behalf and whose wages they pay. What justification is there in putting politicians on a higher plane just because they're public figures and it will be reported?

The proposal is regressive and will undo much of what has been achieved post-Fitzgerald Inquiry. It would effectively be a return to the bad old days. Thank you.

Mr MacSporran QC

Thank you. Does anyone else on the panel wish to make any – any other opening statement or observations before we commence the discussion?

Mr Solomons

I just have a few observations which are further to the submission that I made in recent days. It seems to me that the CCC wants to finally resolve a question that's been raised periodically over the last 25 years but at no stage have any of these efforts gone as far as to actually quantify the extent or full implications of the supposed problem.

I read with interest the New South Wales ICAC submission which noted that vexatious complaints, which seems to be the nub of the problem here, tend to be the more frivolous ones, and the more serious ones tend to be kept confidential by complainants and then proceed through the normal processes of assessment, investigation and so on. The New South Wales ICAC has also noted that it has not suffered repeated bouts of pre-election vexatious complaints since it wrote to all its parliamentarians with a warning about this.

I note with interest that Queensland's whistleblower protection laws have been cited repeatedly in submissions supporting reform. But to my knowledge there has never been a single prosecution under them since they were first introduced in 1994. And I stand to

be corrected on that. Meanwhile, the media continues to receive an unending tide of complaints about reprisals against public sector whistleblowers.

Investigative journalists operate in a more difficult environment than ever in Australia and it's getting worse. Reprisal against whistleblowers, and the presumption that journalists should not be given information, have become entrenched in the public service at state and in particular at federal level.

The submissions supporting reform all cite the risk of compromising investigations by alerting suspects – and I'm sorry, no, Alison has already dealt with this point.

The notion that a reasonable interval should be allowed to expire and then complainants can go public if the CCC hasn't yet done its job, I believe, would be unworkable and impractical. Another point raised in many of the submissions supporting reform is that there's a risk to fair trial. However there's – in most CCC matters, there's considerable length of time before trial takes place and this in itself would substantially diminish the real risk of jeopardising it. Thank you very much.

Mr MacSporran QC

Thanks very much. Could I just ask, just taking up your last point, Mr SOLOMONS, you said that allowing a period to elapse before being able to publicise the complaint would not be workable. Can you just explain why you think that that wouldn't be workable?

Mr Solomons

Well, it raises a number of questions as to how it will be decided what an appropriate length of time would be; how the complainant would be allowed to make a complaint; whether it would have to be in an approved form; whether he or she were able to communicate that with the media; and, if so, in what form? And, I guess, I have a more general concern about the imposition of these – of such a sort of a statutory based limit on complainants' right to have dealings with the media. From experience of having published – or getting published complex stories based on long investigations and having dealt with the internal legal questions that those raise; I know from experience that internal counsel at major media organisations always have issues with any kind of statutory restriction on publishing material. And it's really the first question they will put to a journalist is,

“Are there any suppression orders?” “Has the Judge issued any restrictions on reporting?” And I feel that this is the sort of thing that would fall into the same category and would have a chilling effect on investigative journalism.

Mr MacSporran QC We just need – apparently the second camera, which went outside during the break, is now back. So if we just adjourn informally and just wait for them to replace it, if you don’t mind? I’m sure – you’re the media, you’ll understand.

Ms Webber If anyone understands, we’ve got it.

Mr MacSporran QC Yes. Is that sufficient? Okay?

Mr MacSporran QC All right. Thank you. Okay. Mr SOLOMONS, just taking up that last point about the delay being unworkable; I suppose it’s a tension if you like between allowing some period of delay whilst an appropriate body, whether it be us or the police or someone else, an opportunity to see whether there’s any substance in the complaint. The idea being that, if there isn’t, you can avoid potentially publicising something that’s going to do potentially severe damage to someone’s reputation unnecessarily. So do you – do you accept there’s that tension to be balanced at all? Or do you think it’s all one-way traffic?

Mr Solomons I accept that the publication of allegations can have a damaging effect on – potentially on someone’s reputation. And of course if it proceeds to some sort of legal process then they have the opportunity to rebut those allegations or even in fact before that, they have an opportunity to rebut those allegations, particularly politicians who have relatively easy access to the media and are protected by Parliamentary privilege, if they make comments about it in the Parliament. I accept there’s a – that there may be an issue for people who are on the wrong end of an allegation. But I fail to see why, particularly politicians, should be given a particular level of protection not afforded to ordinary citizens who might equally be the subject of an allegation about something they may or may not have done.

Mr MacSporran QC I think we’re not necessarily proposing – although one of the proposals might be to protect politicians or candidates

for election during any election campaign, that's a subset perhaps, but we're looking more broadly at protecting anyone, politicians included, against whom allegations are made, until there's an opportunity to assess the merits of it. And whatever period of delay that might be, it could be quite a short period. It's six months in the PID Act, as you've seen. It could be a shorter period. But the proposal is to allow some time at least to assess the merits before you go public and with something that might have no substance and might also be motivated by malice.

Mr Solomons Do you accept there may be occasions particularly, let's say, in the lead-up to an election where somebody makes a complaint to the CCC about, let's say, a rival candidate's behaviour, in order to bring a halt to that behaviour, irrespective of whether it in fact leads to a full investigation?

Mr MacSporran QC Yes, I can see that there might be a motivation in that respect. But that then of course lets that person, the subject of the allegation, escape the force of – the full force of the law, which might be an undesirable outcome anyway. So I suppose we at least agree that there are competing considerations to be taken into account.

Mr Solomons I mean, I accept, as I said, that damage can be done to people's reputations but I think that the existing mechanisms to address those are – would be – I consider are sufficient.

Mr MacSporran QC And I suppose the existing mechanisms are firstly to allow someone to go public themselves, as a subject person, and deny the allegations.

Mr Solomons Yes.

Mr MacSporran QC That's the first thing.

Ms Sandy Yes.

Mr MacSporran QC The second is to exercise their right to institute legal proceedings. But I suppose you would accept that that is potentially limited to a certain class of subjects because of the expense and difficulty of the issues. Not everyone can afford a lawyer.

- Mr Solomons Well I would make the point that it's – compared with other jurisdictions, it's relatively easy to bring a defamation case against somebody in Australia.
- Mr MacSporran QC But the result of that might take years to become apparent.
- Mr Solomons Yes. Yes, that's true.
- Ms Sandy We've certainly had plenty of candidates, though, in elections that have been exposed for a lot of undoing – wrongdoing, sorry, I should say. So it would – I can – and these are serious things and the evidence was there. So in those cases, like I think it was a website – one involved a website that was really inappropriate and, you know, that was – would that be part of information that you would expect we wouldn't be able to report on for six months?
- Mr MacSporran QC Well, that's one of the questions as to the limit of the prohibition, if there was to be one, and what qualifications and exemptions there would need to be put in place. Like, we've talked here about the public interest considerations that might mean that publication was appropriate. And a classic example is the QPS investigating a violent crime where there's a very real need to warn the public about a predator in their neighbourhood. So you go public. And you might even go public with an identity kit photo to try and identify the offender so that people can be safe. That might be justified. But alleging someone's guilty of corrupt conduct, which doesn't otherwise touch anyone in the public safety sense, but needs to be investigated, there might be an equally good argument that it should be investigated before its made public so that you can maximise the effect and impact of the investigation.
- Ms Webber What if when you are – when you say that you're investigating to see if there is substance in, say, over that six months, to the point about, you know, going to the public and the public helping, does that stand that obviously when the media does make this transparent that other people actually help the CCC investigate and indeed might have a snowball effect of other whistleblowers coming forward because they now feel kind of almost a sense of protection that they can talk and it is transparent and it is being investigated.

