



**Crime and Corruption
Commission**

QUEENSLAND

CRIME AND CORRUPTION COMMISSION

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

TRANSCRIPT OF PUBLIC FORUM

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Panel members:

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

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

Speaker:

Assistant Commissioner
Clem O'Regan APM

Assistant Commissioner of Police and
Commander of the Ethical Standards
Command

- Mr MacSporran QC Okay. Next speaker is Assistant Commissioner O'REGAN. Just for the record, Assistant Commissioner, can you state your full name and your rank?
- AC O'Regan Yes. I'm Clement David O'REGAN. I'm Assistant Commissioner of Police and the Commander of the Ethical Standards Command.
- Mr MacSporran QC Thank you. And we have your submission and would you like to make an opening statement to summarise your position?
- AC O'Regan Our submission is very brief. And, I guess, in summary, we believe that the status quo and the current legislative regime is sufficient to protect witnesses and complainants.
- Mr MacSporran QC Okay. We have heard evidence, which I think is correct, that the police routinely publicise the fact that a matter is being investigated. And that that occurs at a stage before someone even is charged often. Firstly, is that the case?
- AC O'Regan It's not the case generally. So we would release information about a complaint, or action against a police officer, when we take some affirmative action. So, for example, are moved to a stand-down or suspension. So that's when we move to a publication.
- Mr MacSporran QC And you would do that – obviously you wouldn't be standing down a police officer unless you were satisfied there was some merit or at least something to be investigated.
- AC O'Regan Yes. So both stand-down and suspension are what we would class as risk management tools. So when we've done, I guess, some preliminary assessment of an investigation and see there's something further in it, that's when we move to stand-down or suspension to manage the risk of that officer remaining in the workplace.
- Mr MacSporran Do you see a difficulty with information about a police officer being suspected of misconduct or corrupt conduct prior to an investigation being initiated and conducted?
- AC O'Regan I mean, that happens, I guess. That's the reality of modern policing. You would have seen recently, for example, a number of videos of police use of force issues

being publicised in the media. So it's very difficult for those issues not to be public. And in many respects appropriate.

- Mr MacSporran QC Why is it appropriate before the officer is confirmed to be at least, on the evidence available, strongly suspected of being corrupt or engaged in misconduct?
- AC O'Regan Well, I guess in use of force issues, as an example, the information is in the public. The videos or evidence is public information.
- Mr MacSporran QC It's the case, isn't it, that these days with the proliferation of phones and other mobile devices which have the capability of recording vision and audio of these events that it effectively is impossible to keep those incidents out of the media?
- AC O'Regan That's correct. And police are simply told that, "expect everything you do to be recorded, anything you do in a public place to be recorded."
- Mr MacSporran QC But there is still, isn't there, ultimately a risk of reputational damage which may be longstanding and ongoing, even where some police officer exposed in that way is later deemed to have acted entirely properly?
- AC O'Regan And that's – like, I guess, that's absolutely the conundrum with these sorts of issues.
- Mr MacSporran QC So currently that's just a fact of police life, is it, unfortunately?
- AC O'Regan Exactly. Well, life in the public.
- Mr MacSporran QC All right.
- AC O'Regan In the public eye.
- Mr MacSporran QC In terms of – putting police subject officers to one side – when ordinary investigations are done into crimes, there's care taken, is there not, unless there's a very good reason, not to publish the details of a suspect's name or identity before they're charged?
- AC O'Regan That's exactly right. You don't want to prejudice the investigation or prejudice the opportunity for the suspect to have a fair trial.

