



**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

Conducted at CCC Brisbane, 6 and 7 October 2016

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Opening remarks - Day 1

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 Jen O'Farrell
Mr Alan MacSporran QC

CCC Acting Chief Executive Officer
CCC Chairperson and Panel Chair

Ms O'Farrell

Good morning everyone. Welcome to this public forum and thank you for your interest in this very important issue. My name is Jen O'FARRELL and I'm the Acting CEO of the Crime and Corruption Commission. My job this morning is to quickly cover a number of administrative issues, introduce the panel to you and also run through the schedule for the day.

In terms of evacuation procedures, in the unlikely event that the building fire alarm activates we request that you remain seated and await instructions. If evacuation is required please follow the directions of the fire wardens who you will be able to identify by their red or yellow safety hat. You will be directed to the fire stairs outside this room and then to the evacuation point outside of this building. If you have any mobility concerns please identify those to the fire warden and assistance will be provided to you. Signs outlining the evacuation procedures have been placed in the public gallery today.

Bathroom facilities are located on this floor. The ladies facilities and the accessible facilities are located on this side of security. And gentlemen facilities are located on the other side of this floor as you go past the security section.

In terms of the public forum rules, to ensure we have a very productive two days we ask that you please observe the following rules, or the rules that were displayed as you walked in, but in particular can you please follow the direction of panel members, CCC staff and Queensland Police Officers present. Do not disturb or interrupt the forum and switch your mobile phones off or to silent, or any electronic devices you have to silent, and refrain from moving around the room while the forum is in session. Everyone should also be aware that we are live-streaming and recording the public forum today.

Now I'd like to introduce the panel. We have Mr Alan MacSporran QC, Crime and Corruption Commission Chairperson and Chair of the Panel; Mr Marshall IRWIN, Crime and Corruption Commission Ordinary Commissioner; Mr Richard BINGHAM, Queensland Integrity Commissioner; and Dr Rebecca DENNING, the Crime and Corruption Commission Director of Policy and Research.

Most of you will be aware of the schedule for today. For those of you who aren't we will commence today's proceedings with opening remarks from Mr MacSPORRAN. Following that we will commence the first of three speaker sessions. After we have completed the first session, at around 11 a.m. we will then have an approximate 30 minute break. We will then reconvene at

around 11:30 and go through until 1 p.m. at which time we will break for lunch. Our last session for today will commence at 2 p.m. and will go through until 4 p.m. And then we will conclude for the day.

At the end of each session everyone is asked to leave the public gallery. We ask that you collect your belongings, including any that you have stored in the lockers. Hand in your pass to security and travel to the ground floor via the lifts. There are a number of cafes close by where you can get a refreshment, which you can bring back into the public gallery if you are short on time. If you're returning after the break for the next session please make sure that you leave sufficient time to sign back in and pass through security.

Once again, I thank you for your participation and your attendance today and I'll now hand over to Mr MacSPORRAN.

Mr MacSporran QC Thank you, Jen. Welcome to this public forum being conducted by the Queensland Crime and Corruption Commission. Just a couple of formalities. Pursuant to section 5 of the Recording of Evidence Act 1962 I direct that all relevant matter be recorded by mechanical device by recorder within the meaning of the Act. Ms Melissa LETONDEUR will be the recorder for the purposes of the proceedings today and tomorrow.

Secondly, the panel was to be constituted by another member, Mr John McMillan, the current New South Wales Ombudsman. Unfortunately only yesterday Mr McMILLAN advised that he was unable to attend. He had another commitment which he simply couldn't reschedule. It's a shame and he apologises. But we still have the four remaining panel members to deal with these issues today and tomorrow.

Just by way of background, as you know, the CCC published a discussion paper in June 2016 in relation to the topic, "Whether it is in the public interest to publicise allegations of corrupt conduct, and if not, what legislative or other options are available to prevent this." We invited submissions from all relevant stakeholders and members of the public. We received over 50 submissions in response. Where we have the consent of the submitters and where the submissions are in an appropriate form for publication, we have published them on our website for everyone to read. The content of some parts of some of the submissions has been redacted where that content was not appropriate for publication.

We then assessed the submissions and decided to invite a number of submitters to take part in this forum. We made a selection of

those invited based upon the desire to reflect the range of diverse views set out in the submissions, in other words, across the range of views expressed. It was not practical or logistically possible in the time available to invite everyone who made a submission. However, we've set aside some time tomorrow, as you've seen from the schedule, to hear from those who have expressed a continuing desire to be heard. And that will be the last session tomorrow morning.