- Mr MacSporran QC Yeah, there's no doubt and I accept, as I'm sure we all do here, that there is a public benefit in alerting the public to enable them, if they know something, to come forward. I think the point, though, that if I remember correctly – and someone here might correct me if I'm wrong about this – but Callinan and Aroney made a reference to this in their report and they said that – not that it doesn't happen but those sort of witnesses who come forward in that context would normally be available anyway to the investigators in the course of the investigation. But I accept in my personal experience that there have been cases where the media interest has flagged and produced other evidence. It often happens, I might add, in cases where court proceedings are underway and the classic case is victims of – or a sexual assault case is underway in the court and people ring up and say, "Well, I know that person. In fact, I was the victim some years ago of the same predator." That's happened in the past. But at that stage it's before the court so it is public anyway. So noone's reputation is damaged, other than only in those strict circumstances.
- Ms Cronin And if we're talking about the timing around elections and-
- Mr MacSporran QC Yes.
- Ms Cronin -particular complaints, it is a period where politicians are applying for a job, so everything is – the scrutiny is heightened; like, on their policies, on their character, on their suitability for the job. And I think it's interesting to pose that question against the backdrop of us talking about real-time declarations of political donations. So, six months down the track, you might find out that the accusation was proven. And then is that a failing of democracy and have they duped the people that voted them in?
- Ms Sandy And then you're stuck with them for three years, potentially.
- Mr MacSporran QC Well, the answer I think – and just playing devil's advocate in that space – well, firstly, you're right about the public being potentially duped. But I suppose you say; is it better that the public are duped for that time

rather than someone who might be innocent entirely being prevented from being elected on a false premise?

Ms Cronin

I would argue that we don't act as channels or, you know, funnels. We go through our own internal checks and balances before we decide that we're going to publish particular allegations and we have a good faith belief that what we're publishing is correct and goes through our own internal legal processes. So there is a filter, a check and balance within our news rooms before we do that.

Mr Irwin

Could I respond to that in this way, by posing another question: would you be prevented from doing that if the legislation was directed to non-disclosure of the fact the complaint had been made to the CCC at least for some period of time while you could continue to go on publishing information to the effect that this conduct is occurring, without that reference to the CCC. Could that overcome that situation?

Ms Sandy

That would be better. I think having that power – because I think in the case of South Australia, once it's referred to their ICAC they can't report on it then at all. But if it's referred to the CCC and we just don't mention that and we just still talk about what the allegations are and all that, that would be a lot less restrictive. I don't think it's – I think the status quo is still better but that would be better than, you know, banning us from – or gagging us completely.

Mr Irwin

Because as I see it that's what happened in the lead-up to the CCC Inquiry or it was then the CMC Inquiry in 2006. There was – there were publications, I think, by your paper, Ms CRONIN, about allegations of lack of independence of the candidates on the Gold Coast in 2004. There was no mention of the CMC in those articles because, as I understand it, the CMC didn't commence its investigation until after the issue was raised. So on that basis it would still allow these matters to be discussed and publicly debated before the election without mentioning the fact a complaint had been made to the CCC. So, Alison, you seem to suggest, while it's not the perfect response, it would be a better position than a total ban on discussion about the issue just because a complaint's been made.

Ms Sandy

From the public's point of view, absolutely.

- Mr Irwin Yes.
- Ms Sandy Because the – you’re electing somebody and having a person – a public officer who is going to represent them and you need to know as much information about those people prior to an election.
- Mr Bingham Alison, I wanted to ask about a similar element, if I could. I recall the South Australian provision. I was there at the time that it was introduced. We may even have had some conversation about it. But given your national role in the – with the FOI editorship of Channel 7, I’m interested in your practical experience in the South Australian context. I appreciate that it’s not the preferred position that you would be putting but you just acknowledged to Marshall that it may be less painful than some others. Has it been a practical impediment to the reporting of corruption in South Australia as opposed to the reporting of matters that have – are actually with the ICAC in that State? What’s been your practical experience of its operation?
- Ms Sandy From – I was – I actually worked in SA prior to this but, from what the journalists say down there, it’s a terrible situation, that is, I guess, magnified by the fact that they have the worst FOI laws – well, along with Victoria, the worst FOI laws in the country so they’re really restricted in what they can do and what they can report and it’s really backwards and retrograde, I guess, in relation to what we have up here.
- Queensland, to me, working on a national level, is the most open and accountable State so this would be really a backwards step. I think it would take away – the FOI laws or the RTI laws as they are here are very good. They’re expensive but comparatively when you’re dealing with such important issues, it’s really good. And I guess talking about that too; once – as you would be aware – once anything is referred to the CCC under Right to Information laws, those documents are then exempt under Right to Information laws. So there’s already a lot of protections in place in relation to these sorts of issues. And I guess we would argue that the mechanism, the legal mechanisms already – are already adequate, but particularly in SA, I would be – I’m glad that I don’t just do South Australian issues in relation to corruption and FOI because it’s a really difficult State, and I think a lot

of information isn't brought to the public's attention that is very newsworthy and that the public would like to know because of their laws and restrictions, particularly in relation to the ICAC issues – anything referred to ICAC.

Mr Bingham

Thank you for that. Can we flesh it out a little bit more, because if you read the South Australian provision, on its face, and I think the comment was made earlier this morning, it's not an all-embracing prohibition on publication of information about allegations of corruption? It is simply a prohibition on identifying people and issues that may be before ICAC. So there's no reason, theoretically, why your organisation shouldn't publish information about corruption allegations, so long as they don't mention the fact that ICAC's got anything to do with it. Theoretically. And that's the practical experience that I'm interested in. Why do you think it is that given that the provision is as narrow as it is, that it operates as such a bar to reporting of allegations of corruption then?

Ms Sandy

I haven't – as someone who doesn't work out of SA, only from an FOI perspective – I can't actually say about the practical impacts directly because it's not something I have firsthand knowledge of, but I can say that the journalists there are very frustrated and they're – they have – there's a lot of ways that agencies have taken advantage of this regardless of – you know, because you can always manipulate things to your advantage in another way to hide behind, you know, sort of that black wall of secrecy. Or, you know, something that they – that information doesn't come to light. So I can't say a direct firsthand knowledge. All I can say is that I know that the South Australian journalists are the most frustrated in my network in relation to having to restrict what they can report.

Mr Bingham

Okay. Thanks for that. Can I take a secondary question? You alluded to it earlier about the relationship between the RTI legislation and whatever the restrictions there may be on CCC matters. Callinan and Aroney, when they considered this, thought that it was necessary for there to be a blanket exemption, if you like, about the giving of reasons for which an RTI application is refused, pending the expiry of the time that an investigative body had to deal with it, or the CCC had to deal with it.

I don't know if you recall that element of the Callinan and Aroney recommendations; it's a very expansive response to what seems to be a fairly limited problem. And I'm interested to know if you've got a view about the way that that relationship between the two pieces of legislation should be managed?

Ms Sandy

I definitely would be concerned because of that aspect of there being – I mean that can go on forever. You know, there's no limit to how long something could be considered as part of a CCC investigation. I know for – or even a complaint that's being reviewed, so – but I also know that it is – it helps to know that this is an issue when it comes back through RTI that the reason it's been made exempt is because of a CCC investigation or, sorry, a probe or whatever.

But I think, Mark, you've probably had a bit more experience in relation to this – I mean that does come up and obviously it makes it much more newsworthy. But I just think that certainly from my – I know that there's one case in South Australia at the moment which involves a woman who can't get access to the report – internal hospital report – into her son's death, and I know this is going off on a bit of a tangent but the reason is because they say a police investigation has been reopened. Even though she's been told it's been closed by the DPP and she has it in writing, so its 10 years later and she can't get access to this report, can't get closure on her son's death because of this investigative report being open.