- Mr MacSporran QC And both of those considerations are very important.
- AC O'Regan Absolutely.
- Mr MacSporran QC Can you just outline briefly, if you would, with your experience as a longstanding police officer, what sort of considerations come into play when you're concerned about publication of allegations damaging the efficacy and capability of an investigation?
- AC O'Regan Well, it depends on the nature of the investigation and the type of investigative strategy you might have in place. So if the investigation includes sort of covert investigative methodology, publicising the fact of an investigation can, I guess, jeopardise the effectiveness of that style of investigation.
- Mr MacSporran QC And, again, for all the obvious reasons, I suppose, that's totally undesirable.
- AC O'Regan Absolutely.
- Mr MacSporran QC Especially if the investigation is designed to ascertain the truth.
- AC O'Regan Well, I guess, the purpose of an investigation is precisely that.
- Mr MacSporran QC Yes. All right. Now in an ideal world, I think your position is that you prefer the status quo because it's just a fact of life that you can't do better, in terms of preventing publication of certain allegations before they're investigated.
- AC O'Regan That's exactly right.
- Mr MacSporran QC But in an ideal world if in fact you could control social media, generally, would your preference be to prevent the publication of those matters until they could be properly investigated?
- AC O'Regan I guess my personal view is no. If the information, you know, the reality is the information can be public so – and it may be public already through publication. I guess its incumbent on the police service, once the investigation is complete, to actually publish the result of

their investigation and if it exonerates the officer, publish that.

- Mr MacSporran QC I suppose that's certainly commendable and I endorse that. But, I suppose, one of the problems with that, as we all know, for reasons we don't need to debate here, often there's a long delay between the allegation being made and the clearance, if it is to be a clearance, which is issued. And that that's not really satisfactory for the officer concerned is it?
- AC O'Regan It's difficult for the officer. But I guess it's – if you choose to be a police officer that's part of the territory of being a police officer.
- Mr MacSporran QC Certainly. We have heard from the Media Panel yesterday that there are occasions when the police use the media to publicise aspects of a case to encourage others to come forward to provide evidence and indeed to use them as part of an overall strategy to promote the investigative capability. Is that the case?
- AC O'Regan That's right. And occasionally, with cooperation with the media, as a lever or a part of an investigative tool.
- Mr MacSporran QC And has that been a successful investigative tool?
- AC O'Regan It can be. If it's used in conjunction with certain investigative techniques, yes.
- Mr MacSporran QC I suppose there's a fine line between using that strategy and endeavouring to ensure that the evidence that is in fact gathered by that strategy is admissible in court proceedings which would follow.
- AC O'Regan That's exactly right. Yes.
- Mr MacSporran QC And sometimes that balance is difficult to achieve, I imagine.
- AC O'Regan It is. But I think we have been very successful in that in the recent past.
- Mr MacSporran QC Thank you. Marshall?
- Mr Irwin As I understand it, Assistant Commissioner, you accept that the publication of allegations that are made against police officers can be prejudicial to their reputations?

- AC O'Regan Absolutely, yes.
- Mr Irwin And can, in certain circumstances, be prejudicial to your investigative activities in response to those allegations?
- AC O'Regan They can be, yes.
- Mr Irwin And although I don't think this has been discussed with you, you probably agree that there could also be an effect, a prejudicial effect, on a fair trial further down the track if charges are made and the information is in the public arena in advance?
- AC O'Regan That's certainly the potential, yes.
- Mr Irwin I mean, I understand the concern that you've expressed that you don't have control over a lot of the information that finds its way into the media in the digital age, particularly coverage of excessive force allegations with people having mobile phones and other recording devices available to them. But presumably there's also information that comes to you to investigate involving allegations against police officers where the information is not in the public arena in that way.
- AC O'Regan That's the case, yes.
- Mr Irwin Right. In those cases, do you see any facility to have some legislative prohibition on non-disclosure that the allegation has been made?
- AC O'Regan I don't know if I would see a benefit in it because the – I guess if the information is confidential there's a number of protections around that already that exist in terms of police officers or members of the Commission, for example, releasing information. So I think there's enough protections already in terms of keeping those matters confidential. So unless the complainant themselves is going to release it.
- Mr Irwin I mean, I'm envisaging a case where there's an allegation against a police officer, there hasn't been media coverage because no-one's taken a photographic or filmed record of it and then a complainant or some other person then, while you're commencing the investigation, does seek to publicise the fact that the complaint's been made to the CCC or the Queensland Police Service, or the CCC has

referred its investigation to you to complete. In that situation, even putting aside the internal confidentiality requirements, isn't that likely to make your investigation harder and of course affect the reputation of the person who is being investigated?

AC O'Regan

I'd say, yes, but it's a complex question. And there are some circumstances where that may assist the investigation.

Mr Irwin

And can you expand on that?