Can I personally assure all of those who took the time and trouble to make a submission that your submissions will receive careful consideration in any reports we ultimately make to the government about this issue. As far as possible the forum will be conducted with little formality. When your turn comes we'd like you to state your full name, and if you are representing an organisation or a particular body, the name of that body as well.

You will be invited to make an opening statement of about five minutes' duration, before the discussion itself commences. You don't have to make a statement if you don't want to, but you'll have the opportunity to do so if you so desire.

Although the forum is open to the public, because, as you've seen here, there's limited room for the public to attend, we are also live-streaming these proceedings to all of those who care to tune in. In addition, ultimately a transcript of the proceedings will be available on our website for anyone to access.

Could I ask as a courtesy to everyone present that you take care to switch off or turn to silent your mobile devices. And could I ask everyone here also to be respectful of others, including those who are not present, and debate openly but respectfully the issues that are of interest to this forum. Some of the submitters have raised particular issues, factual matters that have been and continue to be of concern to them.

Whilst those views are understandable, this is not really the forum to be re-litigating some of those matters, or even to air them here in the public. In saying that I don't mean to imply that you are prevented therefore from proper debate in this forum. What I am saying is that you do not need to refer to specific examples and name names to be able to properly debate these issues. It would, of course, be grossly unfair to name names of people against whom allegations are made when they are not here and therefore unable to defend themselves.

As the Presiding Officer I have the power to make a non-publication order if necessary, if, for example, the discussion reveals details about which publication would be unfair to a

person or persons, or contrary to the public interest. I'm hoping that won't be necessary. And, of course, if we debate this matter in a responsible manner it won't be necessary to do such.

As we've all seen from the submissions made, the issues raised by this forum are complex and there are clearly a number of important competing considerations to be carefully balanced in arriving at a sensible solution. That's one of the purposes of this forum, to flesh out and have publicly aired all of the options that might be available to reach a sensible solution.

On the one hand, of course, there is the jealously guarded right to freedom of speech. In that context, however, it should be remembered that even that right is not unqualified. The laws of defamation place considerable constraints on what can be communicated publicly. The laws are designed to protect reputations and they provide for significant liability for transgressions. Consequently, one of the issues for consideration here is as to whether the laws of defamation are adequate to protect persons against whom allegations of corruption are made publicly.

As I'm sure you all know, defamation law is complex and you need a lawyer. Lawyers are expensive and not everyone can afford one. Furthermore, a defamation suit might take a very long time to resolve the issues, and in the meantime damage may have been done to your reputation.

Another issue for forum is the tendency that we all have seen from time-to-time of people publishing allegations of corrupt conduct during election campaigns. An apparent motive might be to cause maximum damage to an opponent, sometimes regrettably, when there are simply no substance at all in the allegations made. The allegations may come to the CCC, with very little time for us to properly assess the complaint and give any indication as to whether there is merit, or it's just a cynical attempt to damage an opponent.

If the allegation is true it can argued that little harm is done to the reputation of the subject of the allegation because they are corrupt, although, of course, if they are corrupt their reputation is destroyed forever. But just imagine for a moment that the allegation is false. Irreparable harm can be done to the reputation, and the election is over before the matter can be clarified. This outcome would, at first blush, seem totally unfair. But does the right to freedom of speech dictate that such publication should be permitted? That's one of the real issues to be debated here.

One of the arguments for permitting this is that the public have a right to know, and that this is the best way to ensure transparency and accountability. It may be argued that the public have every right to know if someone is corrupt. No one could sensibly suggest otherwise. However, does the public have a right to know that someone is alleged to be corrupt? Is there a relevant difference in the sense of assessing where the public interest may lie in someone being corrupt, as opposed to being alleged to be corrupt? And you might think, and we need to debate this, that that may well be a very significant difference.

Another relevant consideration is the CCC's operational imperatives. If the allegations become public, does that tip off someone who may be corrupt and give them an opportunity to interfere with witnesses, concoct their stories with witnesses, destroy, alter or fabricate evidence, or leave the jurisdiction and put themselves beyond the law? If someone is motivated to expose corrupt conduct with the intention that the matter will be properly investigated and the offender brought to justice, how can it help to tip off the offender before the investigation can be carried out? Is education of complainants the answer or is there a need to legislate to prohibit the conduct, either absolutely or in certain defined circumstances? Is there a need to guard against any unintended consequences of such measures? And that, again, is a very important issue to be debated today.

That's just a brief outline of some of the issues that we'd like to see aired today and tomorrow to try and ascertain what the public interest really does determine is necessary, if anything, or if the status quo as it exists today is adequate to protect all of the interests that are engaged.