So it needs to have, you know, a timeframe if there was going to be, you know, a reason given and no, you know, we just weren't being told that it was a CCC case and that could just keep going. Then we need to be able to report that that's the case and that, you know, that the CCC has had it for, you know, 10 years, if it was this case and, you know, and we can't report on it for that fact. And I think that's the accountability and it comes back to it being – it's self-serving for the CCC to make us not be able to report their involvement because, you know, it – then they're less accountable to how they handle it.

Mr Irwin

In relation to that, could I just mention that the recommendation in the Callinan and Aroney report was that "...it would be better that agencies and the

Commissioner simply not be required to give any reasons in any case for a period of nine months of the application unless the Supreme Court, for compelling reasons of public interest, ordered otherwise.” Would that overcome your concern about the-

Ms Sandy

The nine months?

Mr Irwin

-infinite period of time where the matter might be investigated and there could be no reporting on it?

Ms Sandy

Again, it’s only come back to things that are a timely – like, I still believe, coming up to an election or something like that, where there is only specific time period where the public can, I guess, know about certain things that would be pertinent should, you know, they be made to make a decision as to whether a candidate is suitable. I think that’s where the problem lay. And, yeah, I know that I think if you were looking – and FOI is all about outweighing the public interest, you know, what arguments are, you know, in favour of disclosure as opposed to against, I think in all these cases the public interest arguments in favour of disclosure definitely outweigh those against disclosure.

Mr Irwin

Thank you.

Mr MacSporran QC

Danielle, just coming back to one of your earlier points about the analogy of real-time disclosure of political donations during campaigns, I suppose the potential difference between that situation and publicising allegations of corrupt conduct is that when you’re talking about real-time donation disclosure, that’s just a fact isn’t it? A fact of who’s disclosed who’s donated what to whom. So that’s just an incontrovertible fact.

Ms Cronin

But can be put in context.

Mr MacSporran QC

Yes.

Ms Cronin

Like, yeah, so it can be more than that.

Mr MacSporran QC

Yes, absolutely. I mean, it would in that sense, a large developer on the Gold Coast who is tipping a lot of money to a particular candidate who purports to be independent, for instance. That might be the context you’re talking about the public’s entitled to know about.

But the donation itself is a fact. Noone can dispute that because it's self-disclosed, as it were, real-time, and so the voters are aware of it. Whereas I suppose the difference with an allegation of corrupt conduct is it's someone's belief about a person or persons being corrupt and each case will depend on its own merits as to how much evidence there is that's produced. But often it can be a very subjective assessment, can't it, as to whether it leads to a conclusion ultimately of corruption or not.

Ms Cronin

Yes. And similarly an accusation of corruption is a fact – the facts of what the corrupt activity is is sort of a separate issue. But I guess the point I was trying to make is that around election time there's a heightened level of interest and scrutiny placed on people vying for public office, as there should be. And I'm not sure that it makes sense to separate a particular element that would make them either suitable or unsuitable for a job from things like their policies and whatnot.

And I think that if the CCC is going down this track that it really needs to be done because there is a proven and systemic problem with these particular issues. And if there is, then I would argue that it's about the complaints process rather than the media's reporting of allegations of corruption or – or unethical behaviour even if you want to wind it back a little bit.

And we could have a situation taken maybe from a recent example in the business community, where the endeavour of journalists actually exposed a problem within this massive company. And then if the similar law applied in that case, they couldn't report that ASIC was investigating the accusations. So that's where I see the challenge and the complexity of this UI-

Mr Irwin

When you say it might be a reflection on the complaints, do you mean the ability to properly assess something quickly or – or what do you mean?

Ms Cronin

Well, it could be a myriad things. It could be the speed. It could be the hurdle that people need to get over to make an accusation. It could be the level – you know, the powers of the CCC to, you know, or the resourcing of the CCC. It could be any of those things. But I just really hope that when a decision's made that could impinge on freedom of the media, which I see as a cornerstone of our

democratic process, that it's for an absolutely vital proven system problem.

Mr Irwin

Would that be in any way resolved if there was an exception to any non-disclosure law – just assuming there was a non-disclosure law for the moment – an exception that allowed the Commission to make a decision as to whether or not to make something public in that context? Or perhaps even a power to go to the Supreme Court, or some court, to ask for an order that the matter be made public?

Ms Cronin

Well, I think in a modern democracy we should err on the side of transparency and accountability and that includes the media and the authorities. Court processes are a remedy that you can have. But as you pointed out with defamation laws they can – you know, can take time. Quite expensive. If you're a small publication, say, in, you know, Warwick, what remedy would you have – like what resources would you have to fight those sort of things?

Ms Sandy

Just adding to that, could I just say that if – given the impact on the public – if something like this was to be proposed as law, that perhaps it should be an election issue that that – that the governing authority, given if they actually agree with it, actually go to the people and ask them, you know, if we get voted in, this is what we'll do. So I think you'd need it – ensure there was a mandate for that.

Mr Bingham

Can I ask Danielle, a little while ago you mentioned about the internal processes that you go through in terms of working out what's reasonable to publish and what's not. Given that all of this revolves around, on the two views, either a presumption of openness or a presumption of a non-disclosure supplemented by exemptions that would operate in either case. That seems to be the essence of what the submissions have been putting to us; what are some of the criteria that you would apply in making decisions as to what sort of things you publish and what you wouldn't?

Ms Cronin

Yeah. So as an editor, journalists, we all go through the same thing. We look at the complainant and why they're complaining. What's their motivation? We look for multiple sources that can confirm the information. We

also look for source documentation. So whether that's official reports or, you know, inquiries that have mentioned it, or – and reports. So we go through a series of these elements. And then give the person the right of reply. And then go.

So it just depends what's available. So there's not like – like a checklist, if you like. But those are some of the things we do. We can RTI documents. We can seek old court documents, you know, all sorts of things. So we try and find multiple sources that confirm while keeping in mind what perhaps the motivation is of the person coming forward.

Mr Bingham

Okay. Well, then – and as a devil's advocate almost, given that it's reasonable for you to go through that sort of process and to consider those sorts of factors before you make a judgment about what should be in the public domain, why isn't it reasonable for a body like the CCC to go through a similar sort of process to exercise its judgment about the same sorts of criteria before the fact that it's investigating a matter should be in the public domain? And I make that particularly given the responsibilities that the CCC has to investigate properly and all the constraints that, you know, premature publicity might contain for an investigation. You know, the devil's advocate question is; if it's good enough for you to be able to do it, why isn't it good enough for Alan or some process like Alan to be able to do it?

Ms Cronin

It's a very good question. I would just say that I'm not telling you that you can't publish that before you've gone through that process whereas this would tell us that we've gone through this process and we can't publish. So-

Ms Sandy

I'd just add to that also that the public scrutinises us because everything we put in the public domain, you know, we have – everybody can read, whereas you could make decisions and nobody would know.

Mr Solomons

I think to draw parallels between the operations of a body like the CCC, which operates under statute, its taxpayer funded - to compare its operations to those of a media organisation deciding whether or not to make – to publish a story, I really don't think you can make that parallel. I mean, the two types of organisation have completely

different purposes. They have completely different accountabilities, completely different legal constraints. I mean, just as a casual observation, the CCC is, by nature, a very conservative organisation, legally risk averse, concerned about impact on – on what – a large part – secret operations. I mean to make that parallel I really – I really don't think that's a starter.

Mr Bingham

I hear what you're saying, Mark. Again, by way of a response to that, Alison made what I think is a very good point earlier on, that in all these matters what you're doing is making judgments about the public interest. That's what keeps people like me in a job and Alison observed that it's always a question of balancing a range of factors, some of which favour one particular outcome and some of which favour a different outcome. In each case there's going to be, notwithstanding the differences in the legislative framework and the responsibility and so on, but somebody has got to make a judgment about what does the public interest require in this situation, and there is always to be that balancing of factors that favour one outcome and factors that favour another. That model applies from the RTI legislation but I apply it in my day-to-day job as well very much.