AC O'Regan

So, for example, if the issue was, for example, a child protection one or one of sexual misconduct, where you think there might be more than one complainant. A complainant coming forward, making a public statement, or that information becoming public, may bring other complainants forward.

Mr Irwin

Have you concrete examples, and I'm not asking you to give them but I'm just asking you in general terms, is that an experience that you have had either in conducting investigations yourself or in your current role where you're overseeing investigations?

AC O'Regan

Absolutely, yes.

Mr Irwin

All right. I will leave it there for the time being.

Mr MacSporran QC

Thank you.

Mr Irwin

Thank you.

Mr Bingham

Thanks very much, Assistant Commissioner. Given the QPS position about accepting the realities of the world in which we live and having to operate in that sort of environment, but at the same time acknowledging the risk of reputational damage when an allegation which is made against somebody, do you have any views about the sorts of measures which might mitigate that reputational damage? Is there a standard practice, for example, that when a public statement is made acknowledging that a complaint's being investigated that it is just an allegation, that a senior officer, somebody other than the person against whom the allegation is made, is saying "this is a very early stage in the investigation." Is there any sort of standard protocols around that sort of thing?

- AC O'Regan Well, in our standard press release around suspension, stand-down or when we publish something about an allegation we do state at the bottom of that that it is only an allegation, unproven and subject to investigation. So that's a standard practice when we release information publicly.
- Mr Bingham Okay. And are there other sorts of supports that are provided to people who are the subject of allegations which are still under investigation that-
- AC O'Regan We have, I guess, internal wellbeing supports for both complainants, internal complainants and for subject members. So that there are wellbeing services available to both. In terms of internal complainants and internal witnesses, we have an internal witness support program which works under my command.
- Mr Bingham Yes. Okay. How successful are those, do you think?
- AC O'Regan Well, given that between 30 and 40 percent of complaints against police are by police officers, I think they're very successful.
- Mr Bingham Okay. Good. Thank you. My second question is, if there were to be some sort of prohibition on disclosure about the fact of a complaint having gone to the CCC, and you know, given the practice of complaints being referred back to QPS for investigation from the CCC, do you envisage that there would be any difficulty arising from the practice which QPS has adopted in relation to matters which don't go to the CCC, if you like, acknowledging that the – from the earliest stage, that matters are in the public domain and the issues around the – thanks – around the situation where a complaint has been made to the CCC and there is in place some sort of publication prohibition?
- AC O'Regan No, I don't. But the reality is we work in partnership with the CCC all the time. A number of our investigations are reviewed by the CCC prior to their conclusion. So if we were to, say, suspend or stand-down an officer or take some criminal action against them prior to that being taken, we would obviously consult with the CCC and seek permission or – to do a press release.

- Mr Bingham Okay. So you don't envisage there would be an inconsistency or difficulty managing any of that if things were to head down that path?
- AC O'Regan No, I don't. As I say, we have a very strong overview relationship. Like, you know, CCC overview in what we do. And we're currently working towards a joint assessment of the complaint process with the CCC trying to reform and make the police complaint process a little more streamlined currently.
- Mr Bingham Okay. Thanks very much.
- Dr Denning Mr O'REGAN, I'm just interested in you said before on a number of occasions that's "just part of being a police officer". And I actually raised the issue yesterday around the police use of force issue and the – that interface with the public on a really regular basis. So I absolutely understand and appreciate your position on that. I suppose one of the flip sides of that position is that police officers very much know investigative technique, they are very much up with the law enforcement methodology because they live and breathe it every day. So I wonder whether that provides an argument to try to minimise the level of publicity around a police officer being investigated or a complaint being made against them for that very reason that they will know or perhaps be able to anticipate the likely steps that an investigating agency might go in progressing that matter?
- AC O'Regan Can I say my experience in the last three years as Commander of Ethical Standards Command is that where allegations against a police officer have been made and have not been public, and required covert strategies, that they have been very successful.
- Dr Denning And is that notification – and you could choose not to answer this – but does that notification typically stem from inside so it can be controlled a little bit more? What about the public kind of allegations? Can-
- AC O'Regan Well, recent cases, for example, of child protection issues have been kept very confidential and a number of strategies have been put in place to complete investigations of which the subject member has not been aware of, and those strategies have been dealt with not only by the Ethical Standards Command but by specialist police from State Crime, for example.