And it seems to me that that's the essence of what we're getting to here - how is it that you can reach a sensible conclusion about who should be making the judgment about what's in the public interest and what factors should be the ones which are front of mind for people, whether they sit within the CCC or within a media organisation or whatever, in making the judgment as to what the public interest requires in these particular cases? So I take your point that we're coming from different perspectives about it but I think we end up at a position which is not too far different, and what I'm hoping to do is to learn from the experience of the media organisations and how those judgments are made and what we should be proposing through this process.

Mr Solomons

I think what's at the nub of this, though, is the relationship between a complainant and a media organisation. And what is being proposed here is that the CCC is allowed to interpose itself between the two and to arrogate to itself the power of the media organisation to decide whether or not it's a story in the public interest. So it's not – I – I – obviously I totally agree that both

organisations have to go through a range of processes in order to decide what is in the public interest. What I don't agree with is that the CCC should be allowed to take on that role on behalf of the media organisation in respect of the media organisation's relationship with a complainant.

Ms Sandy

I'd also just like to add, if it's okay, that in relation to FOI laws, obviously there's an independent umpire, for example, who – and more often than not public agency or government agency, sorry, will say that this isn't in the public interest and I'll say it is. And it will go to the umpire and more often than not the umpire actually agrees with us, that it is in the public interest that it is disclosed. So government agencies tend to be overly conservative on those sorts of issues.

Mr Solomons

Can I just make a further point which builds on something that came up just before? This range of processes that a media organisation, or an individual journalist, goes through in deciding whether or not to publish, that does include aspects of sensitivity, of operational activities, protecting sources that wish to remain anonymous or are at great risk, and those are issues that equally the CCC would deal with. And there are also many cases that I've had personal experience of where the interests of the media organisation and of the CCC coalesce and are shared and relate to exactly the same matters and in many cases exactly the same people.

And so this notion that the media organisation or an individual journalist, cannot be given that responsibility or is not worthy of the responsibility of making those decisions, I think, doesn't address the reality of what happens in looking into complex matters involving corruption and serious crime. Where in my own experience there's been several cases, examples – and I probably can't go into details because there are a number of issues are before the courts – but a number of cases where I, as a journalist, and my media organisation, whoever I was working for, have agreed that a matter that could have been allowed into the public domain, has been kept back in order to protect the integrity of a CCC investigation or some other sensitive matter.

And I think that the reason that that's worked and that these matters have ended up before the courts is because

of a positive symbiotic relationship between the media organisation and the journalist and the CCC and working around these issues. So I think to have a sort of one size fits all solution that no complaint should be publicised before a certain period doesn't address the realities either because there are some times where, yes, you could publicise this complaint but it's in no-one's interest.

Mr Irwin

Mark, doesn't that have to be qualified though by the point that I discussed with Alison earlier? And that is, that it may be possible, as has been suggested, to craft a provision, a legislative provision, that doesn't prohibit the publication of information about the suspected malice, maladministration, misconduct, corruption, criminal conduct, whatever you want to call it, or the identity of the person alleged to have perpetrated such things, without the need to make reference to the fact that a complaint's been made to an organisation like the CCC. So the decision to publish that and the effect of publishing that is just governed by the general law.

Mr Solomons

Sorry, I'm not clear as to your main point.

Mr Irwin

Well, what I'm suggesting to you, or trying to flesh out with you, is that legislation could be drafted which wouldn't prevent discussion of the issue of the alleged corruption or the identity of the people involved; that the legislation would simply be directed to not reporting the fact that the complaint had been made to an organisation like the CCC. And wouldn't that answer the concern that you are expressing?

Mr Solomons

My experience tells me that that in itself would be problematic because the other side of that coin is that the fact of the – the fact of knowledge of the CCC involvement actually brings people forward. The CCC is perceived amongst the general public as a very powerful, important, significant organisation with heavy responsibilities to police corruption and to tackle organised crime, so the mere knowledge of the CCC's involvement in a matter in many cases, in my experience, has been enough to bring people forward even if the matter was only at the level of a complaint, because those people know that once the complaint is lodged, a series of processes have to be followed by the CCC, even if the assessment process that is used does not result in an investigation or referral back to a relevant agency.

So, for example, and maybe I shouldn't be too specific but I have – I've been involved in reporting significant stories involving public sector corruption where the fact of the revelation of CCC involvement has suddenly brought a whole tide of information and informants and sources and documentation that would not otherwise have emerged. So I think the idea that you could suppress knowledge of involvement with the CCC but still address the matters in hand doesn't address the reality of what happens when it becomes publicly known that the CCC is involved in the matter.

Mr Irwin

All right. Thank you.

Ms Webber

And surely to that point as well, just adding that if we are talking about the allegations then surely the damage is done to what we're talking about if we're worried about reputations, if the allegations are there. Also, why are we hiding this? Where is the transparency? We're allowed to talk about the allegations but not mention the CCC investigation, well, then we would already have had to have gone through the process of, you know, the various laws that we are, you know, and the code of ethics and everything else, and our checklists. So if we were still talking about the allegations, not mentioning the CCC, wouldn't the damage be done anyway? And certainly to the point that, to me, anyway, that if we are talking about some very big public figures or – and certainly there have been cases in the past where some of these have been found to be cleared and have still enjoyed enormous success in their electorates to, you know, prior, after.

So to – it's – I guess, this isn't in every case and, you know, it feels like these are kind of a couple of - it's a small percentage of what we do report on or look at. And the – the reason why when we do this about – you know, this is the freedom of speech obviously – but it's also about the transparency of the electoral process and misinformation. So it may not be someone being in jail for 20 years or when we're making – about a horrible, you know, criminal who's going to get everyone and murder everyone – you know, these extreme cases or extreme politicians with big profiles. It is a case of transparency and public information and the voters and we are the eyes and ears that can be in a council every day, you know, while people are at work. That is our role

think it's not so much what's in the public interest as well as a public's right to know. That is democracy. And that is the role of the free press and we're proud of that in Australia.

Ms Sandy

And we're commercial organisations too so we spend a lot of money trying to figure out what the public are interested in and, you know, ratings, newspaper sales, all that sort of thing, you know, clicks on the Internet. They're all very, you know, determining factors or help with the determining factors as to what they want to know. So we keep – you know, we obviously keep track of that very closely.

Ms Webber

And they do want transparency. You know, might sound like a dry topic and all the rest but they, you know, our readers, viewers, listeners, you know, would tell us that it's very important to them to know that. And to Alison's point, that many of them as well will see that is this – you know, that they can see through allegations, they can tell from an allegation and someone who is found guilty of, you know, just like court reports a lot of the time as well.

Dr Denning

One of the things that we've been talking about and I think, Mark, you raised it, is this concept of evidence and how do you demonstrate, you know, the problems that we're talking about. I suppose I putting that back on you as well in terms of how do you know that the public can differentiate between, you know, all these different parts of a process from allegation up to fairly good – you know, baseless allegation to fairly good allegation to charge to been through the court? You know, how do – what evidence do you have that the general public is that astute to those different phases in an allegation's life cycle?

Mr Solomons

I think people are familiar enough with reporting of criminal matters of court, of debates on TV, of all sorts of matters that are aired in the press that would give them an idea of the relative merits of something that somebody alleges against somebody else and whether it's supported by evidence. I mean, this is a matter of normal daily life as to if somebody makes a claim about something, the normal expectation of the average person is that they should try to substantiate it or that they should give credit to people who provide a certain level of evidence for their statements.

responsibility as a media organisation to report and give the public, you know, access to information that they need to determine, you know, as I said, in an election sense, you know, who to vote for or whether or not some of these issues need to be taken into consideration. And as I – as we also mentioned earlier, context is always provided. I think we've always got to give the public the benefit of the doubt. You know, that they can understand the processes and it will be spelled out and it is also a responsibility of the organisations involved to clarify what process – what it's at. You know, so in relation to a complaint, that this is a complaint and this is something that hasn't been investigated. There is no evidence that we're aware of at this stage that – that, you know, it's going to be substantiated. But, you know, the public – as I said, the public aren't stupid.

Ms Cronin

Yeah, and I think that readers are astute in working out which particular mastheads can be trusted or not trusted or publishing platforms, if you want to say, so I think they deserve credit for being able to discern if something is written by, you know, a particular media organisation as opposed to maybe posted on Facebook. There's a high level of investigation and clarification and checking that's gone on.

Mr Bingham

Danielle, you've raised a point that I wanted to ask and now is a convenient time to do it. Given that you represent what I might call mainstream traditional media organisations, you apply codes of ethics and you're bound in the sorts of decision-making processes that you are, social media isn't so bound. Wouldn't it be nice if there was a law that made them apply the same sort of process that you have to go through or that you put yourself through in making your decisions about whether to publish?

Ms Cronin

I'm not going to suggest that you legislate social media. Apologies, I'm not going to -

Ms Sandy

I think we can safely say, no, that that's why these guidelines are in place for us and that we can – so – because, I mean, anything can be printed. All sorts of stuff is printed on the internet and in social media and things like that and I know, you know, people would be named and shamed over certain things regardless. So the

benefit of being able to do our job properly is we can set the record straight.

- Mr Bingham Sure. But don't we have a responsibility to look at the evolving media landscape and to say this is the way that things-
- Ms Cronin Absolutely.
- Mr Bingham -are going to be into the future? How are we going to protect the public interest? Weigh up all of these factors, and don't they look a little bit different if you're talking about Facebook or any other social media platform, as opposed to what the traditional media might publish about something?
- Ms Cronin We've already seen a couple of cases, I think they hail from overseas, where someone has been sued for defamation over a Facebook post.
- Mr Solomons It's happening here.
- Ms Cronin Yeah. And we've seen a police investigation into some posts made of a public – on a public figure's page of a particular nature. So I think-
- Mr Bingham ...in South Australia.
- Ms Cronin The law is often, you know, catching up and we all are to an extent catching up with a rapid evolving media landscape and social media, I guess, is another element to look at and I don't know that anything is kind of a one fix or magic bullet for that at this point.
- Ms Webber And going back to the points raised earlier when you were talking about what's in the public interest and the checklist that we go through, well, absolutely sometimes it does break your heart because we do – and take it obviously what we do incredibly seriously – and what's of public interest as opposed to what the public are interested in is, you know, something that also for us comes with laws, with – that we see blatantly that social media doesn't adhere to. And probably looking at our organisations going, "Gosh, why haven't you reported that that guy's got, say, to take it out of this – previous history of raping 25 women before he, you know, has just been arrested?" "How come you haven't" – you know,

so we look like idiots. Don't we know that? Of course we know that. But we're bound by all the rules. As you're aware that we have information in the background when we make these decisions. And when we are trying to be transparent and decide what's in the public interest, just like when you're court reporting, you know, we know not to collapse a trial. But, you know, certainly there's this whole other conversation going on on other platforms as well but that's why this – this is so important that we do kind of keep that cornerstone.

Mr Solomons

Having worked for an American-based publication where there's obviously constitutional protection of free speech, even they still insist on same sorts of checks and balances that you would find in an Australian publication before putting something in print.

Dr Denning

Alison, you mentioned before that when you write a story, you're obviously looking to triangulate your sources and get information to back that up and that you're looking to provide the context and sometimes in that context it is a response by an agency like ours, as to say, "Well actually no we're not investigating that. It's only an allegation at this stage" and those sorts of things. As you know, working across the country, different agencies have different policies, I suppose, or approaches in terms of engaging with the media. We have seen our involvement and our – the nature of our engagement change over time. We've seen people suggest that we shouldn't say anything at all, obviously, and, you know, you would obviously be of the view, am I right, in saying that we should be providing more information to – into that presentation of context? Is that right?

Ms Sandy

I think so. I think you can talk about context of what you're doing without obviously, you know, jeopardising the case that you're investigating. Because if you're just talking about processes, well that's in the public realm anyway. So it's just ensuring that it's out there, that that context is given to that and it's just repeating, you know, you could probably put it on every press release, that "This is a complaint, this is not – you know, there's no – at this stage, you know, there's no investigation", or whatever. I mean, there is nothing wrong with doing that and I don't think anyone would be limited in that. That said, when you've been doing this long enough, you do that anyway. But I just think it's important that agencies

also take it, you know, ensure that that – that they do that and that they, you know, that’s why you have media officers and things like that to ensure that everything’s that reported – well, as much as that’s reported in the media is, from your point of view, is correct. So-

Ms Webber And we report allegations in court every day, you know, with people who are cleared. So, you know, we do do it every day. We report allegations every single day.

Mr Solomons I’d suggest that an organisation like the CCC that operates to a large extent in secret, almost needs to – needs to make extra effort in relation to its relationship with the media because it’s not allowed to talk about a lot of what it does and yet it occupies this incredibly important role in the State and so people want to know whether it’s doing a good job and what kind of things it does and why it exists and so I think ironically it’s sort of a reason, if you like, to have more media engagement rather than less.

Dr Denning And should that be at the individual case level? Or is it more appropriate for an agency like this to elevate and talk about, you know, numbers of complaints and how they were processed and the outcomes? Or is it appropriate at a case by case level in response to stories in the media?

Ms Cronin I think both.

Ms Sandy I think both, yeah.

Ms Webber Sure, absolutely.

Mr Solomons I mean, that – I’ve been involved in some stories where there’s been direct operation involvement with the CCC and, for example, Mr MacSPORRAN, your predecessor, Dr LEVY, gave his only media appearance in one of these stories and that was something that took a very long time to organise. It was a very sensitive matter because there were significant things under investigation. Some witnesses hadn’t been spoken to, this kind of thing. So it was done very carefully and with due regard to the operational sensitivities and all the rest of it and took quite a bit of organising. But it did provoke a useful – my understanding at least is it provoked a useful response from the public in relation to that investigation. We had

a great story. We had a scoop because we had the first and only interview with Dr LEVY and all in all it seemed to be a fairly productive, mutually beneficial relationship. So I would like to see, you know, more of that sort of thing happening and I think there's a strong case for it.

Ms Sandy

Just adding to that, I certainly spend my time – a lot of my time negotiating with agencies on how it would be mutually beneficial to do something and a lot of the time it will go outside of FOI restrictions. You know, an example of this might be, you know, in relation to foiled terrorism attacks so it looks good for the AFP to talk about how they, you know, prevented terrorism attacks, ones that aren't subject to legal action and things like that. And so it works for them. It works for us because we get an exclusive on – without, you know, talking about their individual procedures. But, you know, it just – it's all about, I suppose, talking or discussing things that are in the public interest and doing it in a way that assists these things. And, you know, maybe it might have resulted or hopefully it resulted in more people coming forward about potential terrorist acts and I can't see how that isn't publicly – you know, in the public interests and beneficial to them.

Ms Webber

And certainly with other organisations, you would certainly have a high level of – a relationship where you can talk as we all do, that we might know – like alluding to my point before, we have a lot of information that we don't publish all of the time which is part of that checklist. So if we were to know that, you know, that the relationships that we had and whether it was an off-the-record conversation case by case saying, "Look, you know", they're conversations we have with other organisations constantly particularly the police all the time, an off-the-record conversation to say, "this is A plus B" as to why they might go public or why they need our help or, "Can you refrain from doing this?" Like, we abide by those – the relationship and codes of relationship with great integrity and responsibility, an enormous amount of responsibility. So the more that we can open up that relationship, that would be completely beneficial.