- Dr Denning And similar line of questioning; the proposition that, you know, it's just part of being a police officer, this level of exposure to the public – to public scrutiny, does that apply – should that expectation also apply to other parts of the public sector?
- AC O'Regan I'm not certain about that. I think where there is a duty to the public and a duty of care to the public, I think so. Look, I'm – because of my position, I'm subject to a number of complaints regularly about how I have resolved complaints or – so I just see part and parcel of my role and of being a police officer. And occasionally I get a letter saying I'm cleared of a complaint, which is most edifying.
- Mr Irwin Assistant Commissioner, do you appreciate that there are a number of officers in the Queensland Police Service who might take a different view as to being the subject of complaints?
- AC O'Regan Absolutely. Yes. And, look, complaints can take a long time to resolve. And it can be a great burden to an officer and his family to be subject of a complaint that can take years to conclude. So, absolutely.
- Mr Irwin Thank you.
- Mr MacSporran QC Assistant Commissioner, just one further topic. Does the Service keep records of the number of complaints which turn out to be false against police officers?
- AC O'Regan Yes.
- Mr MacSporran QC Are those figures readily available?
- AC O'Regan Yes, they are.
- Mr MacSporran QC Would we be able to have those, by way of a supplementary submission, without identifying names, obviously, just the numbers?
- AC O'Regan Yeah, absolutely. We do a quarterly report on the complaint status across the Service which outlines substantiated, unsubstantiated, exonerated complaints. So, yes.

- Mr MacSporran QC Okay. And do you also keep figures on the numbers of those where there has been a charge of having made a false complaint laid?
- AC O'Regan Can I say I – it certainly hasn't happened in the three years I have been in ESC. And I don't recall it happening at all in the eight years I've been an Assistant Commissioner.
- Mr MacSporran QC Is that largely a matter of policy?
- AC O'Regan And evidence. So proving something is vexatious is – if you read the statutes, it's a quite – quite a difficult charge to prove.
- Mr MacSporran QC I think we've had evidence here yesterday which acknowledges from our point of view that the provision in our Act is similarly difficult. To prove that someone intended to make a false vexatious complaint is almost impossible. And that's your experience as well?
- AC O'Regan Yeah and look, the wording of the Police Service Administration Act offence is – almost mirrors that in the-
- Mr MacSporran QC CCC?
- AC O'Regan -CCC Act, yes.
- Mr MacSporran QC And I suppose additionally, unless it's a very clear case, as a matter of policy, you would be reluctant to discourage complaints being made because people should be able to complain?
- AC O'Regan That's exactly right. And, you know, client service complaints are, you know, are – it's all about transparency. And it's what people – people's perception of what they think has happened.
- Mr MacSporran QC Yes. Can I ask then more generally whether you keep figures for complaints from the public about crimes allegedly committed? The numbers of those that are in fact false?

AC O'Regan Yes. And, once again, I think you could count on one hand the number of people who are charged with causing a false investigation.

Mr MacSporran QC Yes.

AC O'Regan It's not a common offence.

Mr MacSporran QC No. And again for the same reasons?

AC O'Regan Absolutely. I recall I was Assistant Commissioner of Northern Region for five and a half years and I vaguely – I think one case of causing a false investigation in the five years in Northern Region, so.

Mr MacSporran QC Yes.

AC O'Regan It's not a common offence.

Mr MacSporran QC Yes. Can I then ask you, if it's not too much trouble, we would be gratefully appreciative of having those two categories of figures in a short supplementary submission?

AC O'Regan Yes, certainly.

Mr MacSporran QC Perhaps over the last two or three years if that's possible?

AC O'Regan Two to three. Yes, I can do that.

Mr MacSporran QC Okay. Well, thanks very much. I have nothing further.

Mr Bingham No, nothing else. Thank you.

Mr Irwin Nothing further.

Mr MacSporran QC Thanks very much, Assistant Commissioner.

Mr Irwin Thank you.

Mr MacSporran QC Thanks for coming.

END OF SPEAKER