Ms Sandy

I don't know how many front page scoops that would have gone – you know, would have been awesome that

we could have put on there but we were told – or asked by police not to. And we – we abided by that. I mean, even though we could have, but, you know, we don't want to – it's not in our interests to jeopardise anything that they do, so, yeah.

Mr MacSporran QC

I think it's fair to say that our approach at the CCC is to acknowledge our public responsibility to inform everyone about what we're doing in spending, you know, a significant slab of taxpayer funds. That's just what we should be doing. There are certain things we can't talk about for obvious operational reasons, but we have, as I say, a duty to where we can explain the sort of work we do and it is designed to increase the public's confidence in our organisation. So we are – and I hope – I'm hoping you have noticed that we are intent on improving our media presence, where we can, to demystify the work we do and to increase transparency and accountability. That's what we're – they're our core values clearly.

But I suppose the real nub of it is this; that one of the reasons I assume – and I think you've articulated as much quite well – one of the reasons you are very careful what you publish and in the enquiries you make is that you are concerned to get it right.

Ms Cronin

Absolutely.

Ms Sandy

Absolutely.

Mr MacSporran QC

Now the last thing you want to do as an organisation, irrespective of the commercial benefits of it, is to publish salacious but false allegations. That would be completely irresponsible. But I suppose what we're saying is to counter that argument – and we accept all of that, there's no doubt - we don't suggest otherwise.

But the other side of that coin is that you have only limited powers of investigation. You don't have as much power as the police. No-one is forced to speak to you. Complainants who come to you or whistleblowers who come to you are just that. That's really the limit you have. You might check documents they have got. You might follow leads they give you. But no-one is forced to speak to you. People can tell you to "go away." They can shut their doors in your face. So the checks you can do to satisfy yourselves that what you're doing is

genuinely in the public interest and for the right reasons are somewhat limited.

We, on the other hand, have huge powers as you know, powers that we take very seriously and we are constrained to exercise very responsibly. But we have things like we can call people into hearings; we can force them to answer questions, irrespective of whether it incriminates them. You know, all the powers we have are clearly designed to get to the bottom of the truth of an allegation. The counter view to the one you're running is that we should be given the opportunity to use those powers to resolve the issue of whether it's a false complaint or whether it's not, and that we can do so with greater certainty and speed with our powers than you might be able to achieve, and that, we would say, on one view, promotes the greater good and the public interest.

Ms Sandy

With respect, we're not asking to be able to determine guilt or innocence in relation to what we're doing. We just wanted to report what's going on, that's all. I mean, so we would only be reporting your involvement and at the capacity of what, you know, that involvement. We're not, I guess, as I said, right from the beginning, we'd only be discussing where we're at and giving context to ensure that, yeah, that – I mean it's not in our interests. We will get sued if we, you know, implied guilt or anything like that, so that doesn't occur.

Ms Webber

And certainly a false complaint, what – to your point saying that when – yes, you can force people to answer things and certainly in the 2004/2005 Inquiry, you know, that's what also – it was this organisation that actually then uncovered untruths and things that they kept telling us, and we would have to report, that were blatant lies. And it was thanks to this that that actually came out and it proved that everything that we had been reporting was true and accurate, certainly after much criticism of, you know, our newspaper.

But what is the percentage of false complaints? When you talk of a false complaint, is it because there are a couple of high profile – like, what are we actually worried about here that – do we think that this happens a lot? That there are false complaints every day that, you know, media are reporting on and therefore reputations are at risk? Because, again, say, going to court, you – we

do report allegations all the time. And we certainly are bound to report if they are cleared and also give them the right of reply. So if it gets to a complaint and then to an investigation, obviously an investigation should absolutely be transparent and reported and we should all know about that. Is it at that complaints process?

Mr MacSporran QC

Well I think the distinction is – and I think it’s an important distinction – is between the – the reporting of allegations made in court – because something doesn’t get to court unless there is some substance in the allegation.

Ms Webber

Yeah. Yep.

Mr MacSporran QC

Because there is a process that’s gone through. The police officer, he or she has a duty to not charge someone with a criminal offence until they are reasonably satisfied there is evidence to support the charge. That’s – their oath of service warrants that level of scrutiny. Many police officers quite innocently get that test wrong. They might charge someone who is ultimately acquitted. But the fact that they have exercised that test and then it goes to court, and once it’s in court you are, as you know, completely free, once they’re charged, you’re completely free to report that fact. That’s an important threshold.

We’re talking about just the bare allegation made against someone, for instance, in an election campaign. That’s all it is. It’s a bare allegation. No-one’s assessed it. No-one’s determined whether it has substance, and then next minute there’s polling day. And the voters have to go in and say, “Well, why is it in the public interest that the public know that someone’s alleged to have done something and that’s all they know about it?”

Ms Sandy

Devil’s advocate, as you always do, Marshall, just in relation to that, though, I mean it’s weighing up again the factors; the in the public interest outweigh arguments in – favouring disclosure outweighing those against disclosure. So, yes, the allegations are made. The public – I mean if we put it to the public, would you rather know about them or not know about them, knowing that they could be guilty or they could be innocent. I mean it’s just a matter of them having that knowledge when they go to the polls. And as we’ve pointed out, they’ve been all the examples that we know of actually-

- Ms Webber They have won.
- Ms Sandy -didn't hinder their election result. So they actually won regardless. So all we're saying is that I think the arguments favour disclosure – favouring disclosure outweigh those against disclosure. We're not saying there aren't arguments on the other side. But I think if we put it to the public and this is where I say to you, let's put it to the public, if – if this is something that you want to make a law, we should, you know, the – the government or the parties, political parties, should say where they stand on it and the public should decide.
- Ms Webber And what their next steps are.
- Ms Cronin And there's also too, like, stepping back a bit, there's also an issue of media freedom. Like, freedom of the media. And if the activity of the media is going to be curtailed in a particular way that I feel there has to be some systemic problem that we're trying – that's trying to be addressed, and I don't know that there is. Like, I'm not sure that there is widespread systemic vexatious complaints that are just being-
- Ms Webber Thrown around.
- Ms Cronin -picked up and thrown around on, you know, mastheads.
- Mr Solomons Just to follow up Catherine's question, does the CCC have any sort of statistics or body of evidence to support this idea that there is a systemic problem of this nature?
- Mr MacSporran QC One of the difficulties, as I'm sure you appreciate, currently there is an offence provision in our Act which enables us to prosecute as a criminal offence someone who makes a frivolous, vexatious or complaint without substance. But that has to be proved to the standard beyond reasonable doubt and you have to prove the person knew it was a false complaint when they made it. Now that – I'm sure you would understand that's extremely difficult to prove so obtaining evidence that people make false complaints is in that category. There's no – there's never been a prosecution because it's almost impossible to prove.

The closest you might think we came was a case where a complaint was made on a Friday or a Thursday before a Saturday election and withdrawn on the Monday. You would have to conclude that that would be the strongest circumstantial case you would have that there was nothing in the complaint because it was just done for a purpose. But absent that sort of evidence or the admission by someone who made the complaint that they did it deliberately to damage a political candidate component, you – you have very great difficulty prosecuting successfully. So there is the lack of evidence, I agree. And I don't think there's necessarily a need to produce evidence chapter and verse to justify a concern about this problem because it has been a problem for years. People acknowledge anecdotally that there have been what you would have to suspect are complaints made for an ulterior motive during election campaigns at least. Ian LEAVERS correctly referred to the fact that many people make false allegations against police officers.

- Ms Sandy But people know this and this is, I guess, where we were coming back to the fact that the public, you know, particularly leading up to election campaign, they realise that there's a lot of mud-slinging that goes on. I mean it's-
- Ms Webber As do we.
- Ms Sandy Yeah.
- Ms Webber When the complainant rings us on the Thursday night to tell us what they've just done, in the hope that they get the media coverage.
- Ms Sandy Yes. So I mean, (a), yeah, we don't report every complaint; and, (b) I mean it's responsible in the sense that, you know, it just still comes down to this. You know, I mean if we're representing the public, do – you know, is this what the public would like? I mean, if it came down to whether they would rather know or not know, you know, I mean, isn't – aren't their interests who we're serving, not – not the people that are subject of these complaints?
- Ms Webber And again the percentage.

- Mr MacSporran QC We are. We are saying – and this is the distinction again, I think, there's no doubt, I agree entirely, the public would be very interested in knowing if someone's alleged to be corrupt in a lead-up to an election. They would love to hear that. But the other – but just think about what they can do with that. How is it in their – in the public interest that they should know that. And the public includes the candidate against whom they have got the allegation. What can the public do with that? And I think, Catherine, you said before they can think about whether it's guilt or innocence. Well, they might think about that, and that's the danger. They are thinking about that. But how can they possibly make an informed decision on the basis of a bald allegation that's made by someone who is an opponent? You're really saying they conclude that there's nothing in it. That's what you're saying which justifies the publication.
- Ms Sandy Well, the evidence indicates that, that's what we're saying.
- Mr MacSporran QC Well, there's no evidence.
- Ms Sandy There's no evidence – well the evidence of when these allegations have been made that these people that the allegations are against have still been voted in.
- Mr MacSporran QC So why is it in the public interest to publish it at all? If it's not going to affect anyone because they know they can see straight through it, there's nothing in it, it's just a nonsense, why – why does it have to be published? What's the interest -?
- Ms Sandy Well, we don't – we're just saying that-
- Mr MacSporran QC - except to sell papers?
- Ms Sandy We're not saying about ones that-
- Ms Webber ...Kardashians.
- Ms Sandy -are vexatious that are incorrect. We're just saying about complaints in general. I mean if you're going to do a blanket thing on all complaints, that will include ones that are actually real as well. So what you're doing is restricting us from actually reporting on complaints that are made against politic – well, potential politicians

leading up to an election that are actually true. And this could be serious enough that then, as I said, we're stuck with them for three years on the – the taxpayers are paying for them.

Mr MacSporran QC

I think the answer – not necessarily the complete answer, but just again playing Marshall's devil advocate, is that what happens is that if someone, after an election, is found to have been corrupt, that essentially means that they will be dismissed from their electorate or their shire, whatever. Because that – elected officials can't be dismissed for ordinary misconduct. It has to be a corrupt conduct as defined in our Act, which has to be, in the case of elected officials, a criminal offence. So if they're found to be guilty of that after their election, they are in fact taken out of the equation. I mean its small – its small-

Ms Sandy

But as we would sometimes argue, the information that has led to their being found guilty wouldn't necessarily come about if we hadn't reported it. So this is where Mark would argue-

Mr MacSporran QC

Well, you might report it to us confidentially.

Ms Sandy

But this – no, no, we're not talking about people coming forward. We're talking about people coming forward to you as a result of us reporting it because they know of your involvement so we wouldn't necessarily know to bring it to you. So, once it's reported, people, as we say, get – are confident and then they can come to you with this information. I mean police do it all the time with us so basically you're taking away one huge part of your, I guess, armoury, I suppose, in ensuring that these investigations come to light. So why would you want to do that if you actually really wanted to uncover corruption?

Mr Irwin

But, Alison, aren't you just talking about reporting the allegation, not reporting the fact that the allegation has been made to the CCC, when you're giving that answer?

Ms Sandy

Well, that's what we're saying though, because if they know the CCC is involved, they will go to you. You know that. So if they know that there's been – that, you know, there's involvement and it leads to that, I mean and, again, Mark is best to talk about this because that's

what exactly what happened in – in a case that he was investigating, that-

Mr Solomons

And more than one.

Ms Sandy

Yeah. And I mean you talk about the investigators were very grateful. You talk about that.

Mr Solomons

Yeah. Can I ask a question about what have you done, just out of interest, to canvass views on this within the CCC?

Mr MacSporran QC

Nothing, to be frank. You mean investigators: people like that?

Mr Solomons

Exactly.

Mr MacSporran QC

Yeah, we haven't canvassed anyone in that respect. I take your point that is a relevant feature that, well, we should look at, because if the general consensus is that there's been a wealth of information that's come in by virtue of the allegation becoming public, well, it's clearly a matter that we need to factor into any assessment of this question.

Mr Solomons

Because I have had CCC investigators privately tell me exactly that.

Mr MacSporran QC

Yes well, look, there's no doubt that certain investigation can be advanced by publication. As you say, the police do it all the time. You have to be very careful how you do it because it can affect the admissibility of evidence in the trial that might follow but it's a very useful investigative tool from time to time, I agree, yes.

Mr Bingham

Can I ask you perhaps a – a perhaps tangential but related question which is about your experience of the whistleblowers regime? Are there circumstances in which people will come to you saying, "look, I've taken this to the CCC, nothing's happened about it so therefore I'm coming to you now"? And I'm asking that question because of the relevance of the two regimes sitting beside each other, if you like, and how they should complement each other?

Ms Cronin

To me?

- Mr Bingham Well, to all the panel.
- Ms Cronin Well, I have found in my experience with dealing with whistleblowers they have normally gone through a whole range of official channels - reporting it internally, reporting it to regulatory authorities, reporting it to sometimes even their local MP - and they get to the end of their tether and then they come to the media. So that's my overwhelming experience with whistleblowers.
- Ms Sandy It's a last resort. We're often a last resort, so.
- Ms Webber And they've very hesitant obviously to go to the media because they want to be a whistleblower, so they would be completely paranoid about someone tracking them down, you know. And I think that's why to the point it feels - with the argument when we lump it in one; that, you know, we've got these public figures ruining reputations. There's this extreme of what probably a few, and then the extreme of a few, like, what is the percentage of, you know, if every allegation is - I guess that's what's hard for us to understand. How many allegations are, you know, frivolous and - but how many of those would we actually report on? And then to, you know, PISASALE's point, and were they actually damaging? Was any publicity good publicity for some of them who were toying with both sides, you know? And also then to the point that they - if we're talking about politicians, elected public officials who are going into public life who knowingly full well know both sides of the political game are probably better at - better across it than us and what percentage of that are we talking about? Like, are we really ruining and at risk with this process if we put another gag on the media potentially and stop this information getting out to the public, which is their right to know about the transparency and allegations, why - what is the percentage of?
- Mr Bingham But can I put again - I'm not going to use those words - but an alternative point of view about that? One of the things that you quite rightly take very seriously is the protection of sources. Why shouldn't the CCC take equally seriously the protection of complainants?
- Ms Sandy Well, I don't think we're necessarily the complainants, I don't think we're exposing the complainants.

- Ms Cronin No, we're not.
- Ms Sandy It's more about the issue of the complaint. But can I just make the point in relation to FOI laws, and let's face it there's been so much scrutiny on those, that in relation to public officials that is anything that's relating to people's, you know, wages that we're paying etcetera. That's much more likely to be disclosed than, I mean, obviously FOI laws don't even apply to private companies etcetera. So the whole point of FOI and the public's right to know is about public agencies, government agencies. All this sort of information is something that is much more likely to be disclosed under – you know, under FOI laws than it would be if it involved personal private information, which is – is exempt. So I guess if you use that same rule of thumb then this information would still be, you know, come to light.
- Mr MacSporran QC But after – sorry.
- Mr Bingham Yeah, I'm not sure that I'd agree with that analysis about where the two responsibilities lie. It does seem to me that there is an argument that one of the things that makes the media successful is the protection of sources and being able to do that sort of thing without having to disclose all of the information where it all comes from. And I think, by analogy, there is an argument that the CCC would be well placed if the same sort of opportunity was provided to it, so that it could provide, if you like, some protection to people who are bringing matters of public concern. They are likely to be the same matters that they will go to the media about. But, yeah, I take your point there's – there are differences in terms of emphasis and approach but I do think there's a fundamental principle in there somewhere.
- Ms Cronin But you can report-
- Ms Webber And also the politicians would like to conceal, sometimes it is in – politicians would also like to conceal or choose what information is concealed potentially.
- Ms Sandy And I thought we were only talking about your involvement as opposed to a complaint, you know, anything like that. So really all we'd be doing and the – is saying that the CCC had received a complaint, so we

wouldn't be talking about the complainant, we would only be talking about-

- Ms Cronin Talking about the activity. Yeah, that's what I was going to add. So we're talking about the activity which is to be a distinct thing from the complainant.
- Ms Sandy Yeah.
- Mr Solomons I mean the media wouldn't reveal the identity of a complainant unless the complainant agreed to have their identity revealed, and doesn't the CCC automatically afford anonymity to complainants anyway?
- Ms Webber Yeah.
- Mr MacSporran QC Not necessarily, no.
- Mr Solomons Right. Okay.
- Mr MacSporran QC Some complainants obviously require anonymity and we honour that but sometimes, no, their details aren't published.
- Ms Sandy Well we're not – I wouldn't imagine that we – unless it was actually newsworthy – would be interested in the complainant anyway.
- Ms Cronin Or out themselves in Parliament.
- Ms Sandy Yeah, that's right.
- Ms Cronin Say that they've reported it to the CCC.
- Mr MacSporran QC See if you're talking about the public interest in exposing corruption and allegations of corruption, the public has a right to know, there is a very good argument possibly that the public have a right to know who has made the allegation, because often that is the context that is quite important in whether there might be anything in the allegation or not. Because the – you know, an opposition candidate in an election, for instance, that's a pretty important piece of information that the public might be entitled to know if you're going to publish the allegation. Likewise, your sources - the source of your allegation might be a very relevant factor and yet you take the view, your ethics don't permit you to disclose your sources.

- Mr MacSporran QC It would place us in a very difficult position if that was the compromise position reached.
- Ms Sandy Yeah.
- Ms Webber And wouldn't the general public be going, "But why can't we know that?" Because if there are allegations then it -
- Ms Sandy Yeah. And wouldn't you want them-
- Mr MacSporran QC They might realise then, being educated as they are, that we are in fact investigating it.
- Ms Webber Or they might hope and, well, wouldn't you be bound to by the next day to investigating it?
- Mr MacSporran QC And-
- Ms Sandy Yeah, we just don't think that the status quo should be changed.
- Ms Webber And I think also there is a lot of information I think someone mentioned it previously at the beginning that, you know, if there's - whether it's corruption or funds that are being given from - or where the funds are going, but those donations are never revealed three, four months after an election. So you know there is a lot of knowledge that we have that, you know, the public don't get and to your point saying, okay, they might be - are they guilty or not guilty - and do we vote for them or not if they aren't aware of this? And certainly it's also to the point then three months after, as with some investigations now, that you had that information be there and was transparent, it's not necessarily that we're talking about people who are going to be behind bars for 30 years.
- We think that's what's really important to us. It's a very - it's a slippery slope when we start talking about transparency and being able to report on really important matters that are particularly like - just, like I said, the electoral process and a bit of misinformation or a little white lie that gets bigger, that it - we're not always talking about that extreme of someone who's going to be in jail for 30 years because they've been so horribly corrupt and therefore we're going to ruin their career. We are talking about politicians and the right for people who are in public life and accept that their reputation

when they sign up to that job and that they will be before media and who interact with the media every single day and are very aware of what the CCC do, then surely we should argue that the public has a right to know and of transparency about those allegations because -

Mr Solomons

Just to make a quick point; often the people making the complaints, there's been a sort of an assumption here that it's one politician making a complaint against a rival but often that isn't the case. In my experience I've been involved in stories where it's been ordinary people who have made very important or brought forward very important information about very much more powerful people and it's the knowledge of the involvement of the CCC that's given them that confidence to come forward. So there's a power imbalance there which the involvement of the CCC to some extent addresses.

Mr Irwin

In one of the submissions which is in favour of non-disclosure or some non-disclosure provision and also in the Callinan / Aroney Report, a proposition which is advanced in favour of such legislation that I would like to give you an opportunity to comment on is that there exists in Queensland the Criminal Law Sexual Offences Act, which I'm sure you're aware of, which prevents disclosure of the names of defendants and, in some cases, complainants and the people who refer to that in support of there being a non-disclosure regime point to the fact that that's operated without any controversy in Queensland since about 1978 when the legislation was passed. So I just wanted to give you an opportunity, or somebody on the panel, an opportunity to comment on that proposition given that it does occur in some of the submissions that we have received.

Ms Cronin

I think that's quite a complicated legal issue so I don't know that I could do the topic justice with an off-the-cuff remark.

Mr Irwin

I suppose the argument is that because there's a provision that permits non-disclosure or requires non-disclosure that's existed in Queensland for almost 40 years, without any real issue being taken with it, it's not a big jump to say that there could be non-disclosure legislation relating to complaints to the CCC.

- Mr Solomons Could I make a couple of points? First of all, I don't agree that that law has operated without controversy in Queensland. I have been-
- Mr Irwin Well, this is why I'm asking you the question to give you the opportunity to comment on it.
- Mr Solomons Yes. I've been involved in stories where victims of sexual crimes were adults and we still, as a media organisation, were unable to report on them even though they have occurred 20 or 30 years earlier.
- Ms Webber Or they want to.
- Mr Solomons So that was – and that took up considerable time and resources involving company lawyers and making court applications to try to reveal the identities of people who wanted to have their identities revealed but were prevented under that Act. And the other point is that that law surely is intended to protect very vulnerable victims of crime and that isn't really what's at issue here, to my understanding at least.
- Ms Cronin There's also the complication that stories now get published across jurisdictions with very different laws but if you want kind of a more fulsome response I can take it to – take it on notice and get our Fairfax lawyers to put something together.
- Mr Irwin All right. Thank you.
- Ms Cronin And I would just again say to that, again, does it come down to that, is it – are we talking about one percent of – you know, to change all this or to make this change – is it again that one percent of politicians that we're really talking about? Is the vast majority of stuff that the CCC is dealing with in that regard that we would – that really isn't a day-to-day issue for all of us, so are we really protecting the politicians from – and, you know, giving them – that's what worries me anyway. That really the vast majority, we can talk to victims of crime and we can talk to, you know, these corruption and these horrible things that are happening out there in the world, but when it's hard to know what the percentage of, that we're talking about people's reputations and elections and, you know, politicians that are using the system as well, you know, on both sides.

Mr MacSporran QC Okay. Look, I think we're probably out of time. Can I say on behalf of this panel to your panel, Alison, Catherine, Danielle and Mark, I'm very grateful, I think you've articulated very well, if I might say so, all of the issues that need to be ventilated here. And your contribution is valued and I invite you, Danielle and the others, to make any further submissions in writing that might occur to you, things you want to put in writing to us after tomorrow and we will certainly consider those submissions as well. Thanks again.

Ms Cronin Thanks so much.

Mr Solomons Thank you.

Ms Sandy Thanks for having us.

Mr MacSporran QC So we will adjourn now for lunch and come back at 2 o'clock for our next session. Thank you.

SESSION ADJOURNED